

Dear Senators ANDREASON, Coiner & Malepeai, and  
Representatives SCHAEFER, Marriott & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed  
rules of the Dept. of Labor:

IDAPA 09.01.04 - Unemployment Insurance Benefit Fraud & Overpayment

Rules (Docket #09-0104-1001);

09.01.06 - Rules of the Appeals Bureau (Docket #09-0106-1001);

09.01.30 - Unemployment Insurance Benefits Administration Rules

(Docket #09-0130-1001);

09.01.35 - Unemployment Insurance Tax Administration Rules

(Docket #09-0135-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by  
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice  
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis  
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than  
8-27-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)  
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting  
on the enclosed rules is 9-27-10.

The germane joint subcommittee may request a statement of economic impact with  
respect to a proposed rule by notifying Research and Legislation. There is no time limit on  
requesting this statement, and it may be requested whether or not a meeting on the proposed rule  
is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the  
address or FAX number indicated on the memorandum attached.



# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

**Jeff Youtz**  
Director

## MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate and House of Representatives Commerce and Human Resources Committees

FROM : Research and Legislation Manager, Nugent *MPN*

DATE: August 9, 2010

SUBJECT: Four Sets of Temporary and Proposed Rules Implementing 2010 Legislation

- IDAPA 09.01.04 - Unemployment Insurance Benefit Fraud & Overpayment Rules (Docket #09-0104-1001)
- 09.01.06 - Rules of the Appeals Bureau (Docket #09-0106-1001)
- 09.01.30 - Unemployment Insurance Benefits Administration Rules (Docket #09-0130-1001)
- 09.01.35 - Unemployment Insurance Tax Administration Rules (Docket #09-0135-1001)

The Department of Labor is proposing to promulgate four sets of temporary and proposed rules to implement the provisions of House Bill No. 510 and House Bill No. 646aa, which were enacted in 2010.

House Bill 510 amended the Employment Security Law to clarify the claims examination process. It clarified the period of time in which the Department of Labor could recover benefit overpayments and taxable wage contributions, provided for redeterminations of Department decisions, provided for the electronic filing of administrative appeals and the electronic service of determinations and decisions, allowed benefit payments to be made by direct deposit or through the use of debit cards, and allowed the Director of the Department to compromise overpayments, penalties, interest and periods of disqualification when found to be in the Department's best interest.

HB 646aa amended existing law to reduce the amount of benefits paid in a compensable week by the amount equal to temporary disability benefits received under a worker's compensation law of any state or under a similar law of the United States. It also provided that no charge shall be made to a covered employer's account for benefits paid to a worker who turns down an offer of suitable work because of participation in an approved job training program.

**Mike Nugent, Manager**  
Research & Legislation

**Cathy Holland-Smith, Manager**  
Budget & Policy Analysis

**Don H. Berg, Manager**  
Legislative Audits

**Glenn Harris, Manager**  
Information Technology

Docket #09-0104-1001 implements HB510 and allows a waiver of repayment request to be made within fourteen days of the electronic transmission date of a determination of overpayment and allows a determination of overpayment to become final fourteen days after its electronic transmission and provides recourse for errors in electronic transmissions.

Docket #09-0106-1001 implements HB510 and provides recourse for errors in the electronic transmission of determinations or decisions and provides that notice of decisions may be served on interested parties by electronic transmission

Docket #09-0130-1001 implements House Bill 646aa and HB 510 and provides for the reissuing of benefit payment checks that are lost stolen, destroyed or forgotten by means other than paper checks, and reduces the amount of employment insurance benefits paid in a compensable week by an amount equal to the temporary disability benefits a claimant receives under any worker's compensation law.

Docket #09-0135-1001 implements HB510 and adds that notice of determinations may be served on interested parties by electronic transmission, requires employers to maintain unemployment tax records for five years allowing the Department of Labor to implement the new five-year enforcement limitation period in HB510, provides a five-year statute of limitations for audits and inspections of employer records, and makes technical corrections.

It appears the temporary and proposed rules have been promulgated within the scope of statutory authority granted to the Department of Labor.

cc: Department of Labor  
Josh McKenna & Michael Johnson

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.04 - UNEMPLOYMENT INSURANCE BENEFIT FRAUD AND OVERPAYMENT RULES

#### DOCKET NO. 09-0104-1001

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking allows a waiver of repayment request to be made within fourteen days of the electronic transmission date of a Determination of Overpayment and allows a Determination of Overpayment to become final fourteen days after its electronic transmission; provides recourse for errors in electronic transmissions; adds required subsections for incorporation by reference, office hours, and public records act compliance; and makes technical corrections.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents being incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

Michael Johnson, Bureau Chief  
Department of Labor  
317 W. Main Street  
Boise, ID 83735  
Phone 332-3570 ext. 3082  
Fax 334-6125

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 09-0104-1001**

**004. INCORPORATED BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. (7-1-10)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The principle place of business of the Department of Labor is in Boise, Idaho. (7-1-10)T

**01. Street Address and Hours.** The office is located at 317 W. Main St., Boise, Idaho 83735 and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. (7-1-10)T

**02. Mailing Address.** The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 83735. (7-1-10)T

**03. Telephone.** The telephone number of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. (7-1-10)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (7-1-10)T

**0047. -- 009. (RESERVED).**

***(BREAK IN CONTINUITY OF SECTIONS)***

**011. (RESERVED).**

**0142. MATERIALITY, FRAUD DETERMINATIONS.**

For purposes of Idaho Code Section 72-1366(12), a fact is material if it is relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Section 72-1366, Idaho Code. (3-19-99)

**0123. -- 039. (RESERVED).**

***(BREAK IN CONTINUITY OF SECTIONS)***

**050. WAIVER OF REPAYMENT.**

A Determination of Waiver will be made upon the written request of any interested party; except that an appeals examiner or the Industrial Commission may consider the issue of waiver of repayment on their own motion. A

request for a Determination of Waiver must be made within fourteen (14) days of the date of mailing of the Determination of Overpayment or Revised Determination of Overpayment, or within fourteen (14) days of the date of electronic transmission to an electronic-mail address approved by the Department of the Determination of Overpayment or Revised Determination of Overpayment. If a party establishes by a preponderance of the evidence that notice of a Determination of Overpayment or Revised Determination of Overpayment was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, or that notice of a Determination of Overpayment or Revised Determination of Overpayment was not transmitted to an electronic-mail address approved by the Department within fourteen (14) days of the date of transmission because of error on the part of the Department, the period for filing a timely request for Determination of Waiver shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1369, Idaho Code.

~~(3-19-99)~~(7-1-10)T

**01. Waiver Determination.** A Determination of Waiver shall become final unless, within fourteen (14) days after the date of mailing or of electronic transmission to an electronic-mail address approved by the Department, an appeal is filed with the Department of Labor. If a party establishes by a preponderance of the evidence that notice of a Determination of Waiver was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, or that notice of a Determination of Waiver was not transmitted to an electronic-mail address approved by the Department within fourteen (14) days of the date of transmission because of error on the part of the Department, the period for filing a timely request for an appeal shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1369, Idaho Code. ~~(3-19-99)~~(7-1-10)T

**IDAPA 09 - DEPARTMENT OF LABOR**

**09.01.06 - RULES OF THE APPEALS BUREAU**

**DOCKET NO. 09-0106-1001**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking provides recourse for errors in the electronic transmission of determinations or decisions; adds that notice of decisions may be served on interested parties by electronic transmission as allowed by Section 72-1368(5), Idaho Code; adds required subsections for incorporation by reference, office hours and public records act compliance; and to make technical corrections.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna at 334-3570 ext. 3919.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

Josh McKenna, Benefits Bureau Chief  
Department of Labor  
317 W. Main Street, Boise, ID 83735  
Phone 332-3570 ext. 3919 / Fax 334-6125

**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 09-0106-1001**

~~004. — 005.~~      ~~(RESERVED).~~

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. (7-1-10)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The principle place of business of the Department of Labor is in Boise, Idaho. (7-1-10)T

**01. Street Address and Hours.** The office is located at 317 W. Main St., Boise, Idaho 83735 and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. (7-1-10)T

**02. Mailing Address.** The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 83735. (7-1-10)T

**03. Telephone.** The telephone number of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. (7-1-10)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (7-1-10)T

**0067. GENERAL PROVISIONS.**

Department hearing officers shall be called appeals examiners. Ref. Section 72-1368(6) and Section 45-617(7), Idaho Code. (4-5-00)

**0078. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.**

Pursuant to the provisions of Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases," of the rules of administrative procedure promulgated by the Attorney General as IDAPA 04.11.01.100 through 799 do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing the Job Service Complaint System, the Job Training Partnership Act (JTPA) program, or other programs administered by the Department. (4-5-00)

**0089. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.**

**01. Proceedings to Determine the Rights to Unemployment Insurance Benefits and Tax Contribution.** All proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act, pursuant Sections 72-1361 and 72-1368, Idaho Code. Appeals of complaint determinations and other decisions arising within the complaint system or other programs administered by the Department must be determined by the requirements of applicable federal law. The Department has promulgated its own rules of procedure for its appeals proceedings contained in IDAPA 09.01.06.001 et seq. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. (4-5-00)

**02. Claims for Wages Are Exempt.** All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. (4-5-00)

~~009~~10. -- 011. (RESERVED).

**012. FILING OF AN APPEAL.**

**01. Filing of an Appeal Pursuant to the Employment Security Law.** An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Appeals Bureau of the Department, 317 W. Main Street, Boise, Idaho 83735-0720. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Job Service office or the Appeals Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Job Service office or the Appeals Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735-0720. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal shall be deemed to be timely filed. Ref. Section 72-1368(6), Idaho Code. (5-3-03)

**02. Filing of an Appeal Pursuant to the Claims for Wages Act.** An appeal shall be in writing, signed by the appellant or the appellant's representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or revised determination of the Department. The appeal may be filed by personal delivery, by mail, or by fax to the Wage and Hour Section of the Department at the address indicated on the Wage Claim Determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the Wage and Hour Section by 5 p.m. on a business day shall be deemed filed on that date. A faxed appeal that is received by the Wage and Hour Section on a weekend, holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. Ref. Section 45-617(6), Idaho Code. (4-5-00)

**03. Date of Mailing.** ~~The "Date of Mailing" or "Date Mailed."~~ The date indicated on Department determinations, revised determinations, redeterminations and decisions as the "Date of Mailing" or "Date Mailed" shall be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. ~~(4-5-00)~~(7-1-10)T

013. -- 016. (RESERVED).

**017. EFFECT OF POSTAL SERVICE DELAY OR ERROR.**

**01. Department Determinations.** (7-1-10)T

**a.** If a party establishes by a preponderance of the evidence that notice of a Department determination was not delivered to the party's last known address within fourteen (14) days of mailing, as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, and by the Claims for Wages Act in Sections 45-617(4) and (5), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (4-5-00)

**b.** If a party establishes by a preponderance of the evidence that notice of a Department determination was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, because of error on the part of the Department, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (7-1-10)T

**02. Decisions of the Appeals Examiner.** (7-1-10)T

**a.** If a party establishes by a preponderance of the evidence that notice of a decision by an appeals

examiner was not delivered to the party's last known address within ten (10) days of mailing, as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, and by the Claims for Wages Act in Sections 45-617(5) and (7), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (4-5-00)

**b.** If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, because of error on the part of the Department, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department because of error on the part of the Department, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. (7-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**090. DISMISSAL IF FILING IS LATE.**

Where it appears that any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, may not have been filed within the period of time prescribed for filing, the appellant, claimant, petitioner, or applicant (as the case may be) shall be notified and be given an opportunity to show that such appeal, claim for review, petition, or other request was timely. In computing any period of time prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays shall be counted during the period unless the last day of the period is a Saturday, Sunday, or legal holiday in which event the period shall not expire until the next business day following the Saturday, Sunday, or legal holiday. If it is found that such appeal, claim for review, petition or other request or application was not filed within the applicable time limit, it shall be dismissed on such grounds. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter shall be decided on the merits. Copies of a decision under this section shall either be given, or mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code.

~~(4-5-00)~~(7-1-10)T

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1001

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking provides for the reissuing of benefit payment checks that are lost, stolen, destroyed, or forged by means other than paper checks; and reduces the amount of unemployment insurance benefits paid in a compensable week by an amount equal to the temporary disability benefits a claimant received under any worker's compensation law.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to 72-1312(4)(b) and 72-1346(3), Idaho Code, that were passed during 2010 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Josh McKenna 334-3570 ext. 3919.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010.

Josh McKenna, Benefits Bureau Chief  
Department of Labor  
317 W. Main Street, Boise, ID 83735  
Phone 332-3570 ext. 3919 / Fax 334-6125

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 09-0130-1001

**500. REISSUING ~~CHECKS~~ BENEFIT PAYMENTS.**

Whenever a benefit check payment is lost, stolen, destroyed, or forged, the claimant shall be issued a new check benefit payment upon his proper presentation of the facts and submission of an affidavit, in a form prescribed by the Department, for the issuance of a new check benefit payment. Ref. Section 72-1368(1), Idaho Code.

~~(3-19-99)~~(7-1-10)T

**01. Affidavit for Issuance of New ~~Check~~ Benefit Payment.** A claimant's affidavit filed for the issuance of a new check benefit payment must be signed before a notary public or an authorized representative of the Department. ~~If a claimant completes an affidavit and submits the remaining portions of a partially destroyed or mutilated check, the Department will waive any waiting period for reissuance of the check.~~

~~(3-19-99)~~(7-1-10)T

**02. Reissuance of Stolen ~~Checks~~ Benefit Payments.** If a claimant knows who took a check benefit payment, he must provide evidence that he has taken all reasonably available legal steps and been unsuccessful in recovering the check benefit payment before the Department will consider reissuing the check benefit payment.

~~(3-19-99)~~(7-1-10)T

**501. -- 524. (RESERVED).**

**525. REPORTABLE INCOME.**

Ref. Sections 72-1312, 72-1328, Idaho Code.

(3-19-99)

**01. Back Pay or Disputed Wages.** Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages for the weeks in which the claimant would have earned them, or are assignable to the weeks stipulated in the award or judgment. If the claimant received waiting week credit for a week in which the award or judgment is reported or assigned, the waiting week will be denied if the amount of the award or judgment for the week renders the claimant ineligible for such credit. If the claimant received benefits for the weeks in which the award or judgment is reported or assigned, such benefits are overpaid to the extent that the weekly amount of the award or judgment affects the claimant's eligibility.

(3-19-99)

**02. Disability/Injury Compensation.** Injury or disability compensation payments are not considered wages and are not reportable income for unemployment insurance purposes.

(3-19-99)

**03. Disability Retirement Payments.** Retirement payments as a result of disability shall be treated the same as other types of retirement payments. Ref. Section 72-1312(4), Idaho Code.

(3-19-99)

**04. Gratuities or Tips.** Gratuities or tips must be reported by a claimant for the week in which each gratuity or tip is earned.

(3-19-99)

**05. Holiday Pay.** Holiday pay must be reported as though earned in the week in which the holiday occurs.

(4-6-05)

**06. Non-Periodic Remuneration.** All non-periodic remuneration such as one-time severance pay, profit sharing, and bonus pay is reportable for the week in which paid.

(3-19-99)

**07. Penalty or Damage Awards.** Amounts awarded to a claimant as a penalty or damages against an employer, other than for lost wages, do not constitute wages.

(3-19-99)

**08. Pension, Retirement, or Annuity Payments.** The pension deduction provision of Section 72-1312(4), Idaho Code, only applies if the pension, retirement pay, annuity, or other similar periodic payment is made under a plan maintained or contributed to by a base period employer. The dollar amount of the weekly pension shall be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension plan, the pension offset shall be reduced one

hundred percent (100%), and no deduction for the pension shall be made from the claimant's weekly benefit amount. Ref. Section 72-1312(4), Idaho Code. (3-19-99)

**a.** Pension Contributions. The burden shall be on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan. (3-19-99)

**b.** Pension Payment Changes. Any change in the amount of the pension, retirement, or annuity payments which affects the deduction from the claimant's weekly benefit amount shall be applied in the first full week after the effective date of the change. (3-19-99)

**09. Relief Work or Public Assistance.** (3-19-99)

**a.** Remuneration received for relief work or public service work will be considered wages on the same basis as any other employment. (3-19-99)

**b.** Eligibility When Public Assistance Received. A person receiving public assistance shall be eligible for benefits if no work is involved and the claimant is otherwise eligible. (3-19-99)

**10. Self-Employment Earnings.** When reporting earnings, a claimant must report gross earnings from self-employment unless the claimant can prove that certain expenditures, which are not commonly associated with working for wages, were necessary in order to accomplish the work. Such expenditures may include, but are not limited to, buying products wholesale for resale and renting equipment to accomplish a task. Expenditures which are not deductible include, but are not limited to, transportation costs, uniforms, and depreciation of equipment. (3-19-99)

**11. Severance Pay.** An equal portion of a periodic severance payment must be reported in each week of the period covered by the payment. However, severance pay received in a lump sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

**12. Vacation Pay.** Vacation pay allocable to a certain period of time in accordance with an employment agreement must be reported in the week to which it is allocable. However, vacation pay received in a lump-sum payment at the time of severance of the employment relationship must be reported when paid. (3-19-99)

**13. Verification of Earnings on Claim Reports.** The Department may verify the earnings and/or reasons for separation reported by claimants on claim reports filed for benefit payments. Ref. Section 72-1368(1), Idaho Code. (3-19-99)

**14. Wages for Contract Services.** A person who is bound by a contract which does not prevent him from accepting other employment but who receives pay for a period of not working, is required to report the contract payments as earnings in equal portions in each week of the period covered by the contract. This rule does not apply to employees of educational institutions. (3-19-99)

**15. Wages for Services Performed Prior to Separation.** Wages for services performed prior to a claimant's separation are reportable for the week in which earned. (3-19-99)

**16. Temporary Disability Benefits.** For any week with respect to which a claimant is receiving or has received temporary disability benefits under a worker's compensation law of any state or under a similar law of the United States, such payments shall be reported in an amount attributable to such week. If a claimant receives an award of temporary disability benefits which is attributable to any week in which the claimant had already received unemployment insurance benefits, the unemployment insurance benefits are overpaid to the extent the weekly amount of temporary disability benefits affects the claimant's eligibility for unemployment benefits. (7-1-10)T

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1001

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking adds that notice of determinations may be served on interested parties by electronic transmission as allowed by Section 72-1368(5), Idaho Code; requires employers to maintain unemployment insurance tax records for five years allowing the Department to implement the new five (5) year enforcement limitation period of Section 72-1349(8), Idaho Code; provides a five-year statute of limitations for audits and inspections of employer records as required by Section 72-1349(8), Idaho Code; and makes technical corrections.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will be no fiscal impact to the General Fund as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes simply bring the rule into compliance with amendments made to Sections 72-1349(8) and 72-1368(5), Idaho Code, that were passed during 2010 Legislative Session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 1st day of July, 2010

Michael Johnson, Bureau Chief  
Department of Labor  
317 W. Main Street, Boise, ID 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125

**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 09-0135-1001**

**011. GENERAL PROVISIONS.**

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

**01. Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-22-07)

**02. Contribution Due Date.** Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Section 72-1349, Idaho Code. (3-19-99)

**03. Penalties and Interest on Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-19-99)

**04. Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Section 72-1360, Idaho Code. (3-19-99)

**05. Penalty and Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-19-99)

**06. Confidential Information.** Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sections 9-340 and 72-1342, Idaho Code. (3-19-99)

**07. Filing of an Employer Appeal.** (3-30-01)

**a.** An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Labor local office or to the UI Compliance Bureau of the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Department of Labor local office or to the UI Compliance Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Section 72-1361, Idaho Code. (~~3-22-07~~)(7-1-10)T

**b.** An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

**c.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-

1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

**08. Determinations.** Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, of the determination in accordance with Sections 72-1361 and -1368(5), Idaho Code. ~~(3-30-01)~~(7-1-10)T

**09. Determination of Payment Date.** Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. (3-19-99)

**10. Release of Lien upon Payment in Full.** An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-19-99)

**11. Contribution Reports.** Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. (4-11-06)

**a.** Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-22-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**081. EMPLOYER RECORDS.**

Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall establish and maintain records to show the information hereinafter indicated. Such records shall be kept for a period of ~~three~~ five (35) years after the calendar year in which the remuneration was due. Ref. Section 72- 1337, Idaho Code. ~~(3-19-99)~~(7-1-10)T

**01. Required Information.** Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment: (4-11-06)

- a.** Full name and home address of worker; (3-19-99)
- b.** Social Security account number; (3-19-99)

- c. The place of work within this State; (4-11-06)
- d. Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; (3-19-99)
- e. Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; (3-19-99)
- f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: (3-19-99)
  - i. Money wages; (3-19-99)
  - ii. The cash value of other remuneration; and (3-19-99)
  - iii. The amount of all bonuses or special commissions. (3-19-99)
- 02. Special Remuneration.** Any special remuneration paid for services performed in more than one-quarter (1/4) of the year, such as annual commissions or bonuses, gifts and prizes, showing separately: (3-19-99)
  - a. Money payments; and (3-19-99)
  - b. The cash value of other remuneration and the nature thereof. (3-19-99)
- 03. Travel or Employee Business Expenses.** Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. (3-19-99)
- 04. Records to Be Made Available.** The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the department. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**166. FIELD OPERATIONS CONTROL.**

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. (4-11-06)

**01. Statute of Limitations for Audits and Inspections of Employer Records.** ~~In the absence of fraudulent practices, the~~ Department shall not audit an employer's records for a period greater than ~~three~~ five (35) years for purposes of establishing a tax liability. The ~~three~~ five (35) year period shall be determined by, and extend three five (35) years back from; the due date that the employer is notified, orally of a quarterly report or in writing by any representative of the Department, of an intent to perform an audit of the records, and shall be deemed to include every quarter which, in whole or in part, falls within the three (3) year period. This statute of limitations shall not apply in any case in which an employer has engaged in fraudulent practices the date a quarterly report is filed, whichever is later. ~~(3-30-01)(7-1-10)T~~

**02a.** Tolling of Statute of Limitations. The ~~three~~ five (35) year statute of limitations is tolled for any period in which the employer ~~does not reside within the state~~ absconds from the state, during any period of the employer's concealment, or during any period when the department's ability to commence administrative

proceedings to enforce Chapter 72, Section 1349 of the Idaho Code is stayed by legal proceedings.

~~(3-30-01)~~(7-1-10)T

**03h.** Notification of Audits. Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code. (3-19-99)

**04c.** Frequency of Audits. The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: (3-30-01)

**a.i.** On the basis of random selection and other selection criteria in accordance with federal requirements; (3-30-01)

**b.ii.** As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or (3-30-01)

**e.iii.** As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Section 72-1337, Idaho Code. (3-30-01)

~~**05.** *Statute of Limitations for Collections of Contributions, Penalty and Interest. Administrative proceedings for collection of taxes from subject employers shall be instituted within five (5) years from the date of a final determination, decision or order establishing the employer's liability.* (3-30-01)~~

~~**a.** *The time limits contained in Subsection 166.05 shall not apply once a tax liability is recorded as a lien against the property of an employer.* (3-30-01)~~

~~**b.** *If the employer or his representative acknowledges the indebtedness or makes a partial payment thereon, the statute of limitations for collection shall be extended an additional three (3) years from the date of such payment or acknowledgement.* (3-30-01)~~

**062.** Execution Against Assets. The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. (3-30-01)

**073.** Relief of Indebtedness. Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. (3-30-01)