

Dear Senators ANDREASON, McKague, Stennett, and  
Representatives BLOCK, Hartgen, Ringo:

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

IDAPA 09.01.30 - Rules Pertaining To The Unemployment Insurance Benefits Administration Rules  
(Docket No. 09-0130-1101);

IDAPA 09.01.35 - Rules Pertaining To The Unemployment Insurance Tax Administration Rules  
(Docket No. 09-0135-1101).

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 08/15/2011. 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 09/13/2011.

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 enclosed.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee  
**FROM:** Principal Legal Analyst - Eric Milstead  
**DATE:** July 27, 2011  
**SUBJECT:** Department of Labor

IDAPA 09.01.30 - Rules Pertaining To The Unemployment Insurance Benefits Administration Rules (Docket No. 09-0130-1101)

IDAPA 09.01.35 - Rules Pertaining To The Unemployment Insurance Tax Administration Rules (Docket No. 09-0135-1101)

The Department of Labor has submitted the following temporary and proposed rules:

1. 09.01.30 - Pertaining To The Unemployment Insurance Benefits Administration Rules (Docket No. 09-0130-1101)

The Department submits notice of temporary and proposed rulemaking at IDAPA 09.01.30 - Pertaining To The Unemployment Insurance Benefits Administration. The temporary and proposed rule closely mirrors House Bill 80 (section 1 of the bill) which was passed by the 2011 Legislature. Specifically, the rule governs:

- Instances when a corporate officer is or is not eligible for unemployment insurance benefits;
- Defines certain terms, including "not employed", "family member", "and "circumstances beyond a corporate officer's control"; and
- Provides for a rebuttable presumption relating to overpayment of benefits.

The Department notes that the temporary rule is justified because the rule is implementing provision of recently enacted legislation. Also, the Department states that negotiated rulemaking was not conducted because the changes reflected in the temporary and proposed rule reflect statutory changes found in House Bill 80 passed during the 2011 legislative session.

The temporary and proposed rule appears to be authorized pursuant to sections 67-5226, 72-1333 and 72-1312A, Idaho Code.

2. 09.01.35 - Pertaining To The Unemployment Insurance Tax Administration Rules (Docket No. 09-0135-1101)

The Department submits notice of temporary and proposed rulemaking at IDAPA 09.01.35 - Pertaining To The Unemployment Insurance Tax Administration Rules. In a manner similar to the docket discussed above, the temporary and proposed rule closely mirrors House Bill 80 (Section 2 of the bill) which was passed by the 2011 Legislature. The temporary and proposed rule governs:

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

- Instances when a corporation elects to exempt corporate officers from coverage and provides requirements relating to such exemptions;
- Provides provisions for exemptions of corporate officers for public companies and corporations that are not public companies;
- Provides for termination of exemptions and for reinstatement of coverage; and
- Defines terms.

The Department notes that the temporary rule is justified because the rule is implementing provision of recently enacted legislation. Also, the Department states that negotiated rulemaking was not conducted because the changes reflected in the temporary and proposed rule reflect statutory changes found in House Bill 80 passed during the 2011 legislative session.

The temporary and proposed rule appears to be authorized pursuant to sections 67-5226, 72-1333 and 72-1312A, Idaho Code.

cc: Department of Labor  
Josh McKenna & Michael Johnson

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

#### DOCKET NO. 09-0130-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**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 17, 2011.

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:

IDAPA 09.01.30.375 is being amended to limit when a corporate officer can be personally eligible for unemployment insurance benefits. IDAPA 09.01.30.550 allows claimants to file continued claim reports by facsimile or electronic mail. This will help eliminate the late payment of benefits to claimants filing from out of state.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and (c), 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 and conferring a benefit.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 IDAPA 09.01.30 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 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 332-3570 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 24, 2011.

DATED this 6th of July, 2011.

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

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 09-0130-1101

**375. FULLY EMPLOYED/NOT UNEMPLOYED.**

Ref. Section 72-1312(1), Idaho Code.

~~(3-19-99)~~(7-1-11)T

**01. Excessive Earnings Week.** An excessive earnings week is a week in which the claimant's wages allocable to that week are more than one and one-half (1-1/2) times the claimant's weekly benefit amount. (3-19-99)

**02. Leave of Absence.** A claimant who is on a mutually agreed upon leave of absence is employed and not eligible for benefits. In order to meet the definition of "leave of absence," the employer must have committed to the claimant's return to work at the end of the leave. (3-19-99)

**03. Suspension.** A claimant who has been suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. (3-15-02)

**04. Corporate officer.** A corporate officer whose claim for benefits is based on wages with a corporation in which the corporate officer or a family member of the corporate officer has an ownership interest is considered unemployed and eligible for benefits only when his unemployment is due to circumstances beyond his control or the control of a family member of the corporate officer with an ownership interest in the corporation. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. (7-1-11)T

**a.** Not unemployed. Corporate officers are not unemployed and are ineligible for benefits in any week during the corporate officer's term of office with the corporation even if wages are not being paid. (7-1-11)T

**b.** Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: (7-1-11)T

**i.** Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions set forth in Section 72-1366, Idaho Code; (7-1-11)T

**ii.** Unemployment due to dissolution of the corporation; or (7-1-11)T

**iii.** Unemployment due to the sale of the corporation to an unrelated third party. (7-1-11)T

**c.** Rebuttable presumption - Overpayment. If at any time during the benefit year the corporate officer resumes or returns to work for the corporation, it shall be a rebuttable presumption that the corporate officer's unemployment was due to circumstances within the corporate officer's control or the control of a family member with an ownership interest in the corporation, and all benefits paid to the corporate officer during the benefit year shall be considered an overpayment for which the corporate officer shall be liable for repayment. (7-1-11)T

**d.** Family member. "Family member" is defined as a person related by blood or marriage as a parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild. (7-1-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. REPORTING REQUIREMENTS.**

Each claimant shall report weekly or biweekly for benefits as directed. When filing claim reports, a claimant shall use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule shall result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. ~~(4-2-08)~~(7-1-11)T

**01. In-Person Reports.** A claimant reporting in person must hand the report to an authorized employee of the local office or place it in a receptacle identified for that purpose. The Department will not accept reports deposited under or through the doors of the office. Reports filed in person at a local office shall be considered timely when filed within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the ~~following~~ next working day. ~~(3-19-99)~~(7-1-11)T

**02. Mailed Reports.** Reports that are mailed shall be considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period shall be extended to include the ~~following~~ next working day. ~~(3-19-99)~~(7-1-11)T

**03. Telephone/Internet Reports.** Reports filed by telephone to the Idaho Tel A Claim system or via the internet ~~must be~~ shall be considered timely when made between 12:01 A.M. Mountain Time of the Sunday following the week being claimed and midnight Mountain Time of the Saturday following the week being claimed. ~~(3-20-04)~~(7-1-11)T

**04. Facsimile Reports.** Reports filed by facsimile shall be considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (7-1-11)T

**05. Electronic Mail Reports.** Reports filed by electronic mail shall be considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (7-1-11)T

**046. When Report Missing.** If a claimant establishes, by credible and corroborated evidence, that a missing report was ~~personally delivered to a local office or mailed within the filing period~~ properly filed as required by this rule, a replacement report shall be considered timely. ~~(3-19-99)~~(7-1-11)T

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1101

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2011.

**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 17, 2011.

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:

IDAPA 09.01.35 is being amended to allow a corporation to exempt its corporate officers from unemployment insurance coverage and to reinstate corporate officers previously exempted. Corporations will not have to pay employment security contributions for exempt corporate officers and exempt corporate officers would not be eligible for unemployment insurance benefits.

**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: None.

**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 IDAPA 09.01.35.108 is being changed to accurately reflect statutory language and conform with Section 72-1312A, Idaho Code passed during the 2011 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 at 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 24, 2011.

DATED this 6th of July, 2011.

Michael Johnson, (Acting) Bureau Chief  
Idaho Department of Labor  
317 West Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 09-0135-1101

**108. ELECTION TO EXEMPT CORPORATE OFFICERS.**

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the department each qualifying corporate officer it elects to exempt. Registrations in the format prescribed by the department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. (7-1-11)T

**01. Public Company Election.** A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who: (7-1-11)T

**a.** Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; (7-1-11)T

**b.** Is a shareholder of the corporation; (7-1-11)T

**c.** Exercises control in the daily management of the corporation; and (7-1-11)T

**d.** Does not perform manual labor as a primary work responsibility. (7-1-11)T

**02. Election for Corporations that are not Public Companies.** A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: (7-1-11)T

**a.** Is a shareholder of the corporation; (7-1-11)T

**b.** Voluntarily agrees to be exempted from coverage; and (7-1-11)T

**c.** Exercises substantial control in the daily management of the corporation. (7-1-11)T

**03. Election to Exempt Not Applicable.** The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. (7-1-11)T

**04. Termination of Exemption.** A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria in Subsections 108.01 or 108.02 of this rule. It is the responsibility of the corporation to notify the department in writing in a format required by the department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. (7-1-11)T

**05. Reinstatement of Coverage.** A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the department in a format required by the department. Reinstatement requests received by the department on or before December 15th shall become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. (7-1-11)T

**06. Definitions.** For purposes of this rule: (7-1-11)T

**a.** "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. (7-1-11)T



**b.** “Exercise substantial control in the daily management of the corporation” is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other’s activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. (7-1-11)T

**07. Services in Employment.** Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. (7-1-11)T

**08. FUTA Applicable.** The wages attributable to exempt corporate officers are wages subject to the Federal Unemployment Tax Act (FUTA) and the corporation may be liable for FUTA taxes. (7-1-11)T

**1089. -- 110. (RESERVED)**