

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 09.01.04 - Rules Pertaining To The Unemployment Insurance Benefit Fraud and  
Overpayment Rules (Docket No. 09-0104-1201);

IDAPA 09.01.30 - Rules Pertaining To The Unemployment Insurance Benefits Administration Rules  
(Docket No. 09-0130-1201);

IDAPA 09.01.35 - Rules Pertaining To The Unemployment Insurance Tax Administration Rules  
(Docket No. 09-0135-1201).

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 08/30/2012. 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 09/28/2012.

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 on the  
memorandum attached below.



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:** Division Manager - Mike Nugent

**DATE:** August 13, 2012

**SUBJECT:** Department of Labor

IDAPA 09.01.04 - Rules Pertaining To The Unemployment Insurance Benefit Fraud and Overpayment Rules (Docket No. 09-0104-1201)

IDAPA 09.01.30 - Rules Pertaining To The Unemployment Insurance Benefits Administration Rules (Docket No. 09-0130-1201)

IDAPA 09.01.35 - Rules Pertaining To The Unemployment Insurance Tax Administration Rules (Docket No. 09-0135-1201)

The Department of Labor is proposing to promulgate three sets of proposed rules relating to unemployment insurance benefit fraud and overpayment, to unemployment insurance benefits administration and to unemployment insurance tax administration. The proposed fraud and overpayment rules provide that all information a claimant is asked to provide to the Department of Labor is material information used to determine a claimant's eligibility for benefits and a new rule is being added to provide that claimants must repay all benefits received as a result of a willful false statement or willful failure to report a material fact.

The proposed rule relating to unemployment insurance benefits administration is amending an existing rule to provide the same definition for corporate officers for unemployment insurance benefit purposes as that term is currently defined for unemployment tax purposes. There was some legislative activity in 2012 relating to corporate officers. The Department introduced House Bill No. 523, As Amended, which passed and created a deadline for corporate officers to opt out of the unemployment insurance program. It also created a procedure for corporate officers of newly established businesses in Idaho to opt out of the unemployment insurance program from the time they begin operating in Idaho and at least the two calendar years following that date. The deadline for corporate officers of existing businesses to opt out of the unemployment insurance program is being established to assist those corporate officers who failed to meet the original deadline of December 15, 2011. Corporate officers who opt out before the deadline will be out of the system for all of 2012 and through at least 2013. In cases where the unemployment insurance tax has already been paid on the corporate officer's wages, an amended return can be filed to recover that payment. The other bill addressing this issue was Senate Bill No. 1240 which did not pass and which would have defined eligibility for unemployment benefits for family members of corporate officers with an ownership interest. The added language would have deemed family members of corporate officers with an ownership interest eligible for unemployment benefits, so long as the family member does not receive compensation of one thousand two hundred and fifty dollars (\$1,250) or more from the company during the quarter when the family became eligible for unemployment compensation.

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The proposed rule relating to unemployment insurance tax administration rules would make the treatment of members of a limited liability company consistent under both federal income tax law and Idaho's employment security law. A rule is being amended to provide that one of the factors used in the independently established prong of the independent contractor test only applies to workers with an outside business providing the same type of services the worker provides for the business engaging his services.

It appears that all three sets of proposed rules have been promulgated within the scope of statutory authority granted to the Department of Labor.

cc: Department of Labor  
Michael Johnson

## **IDAPA 09 - DEPARTMENT OF LABOR**

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

**DOCKET NO. 09-0104-1201**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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 15, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.04.012 is being changed to clarify that all information a claimant is asked to provide to the department is material information used to determine a claimant's eligibility for benefits, and a new rule at IDAPA 09.01.04.013 is being added to clarify that claimants must repay all benefits received as a result of a willful false statement or willful failure to report a material fact.

**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 resulting from this rulemaking: There will be no fiscal impact to the General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking was done to comply with existing state law.

**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 proposed rule, contact Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2012.

DATED this 2nd of July, 2012.

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

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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 09-0104-1201**

**012. 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. All information a claimant is asked to provide when applying for unemployment benefits or when making a continued claim report is material and 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)~~( )

**013. FRAUD BENEFIT REPAYMENT.**

For purposes of Section 72-1366(12), Idaho Code, "any sums received for any week" means all unemployment benefits received in any week it is determined that the claimant received benefits as a result of a willful false statement or failure to report a material fact in order to obtain benefits. ( )

~~0134.~~ -- 039. (RESERVED)

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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 15, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking: The proposed rule would amend 09.01.30 to add the same definition for corporate officers for unemployment insurance benefit purposes as it is currently defined for unemployment insurance tax purposes.

**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 resulting from this rulemaking: There will be no fiscal impact to the General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking was done to comply with existing state law.

**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 proposed rule, contact Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2012.

DATED this 2<sup>nd</sup> of July, 2012.

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

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#### THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0130-1201

##### 010. DEFINITIONS.

Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Labor.  
(3-19-99)

**01. Additional Claim.** An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

**02. Administrative Office.** The main office in Boise, Idaho, wherein the administrative functions of the Department of Labor are performed. (3-19-99)

**03. Appealed Claim.** An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

**04. Average Annual Wage.** For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. (3-19-99)

**05. Average Weekly Wage.** For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). (4-11-06)

**06. Benefit Balance.** The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

**07. Chargeability Determination.** A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

**08. Claim.** An application for unemployment insurance or "benefits." (3-19-99)

**09. Combined Wage Claim.** A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

**10. Compensable Claim.** An application for benefits which certifies to the completion of a benefit period (one (1) or more weeks). (3-19-99)

**11. Contested Claim.** A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)

**12. Continued Claim.** An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)

**13. Corporate officer.** 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. ( )

**134. Employment.** For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, "employment" means that employment subsequent to which a claimant has not earned fourteen (14) times his weekly benefit amount. (4-11-06)

**145. Full-Time Employment.** A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one-half (1-1/2) times his weekly benefit amount. (4-5-00)

**156. Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous

period of unemployment. An initial claim may be either new or additional. (3-19-99)

**167. Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)

**178. Intrastate Claim.** A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)

**189. Itinerant Point.** A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)

**1920. Liability Determination.** A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)

**201. Local Office.** A community office of the Department of Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)

**212. Mail Claim.** A claim filed by mail rather than in person at a local office. (3-19-99)

**223. Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)

**234. New Claim.** The first initial claim made in a benefit year. (3-19-99)

**245. Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)

**256. Personal Identification Number (PIN).** A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)

**267. Regular Claim.** A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)

**278. Signature, Signed.** The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)

**289. Telephone Claim.** A claim filed by telephone rather than in person at a local office. (3-19-99)

**2930. Total Benefit Amount.** The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)

**301. Unemployment.** An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him for less than full-time work performed in such week amounted to less than one and one-half (1-1/2) times his weekly benefit amount. (3-19-99)

**312. Weekly Benefit Amount.** The full amount of benefits to which a claimant may be entitled for one (1) week of total unemployment. (3-19-99)



**IDAPA 09 - DEPARTMENT OF LABOR**

**09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**

**DOCKET NO. 09-0135-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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 15, 2012.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking: IDAPA 09.01.35.061 is being changed to make the treatment of members of a limited liability company consistent under both federal income tax law and Idaho's employment security law. IDAPA 09.01.35.112.04 is being changed to clarify that one of the factors used in the independently established prong of the independent contractor test only applies to workers with an outside business providing the same type of services the worker provides for the business engaging his services.

**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 resulting from this rulemaking: There will be no fiscal impact to the General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking was done to comply with existing state law.

**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 proposed rule, contact Michael Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2012.

DATED this 2<sup>nd</sup> of July, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0135-1201**

**061. DEFINITIONS.**

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau. (3-22-07)

**01. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code. (3-19-99)

**02. Wages.** The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

**a.** Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

**b.** Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

**c.** Commissions for past services in covered employment; (3-19-99)

**d.** Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

**e.** Salary advances against commissions; (3-19-99)

**f.** All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

**g.** Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

**h.** Vacation or "idle-time" pay, no matter when paid; (3-19-99)

**i.** Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

**j.** The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. (3-19-99)

**k.** Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Section 72-1328, Idaho Code. (3-15-02)

**03. Exclusions From Wages.** The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

**a.** Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

**b.** Bonuses paid for signing a contract; (3-19-99)

**c.** Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)

**d.** Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)

**e.** Rental charge for personal equipment provided by the employee on the job: if (3-19-99)

- i. There is a rental agreement; and (3-19-99)
- ii. The worker has received a reasonable wage for services performed; and (3-19-99)
- iii. The fees are held separately on the employer's records. (3-19-99)
- f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)
- g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)
  - i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)
  - ii. To account adequately to the employer for these expenses; and (3-19-99)
  - iii. To return any excess reimbursement or allowance. (3-19-99)
- h. Payments for employee travel expenses, provided: (3-19-99)
  - i. Payments are job related expenses while performing services; and (3-19-99)
  - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)
  - iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)
- i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)
- j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. (3-15-02)

**04. Treatment of Limited Liability Companies.** For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. (4-5-00)( )

**05. Domestic Employment.** Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by: (3-15-02)

- a. Cooks; (3-15-02)
- b. Waiters; (3-15-02)
- c. Butlers; (3-15-02)
- d. Maids; (3-15-02)

- e. Janitors; (3-15-02)
- f. Laundresses; (3-15-02)
- g. Furnacemen; (3-15-02)
- h. Handymen; (3-15-02)
- i. Gardeners; (3-15-02)
- j. Housekeepers; (3-15-02)
- k. Housemothers; and (3-15-02)
- l. In-home caregivers. Ref. Section 72-1315, Idaho Code. (3-15-02)

**06. Casual Labor.** Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars (\$50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Section 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, "services not in the course of the employer's trade or business," refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (4-11-06)

**07. Willfully.** When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and therefore not accidental. Ref. Section 72-1372, Idaho Code. (3-22-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**112. DETERMINING STATUS OF WORKER.**

**01. Determining if Worker Is an Employee.** In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-22-07)

- a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)
- b. Statements made to the Department; (3-19-99)
- c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)
- d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

**02. Determining if Worker Is an Independent Contractor.** If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a)

and (b), Idaho Code. (3-19-99)

**03. Proving Worker Is Free from Control or Direction in His Work.** To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-22-07)

- a. Whether the alleged employer has control over: (3-19-99)
  - i. The details of the work; (3-19-99)
  - ii. The manner, method or mode of doing the work; and (3-19-99)
  - iii. The means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)
- b. The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (4-11-06)
- c. The employer must demonstrate that it lacked a right to control the worker. (4-11-06)

**04. Proving Worker Is Engaged in Independently Established Business.** To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors may be considered in this determination: (3-22-07)

- a. Skills, qualifications, and training required for the job; (3-19-99)
- b. Method of payment, benefits, and tax withholding; (3-19-99)
- c. Right to negotiate agreements with other workers; (3-19-99)
- d. Right to choose sales techniques or other business techniques; (3-19-99)
- e. Right to determine hours; (3-19-99)
- f. ~~Existence of outside businesses or occupations~~ Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the business engaging his services; (3-19-99)( )
- g. Special licensing or regulatory requirements for performance of work; (3-19-99)
- h. Whether the work is part of the employer's general business; (3-19-99)
- i. The nature and extent of the work; (3-19-99)
- j. The term and duration of the relationship; (3-19-99)
- k. The control of the premises; (3-19-99)
- l. Whether the worker has the authority to hire subordinates; (3-19-99)
- m. Whether the worker owns or leases major items of equipment or incurs substantial unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer: (3-19-99)
  - i. The terms of the lease; and (3-19-99)

ii. The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards. (3-19-99)

n. Whether either party would be liable to the other party upon preemptory or unilateral termination of the business relationship; and, (3-19-99)

o. Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business. (3-19-99)

**05. Meeting Criteria for Covered Employment.** A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

**06. Evidence of Contractual Liability for Termination.** For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-19-99)