



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators TIPPETS, Patrick, Schmidt and
Representatives HARTGEN, Anderson, King

FROM: Eric Milstead - Principal Legislative Research Analyst

DATE: June 03, 2013

SUBJECT: Temporary Rule

IDAPA 15.04.01 - Rules of the Division of Human Resources & Personnel Commission -
TEMPORARY Rule - Docket No. 15-0401-1301

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. Please call with any questions - 334-4845. Thank you.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
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Glenn Harris, Manager
Information Technology

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES**

15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-1301

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2013.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-5309, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The changes to IDAPA 15.04.01 Sections 013 and 020 bring DHR rules in compliance with Title 65-502(17), Idaho Code, which was amended in the 2013 Legislature by SB1045a. This revision altered the definition of “veteran” by removing the requirement of service in active duty during a war or in a combat zone. The addition of “disabled veteran” to the definition section in IDAPA 15.04.01 Section 010 is needed to clarify language in related rules. The changes to IDAPA 15.04.01 Sections 102 and 141 clarify existing rules so that they conform to the new definitions.

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:

To comply with deadlines in amendments to governing law or federal programs. This rulemaking aligns administrative rule with the statute changes adopted by the 2013 Legislature and clarifies related sections.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Melody Rose, HR Specialist, Sr. at 208-854-3068.

DATED this May 10th, 2013.

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 15-0401-1301

010. DEFINITIONS -- A THROUGH E.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

- 01. Administrator.** The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. (5-8-09)
- 02. Agency Classification.** A classification of positions unique to an agency. (5-8-09)
- 03. Allocation.** The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)
- 04. Appeal.** Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)
- 05. Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)
- 06. Appointing Authority.** The officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)
- 07. Appointment, Limited.** The appointment of a person to a classified, position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)
- 08. Appointment, Nonclassified.** The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)
- 09. Appointment, Permanent.** The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)
- 10. Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)
- 11. Appointment, Project Exempt.** The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)
- 12. Appointment, Provisional.** The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)
- 13. Appointment, Seasonal.** An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) (3-16-04)
- 14. Appointment, Temporary.** The appointment of a person to a nonclassified position which is of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) agency. Temporary appointments may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) (5-8-09)
- 15. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)
- 16. Certifiable Range.** An examination score and a rank on an eligibility register sufficiently high to be among the top twenty-five (25) available names, plus names of all individuals with scores identical to the twenty-fifth ranking eligible, for certification to fill a position in the classification for which the register was established.

(4-7-11)

17. Classified Service. That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (5-8-09)

18. Commission. As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code. (5-8-09)

19. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division of Human Resources and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. (5-8-09)

20. Compensation Schedule. The pay grades established by the Division of Human Resources and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

21. Consultant. An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule Section 050) (5-8-09)

22. Disabled Veteran. Those veterans separated under honorable conditions who: (7-1-13)T

a. Have served on active duty in the armed forces and have a current service-connected disability rating of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or (7-1-13)T

b. Are Purple Heart recipients. (Ref. Section 65-502(4), Idaho Code) (7-1-13)T

~~23.~~ Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Section 190 of these rules. (5-8-09)

~~24.~~ Due Process. As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)

~~25.~~ Employment History. The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

~~26.~~ Examination. The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)

(BREAK IN CONTINUITY OF SECTIONS)

013. DEFINITIONS -- P THROUGH Z.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. (5-8-09)

02. Permanent Employee. An employee in the classified service who has successfully completed

entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (5-8-09)

03. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. (5-8-09)

04. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)

05. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)

06. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (5-8-09)

07. Respondent. The party whose interests are adverse to those of the appellant. (7-1-93)

08. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Section 190 of these rules. (5-8-09)

09. Termination. The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Section 152 of these rules. (5-8-09)

10. Transfer. A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)

11. Underfill. The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (3-16-04)

12. USERRA. Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (5-8-09)

13. Veteran. Any person who has been discharged or released from active duty in the armed forces under honorable conditions provided they have served on active duty for a minimum of one hundred eighty (180) consecutive days. "Active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. (Ref. Section 65-502(17), Idaho Code) (7-1-13)T

134. Workweek. A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

020. VETERANS PREFERENCE.

Except for key employee positions, preference must be given to qualified veterans ~~in~~ as defined by Section 65-502, Idaho Code who meet the minimum qualifications for a position at initial employment and for retention. (5-8-09)(7-1-13)T

- ~~01. **Qualified Veteran.** To receive the preference, the person must have: (5-8-09)~~
- ~~a. Served on active duty in the armed forces during a war, in a campaign, or expedition for which a campaign badge has been authorized, or served on active duty during the period beginning April 28, 1952 and ending July 1, 1955; (5-8-09)~~
 - ~~b. Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; (5-8-09)~~
 - ~~c. Served on active duty as defined in 38 U.S.C. Section 101(21) in the armed forces during the period beginning on August 2, 1990 and ending on January 2, 1992; (5-8-09)~~
 - ~~d. Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred during the period beginning on September 11, 2001 and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom. (Ref. Section 67-502(14), Idaho Code, and 5 U.S.C. Section 2108); or (5-8-09)~~
 - ~~e. Served as may be further defined in 38 U.S.C. Section 101(11). (5-8-09)~~
- ~~021. **Disabled Veteran Defined (for Preference Points on Competitive Exam) Initial Appointment.** Veterans, Disabled veterans, Purple Heart recipients, and their spouses, unmarried widows, or unmarried widowers, or spouses, when qualified under state law will have additional points added to a passing score and placed on the register in accordance with the provisions set forth in Section 102 of these rules. (Ref. Rule Subsection 093.03, and Sections 65-502(2), 503, and 504(3), and 67-5309(f), Idaho Code) (5-8-09)(7-1-13)T~~

~~032. **Retention.** Veterans (as defined in Title 65, Chapter 5, Idaho Code) will receive the equivalent of three (3) years of satisfactory service in additional points awarded towards the total calculation of retention points in a reduction of work force determination. (Ref. Rule Section 141 and Section 65-501, Idaho Code) (5-8-09)(7-1-13)T~~

(BREAK IN CONTINUITY OF SECTIONS)

102. PLACEMENT ON REGISTER.

- 01. Score Order.** Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (5-8-09)
- 02. Veterans' Preference.** Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) (5-8-09)
- 03. Disabled Veterans' Preference.** Preference in addition to that identified in Subsection 102.02 will be awarded to disabled veterans as follows: (7-1-13)T
- ~~a. Eligible ten percent (10%) or more d~~Disabled veterans, Purple Heart recipients, ~~or surviving spouses~~ of any eligible disabled veterans who cannot qualify for any public employment because of service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Sections 65-503 and 65-504, Idaho Code) (7-1-13)T
 - ~~b. Disabled~~ Veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top twenty-five (25) qualified candidates. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or greater

~~disabled veterans~~ **more** place in the top twenty-five (25) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) ~~(3-29-12)~~(7-1-13)T

04. Veterans' Preference Points for Initial Appointment Only. The additional points added by reason of veterans' preference will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-504, Idaho Code) Initial appointments do not include: (5-8-09)

- a. Jobs held by patients, inmates, or students employed at a state institution; (5-8-09)
- b. Temporary or casual employment; or (5-8-09)
- c. An office filled by election. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

141. CALCULATION OF RETENTION POINTS.

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, ~~and~~ classified credited state service, ~~and veterans preference as described in Subsection 141.03. Qualified veterans are given preference through additional retention points. (Ref. Subsection 141.03).~~ The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points
Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

~~(5-8-09)~~(7-1-13)T

01. No Performance Evaluation on File for a Twelve-Month Period. All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation. (5-8-09)

a. Grace period. Supervisors have ninety (90) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that ninety (90) day time frame, the evaluation may be written to cover the two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation. (3-16-04)

b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution. (3-16-04)

02. Calculation of Retention Points Since Last Evaluation. The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Subsection 141.01 of these rules. (5-8-09)

03. Qualified Veterans Preference. Veterans as defined in Title 65, Chapter 5, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) ~~(5-8-09)~~(7-1-13)T

04. Calculation Date Cutoff. No points will be calculated for the sixty (60) days prior to the effective date of the layoff. (3-16-04)

05. Audit of Retention Points. Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. (5-8-09)