

Dear Senators PATRICK, Agenbroad, Ward-Engelking, and  
Representatives HOLTZCLAW, Anderson, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Office of the Governor - Division of Human Resources and Personnel Commission:  
IDAPA 15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission -  
Proposed Rule (Docket No. 15-0401-2002).

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 09/25/2020. 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 10/23/2020.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
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:** Legislative Drafting Attorney - Matt Drake

**DATE:** September 08, 2020

**SUBJECT:** Office of the Governor - Division of Human Resources and Personnel Commission

IDAPA 15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission - Proposed Rule (Docket No. 15-0401-2002)

#### Summary and Stated Reasons for the Rule

The Idaho Office of the Governor - Division of Human Resources and Personnel Commission submits notice of proposed rulemaking at IDAPA 15.04.01. The rulemaking clarifies holiday pay calculation. The proposed rule reflects current practice pursuant to a 2009 rule waiver. Under current practice, an employee may not receive holiday pay in accordance with a regular workday that exceeds eight (8) hours. That practice is maintained by this rulemaking.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted because the rule reflects current practice as established by a 2009 rule waiver. There is no fiscal impact.

#### Statutory Authority

The proposed rule is within the authority of the Division of Human Resources and Personnel Commission pursuant to section 67-5309, Idaho Code.

cc: Office of the Governor - Division of Human Resources and Personnel Commission  
Susan Buxton

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 15 – OFFICE OF THE GOVERNOR  
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION**

**DOCKET NO. 15-0401-2002**

**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 67-5309, 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 September 16, 2020.

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:

Alter language in Subsection 073.04, Paragraphs (b) and (f), of these rules, which allows holiday pay in excess of eight (8) hours. Both subsections have been waived by the Administrator since 2009. In 2014, legislation (Senate Bill 1203) to pay employees more than eight (8) hours of holiday pay if they had an employer-mandated flexible schedule, failed on the House floor.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the current practice of holiday pay calculation is not changing. If the rule waiver is lifted and these Rule edits are not made, the fiscal impact would include up to 20 hours per year of additional holiday pay for full-time employees who regularly work more than eight (8) hours a day.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible to conduct negotiated rulemaking for edits of language that has been waived since 2009 and rejected by the 2014 Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sheena Buffi at [sheena.buffi@dhr.idaho.gov](mailto:sheena.buffi@dhr.idaho.gov) or (208) 854-3086.

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 September 23, 2020.

Dated this 12th day of August, 2020.

Susan E. Buxton  
Administrator  
304 North 8th Street  
P.O. Box 83720  
Boise, Idaho 83720-0066  
[Susan.Buxton@dhr.idaho.gov](mailto:Susan.Buxton@dhr.idaho.gov)  
Phone: (208) 334-2263  
Fax: (208) 854-3088

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-2002**  
**(Only Those Sections With Amendments Are Shown.)**

**073. CALCULATION OF PAY.**

**01. Standard Calculation of Pay.** For other than police, correctional officers, or fire employees, pay is calculated in the following order: (5-8-09)

- a. Holiday pay; (12-10-90)
- b. All hours worked on a holiday as overtime; (12-10-90)
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; (4-7-11)
- d. Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e. All remaining hours worked at the employee's regular rate of pay. (5-8-09)

**02. Shift Differential.** Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. (Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (5-8-09)

**03. Calculation of Pay for Police, Correctional Officers, and Fire Employees.** Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Rules 073.01 and 073.02, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek. (5-8-09)

**04. Holiday Pay Calculation. (7-1-87)**

a. Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (5-8-09)

b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday, not to exceed eight (8) hours. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. ~~(3-16-04)~~( )

c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-16-04)

d. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (5-8-09)

e. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

f. ~~Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan.~~ Appointing authorities may *also* suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. ~~(5-8-09)~~ ( )

**05. Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. (5-8-09)

**06. Salary Administration.** Each agency must develop a compensation plan designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

**07. Salaries for Temporary Appointments.** Except as provided for in these rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (5-8-09)