

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 75

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO CLAIMS FOR WAGES; AMENDING SECTION 45-617, IDAHO CODE, TO REVISE  
2 PROVISIONS REGARDING WAGE CLAIMS AND TO MAKE TECHNICAL CORRECTIONS.  
3

4 Be It Enacted by the Legislature of the State of Idaho:

5 SECTION 1. That Section 45-617, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 45-617. ADMINISTRATIVE PROCEEDINGS FOR WAGE CLAIMS. (1) Wage claims  
8 filed with the department, excluding potential penalties, are limited by the  
9 same dollar amount that limits actions before the small claims department of  
10 the magistrate's division of the district court.

11 (2) The contested case provisions of the Idaho administrative proce-  
12 dures act, chapter 52, title 67, Idaho Code, are inapplicable to proceedings  
13 involving wage claims under this chapter.

14 (3) Once a wage claim has been properly filed with the department, the  
15 provisions of this section shall provide the exclusive remedy for resolving  
16 the wage claim. If at any time after the filing of the wage claim the depart-  
17 ment determines that it lacks jurisdiction over the wage claim, the depart-  
18 ment shall provide written notification of its determination to the claimant  
19 and the employer. The claimant may then assert the wage claim in any court  
20 of competent jurisdiction. In the event the department determines that it  
21 lacks jurisdiction over the wage claim, the limitation periods provided for  
22 in section 45-614, Idaho Code, shall be tolled from the date the wage claim  
23 was filed with the department until the date notice that the department lacks  
24 jurisdiction is mailed to the claimant, as provided in subsection (5) of this  
25 section.

26 (4) A department compliance officer shall examine wage claims filed  
27 with the department and, on the basis of the facts found, shall determine  
28 whether the wage claimant is entitled to an award for unpaid wages and penal-  
29 ties. If the compliance officer is unable to determine whether wages and  
30 penalties are owed, the claim may be referred to a hearing officer for a  
31 determination. The department may adjust the amount of penalties awarded  
32 for an employer's failure to comply with the requirements of section 45-606,  
33 Idaho Code. The department may award no penalty, or may award a penalty in  
34 any amount up to the maximum amount allowed under section 45-607, Idaho Code.  
35 No penalty shall be awarded by the department unless a specific finding  
36 is made that wages were withheld willfully, arbitrarily and without just  
37 cause. The department's determination shall include findings of fact and  
38 conclusions of law. Before the determination becomes final or an appeal  
39 is filed, the compliance or hearing officer that issued the determination  
40 may, on ~~their~~ his own motion, issue a revised determination. The determi-  
41 nation or revised determination shall become a final determination unless,  
42 within fourteen (14) days after notice, as provided in subsection (5) of this

1 section, an appeal is filed by the claimant or the employer in accordance  
2 with the department's rules. If an appeal is not timely filed, the amount  
3 awarded by a final determination shall become immediately due and payable to  
4 the department. A final determination may be enforced by the department in  
5 accordance with section 45-618, Idaho Code.

6 (5) The claimant and the employer shall be entitled to prompt service of  
7 notice of determinations and decisions. ~~A notice shall be deemed served if~~  
8 ~~delivered to the person being served or if mailed to his last known address.~~  
9 ~~Service by mail shall be deemed complete on the date of mailing. Notice~~  
10 ~~shall be deemed served if delivered to the person being served, if mailed~~  
11 ~~to the person's last known address, or if electronically transmitted to the~~  
12 ~~claimant at the claimant's request and with the department's approval. Ser-~~  
13 ~~vice by electronic transmission shall be deemed complete on the date notice~~  
14 ~~is electronically transmitted.~~ The date indicated on ~~department~~ determi-  
15 nations or decisions as the "date of service" or "date of mailing" shall be  
16 presumed to be the date ~~the document was deposited in the United States mail,~~  
17 of service unless otherwise shown by a preponderance of competent evidence.

18 (6) An appeal from a wage claim determination shall be in writing,  
19 signed by the appellant or the appellant's representative and shall contain  
20 words that, by fair interpretation, request the appeal process for a spe-  
21 cific determination of the department. The appeal may be filed by personal  
22 delivery, by mail, by electronic transmission, or by fax to the wage and  
23 hour section of the department at the address indicated on the wage claim  
24 determination. The date of personal delivery shall be noted on the appeal  
25 and shall be deemed the date of filing. If mailed, the appeal shall be deemed  
26 to be filed on the date of mailing as determined by the postmark. A faxed or  
27 electronically transmitted appeal ~~that is~~ shall be deemed filed on the date  
28 received by the wage and hour section ~~by 5:00 p.m. on a business day shall be~~  
29 ~~deemed filed on that date.~~ A faxed or electronically transmitted appeal ~~that~~  
30 ~~is~~ received by the wage and hour section on a weekend, or holiday ~~or after~~  
31 ~~5:00 p.m. on a business day~~ shall be deemed filed on the next business day.

32 (7) To hear and decide appeals from determinations, the director shall  
33 appoint appeals examiners who have been specifically trained to hear wage  
34 claims. Unless the appeal is withdrawn, the appeals examiner shall affirm,  
35 modify, set aside or reverse the determination involved, after affording the  
36 claimant and the employer reasonable opportunity for a fair hearing, or may  
37 refer a matter back to the compliance or hearing officer for further action.  
38 The appeals examiner shall notify the claimant and the employer of his de-  
39 cision by serving notice in the same manner as provided in subsection (5) of  
40 this section. The decision shall set forth findings of fact and conclusions  
41 of law. The appeals examiner may, ~~either~~ upon application for rehearing by  
42 the claimant, the employer, or on his own motion, rehear, affirm, modify, set  
43 aside or reverse any prior decision on the basis of the evidence previously  
44 submitted or on the basis of additional evidence; provided, that such appli-  
45 cation or motion be made within ten (10) days after the date of service of the  
46 decision. A complete record shall be kept of all proceedings in connection  
47 with an appealed wage claim. All testimony at any hearing shall be recorded.  
48 Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate  
49 prescribed by the director. If the claimant or the employer formally re-  
50 quests the appeals examiner to issue a subpoena for a witness whose evidence

1 is deemed necessary, the appeals examiner shall promptly issue the subpoena,  
2 unless such request is determined to be unreasonable. Unless the claimant or  
3 the employer, within fourteen (14) days after service of the decision of the  
4 appeals examiner, seeks judicial review pursuant to section 45-619, Idaho  
5 Code, or unless an application or motion is made for a rehearing of such deci-  
6 sion, the decision of the appeals examiner shall become final and the amount  
7 awarded by the decision shall become immediately due and payable to the de-  
8 partment. A decision that has become final may be enforced by the department  
9 according to section 45-618, Idaho Code.

10 (8) No person acting on behalf of the director shall participate in any  
11 case in which he has a direct or indirect personal interest.

12 (9) (a) Any right, fact, or matter in issue, directly based upon or nec-  
13 essarily involved in a determination or decision of the appeals exam-  
14 iner ~~which~~ that has become final, shall be conclusive for all the pur-  
15 poses of this chapter as between the claimant and the employer who had  
16 notice of such determination or decision. Subject to judicial review as  
17 set forth in this chapter, any determination or decision shall be con-  
18 clusive for all purposes of this chapter and shall not be subject to col-  
19 lateral attack irrespective of notice.

20 (b) No finding of fact or conclusion of law contained in a determination  
21 or decision rendered pursuant to this chapter by an appeals examiner, a  
22 court, or any other person authorized to make such determinations shall  
23 have preclusive effect in any other action or proceeding, except pro-  
24 ceedings that are brought:

25 (i) Pursuant to this chapter;

26 (ii) To collect wage claims; or

27 (iii) To challenge the constitutionality of provisions of this  
28 chapter or administrative proceedings under this chapter.