

TITLE 72
WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13
EMPLOYMENT SECURITY LAW

72-1301. SHORT TITLE. This act shall be known as the "Employment Security Law."

[72-1301, added 1947, ch. 269, sec. 1, p. 793; am. 1949, ch. 144, sec. 1, p. 252; am. 1998, ch. 1, sec. 1, p. 6.]

72-1302. DECLARATION OF STATE PUBLIC POLICY. The public policy of this state is as follows: Economic insecurity due to unemployment is a serious threat to the well-being of our people. Unemployment is a subject of national and state concern. This chapter addresses this problem by encouraging employers to offer stable employment and by systematically accumulating funds during periods of employment to pay benefits for periods of unemployment. The legislature declares that the general welfare of our citizens requires the enactment of this measure and sets aside unemployment reserves to be used for workers who are unemployed through no fault of their own.

[72-1302, added 1947, ch. 269, sec. 2, p. 793; am. 1949, ch. 144, sec. 2, p. 252; am. 1998, ch. 1, sec. 2, p. 6.]

72-1303. DEFINITIONS. Unless the context clearly requires otherwise, these terms shall have the following meanings when used in this chapter.

[72-1303, added 1947, ch. 269, sec. 3, p. 793; am. 1949, ch. 144, sec. 3, p. 252; am. 1998, ch. 1, sec. 3, p. 6.]

72-1304. AGRICULTURAL LABOR. (1) "Agricultural labor" means all services performed:

(a) On a farm, in the employ of any person in connection with cultivating the soil, or raising or harvesting any agricultural, aquacultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, fish, poultry, furbearers, and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) In connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and used exclusively for supplying and storing water, at least ninety percent (90%) of which was ultimately delivered for agricultural purposes during the preceding calendar year; and

(d) In the employ of any farm operator or group of operators, organized or unorganized, in handling, planting, drying, packing, packaging, eviscerating, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural, aquacultural or horticultural commodities, if such operator or group, in both the current

and preceding calendar years, produced more than one-half (1/2) of the commodities with respect to which such service is performed.

This subsection is not applicable to services performed in commercial canning, freezing, or dehydrating, or in connection with any agricultural, aquacultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(2) "Custom farming" means "agricultural labor" for the purposes of this chapter.

(3) "Farm" includes stock, dairy, fish, poultry, fruit, furbearer and truck farms, plantations, ranches, nurseries, hatcheries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural, aquacultural or horticultural commodities, and orchards.

(4) "Unmanufactured state" means retention of its original form and substance.

(5) "Terminal market" means a place of business to which products are shipped in a sorted, graded, packaged condition, ready for immediate sale.

[72-1304, added 1947, ch. 269, sec. 4, p. 793; am. 1949, ch. 144, sec. 4, p. 252; am. 1951, ch. 235, sec. 1, p. 472; am. 1971, ch. 142, sec. 1, p. 595; am. 1972, ch. 344, sec. 1, p. 998; am. 1973, ch. 257, sec. 1, p. 508; am. 1981, ch. 254, sec. 1, p. 544; am. 1982, ch. 326, sec. 3, p. 809; am. 1996, ch. 63, sec. 1, p. 185; am. 1998, ch. 1, sec. 4, p. 6; am. 1998, ch. 83, sec. 1, p. 292; am. 2021, ch. 243, sec. 1, p. 751.]

72-1305. ANNUAL PAYROLL. "Annual payroll" means total payroll for a period of twelve (12) consecutive calendar months ending on June 30 of any year.

[72-1305, added 1947, ch. 269, sec. 5, p. 793; am. 1949, ch. 144, sec. 5, p. 252; am. 1951, ch. 236, sec. 1, p. 482; am. 1998, ch. 1, sec. 5, p. 7.]

72-1306. BASE PERIOD. (1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year. If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "base period" shall be the last four (4) completed calendar quarters immediately preceding the beginning of a benefit year.

(2) "Alternate base period" means the first four (4) of the last five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "alternate base period" shall be the last four (4) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. To use the alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

[72-1306, added 1947, ch. 269, sec. 6, p. 793; am. 1949, ch. 144, sec. 6, p. 252; am. 1967, ch. 117, sec. 1, p. 233; am. 1993, ch. 181, sec. 1, p. 461; am. 1998, ch. 1, sec. 6, p. 8; am. 2009, ch. 238, sec. 1, p. 733.]

72-1307. BENEFITS. "Benefits" means the money paid to an individual with respect to his unemployment.

[72-1307, added 1947, ch. 269, sec. 7, p. 793; am. 1949, ch. 144, sec. 7, p. 252; am. 1976, ch. 207, sec. 1, p. 754; am. 1998, ch. 1, sec. 7, p. 8.]

72-1308. BENEFIT YEAR. "Benefit year" means a period of fifty-two (52) consecutive weeks beginning with the first day of the week in which an individual files a new valid claim for benefits; except that the benefit year shall be fifty-three (53) weeks if the filing of a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year cannot be established until the expiration of the current benefit year.

[72-1308, added 1947, ch. 269, sec. 8, p. 793; am. 1949, ch. 144, sec. 8, p. 252; am. 1967, ch. 117, sec. 2, p. 233; am. 1998, ch. 1, sec. 8, p. 8.]

72-1309. COMMISSION. "Commission" means the industrial commission.

[72-1309, added 1947, ch. 269, sec. 9, p. 793; am. 1949, ch. 144, sec. 9, p. 252; am. 1998, ch. 1, sec. 9, p. 8.]

72-1310. BONUS PAYMENT. "Bonus payment" means wages paid for employment by an employer which are either:

- (1) Additional remuneration for meritorious service and not customarily paid to his employees at regular payroll intervals; or
- (2) Additional remuneration based upon production, length of service, or profits, which at the time paid covers service rendered in two (2) or more calendar quarters. Bonus payments shall be reported by employers as prescribed by rule.

[72-1310, added 1947, ch. 269, sec. 10, p. 793; am. 1949, ch. 144, sec. 10, p. 252; am. 1951, ch. 104, sec. 1, p. 233; am. 1998, ch. 1, sec. 10, p. 8.]

72-1311. CALENDAR QUARTER. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31, in each year.

[72-1311, added 1947, ch. 269, sec. 11, p. 793; am. 1949, ch. 144, sec. 11, p. 252; am. 1951, ch. 104, sec. 2, p. 233; am. 1998, ch. 1, sec. 11, p. 9.]

72-1312. COMPENSABLE WEEK. "Compensable week" means a week of unemployment, all of which occurred within the benefit year, for which an eligible claimant is entitled to benefits and during which:

- (1) The claimant had either no work or less than full-time work; and
- (2) No benefits have been paid to the claimant; and
- (3) The claimant complied with all of the personal eligibility conditions of section [72-1366](#), Idaho Code; and
- (4) The total wages payable to the claimant 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; provided however, that any benefits which a claimant receives for any week shall be reduced by:

(a) An amount equal to the amount received as pension, retirement pay, annuity, or any other similar payment which is based on the previous work of such individual which is reasonably attributable to such week, if the payment is made under a plan maintained or contributed to by the base period employer and the claimant has made no contributions to the plan;

(b) An amount equal to temporary disability benefits received under a worker's compensation law of any state or under a similar law of the United States; and

(5) All of which occurred after a waiting week as defined in section [72-1329](#), Idaho Code.

[72-1312, added 1947, ch. 269, sec. 12, p. 793; am. 1949, ch. 144, sec. 12, p. 252; am. 1961, ch. 298, sec. 1, p. 539; am. 1967, ch. 117, sec. 3, p. 233; am. 1980, ch. 256, sec. 1, p. 667; am. 1990, ch. 353, sec. 1, p. 946; am. 1998, ch. 1, sec. 12, p. 9.; am. 2010, ch. 183, sec. 1, p. 377.]

72-1312A. CORPORATE OFFICER -- EMPLOYMENT. (1) A corporate officer meeting the requirements of section [72-1312](#), Idaho Code, whose claim for benefits is based on any wages with a corporation in which the corporate officer or a family member of the corporate officer has an ownership interest shall be:

(a) Not "unemployed" and ineligible for benefits in any week during the corporate officer's term of office with the corporation, even if wages are not being paid.

(b) "Unemployed" in any week the corporate officer is not employed by the corporation for a period of indefinite duration because of circumstances beyond the control of the corporate officer or a family member of the corporate officer with an ownership interest in the corporation, and the period of "unemployment" extends at least through the corporate officer's benefit year end date. 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.

(2) For purposes of this section, "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild.

[72-1312A, added 2011, ch. 82, sec. 1, p. 173.]

72-1313. COMPUTATION DATE. "Computation date" means the June 30 immediately prior to the calendar year for which a covered employer's taxable wage rate is effective.

[72-1313, added 1947, ch. 269, sec. 13, p. 793; am. 1949, ch. 144, sec. 13, p. 252; am. 1951, ch. 236, sec. 2, p. 482; am. 1963, ch. 314, sec. 1, p. 841; am. 1965, ch. 170, sec. 1, p. 331; am. 1967, ch. 117, sec. 4, p. 233; am. 1991, ch. 119, sec. 1, p. 248; am. 1998, ch. 1, sec. 13, p. 10.]

72-1314. CONTRIBUTIONS. "Contributions" means the payments required to be paid into the employment security fund by any covered employer pursuant to sections [72-1349](#) through [72-1353](#), Idaho Code.

[72-1314, added 1947, ch. 269, sec. 14, p. 793; am. 1949, ch. 144, sec. 14, p. 252; am. 1976, ch. 207, sec. 2, p. 754; am. 1980, ch. 264, sec. 1, p. 683; am. 1998, ch. 1, sec. 14, p. 10.]

72-1315. COVERED EMPLOYER. "Covered employer" means:

(1) Any person who, in any calendar quarter in either the current or preceding calendar year paid for services in covered employment wages of one thousand five hundred dollars (\$1,500) or more, or for some portion of a day in each of twenty (20) different calendar weeks, whether or not consecutive, in either the current or preceding calendar year employed at least one (1) individual, irrespective of whether the same individual was in employment in each such day. For purposes of this subsection there shall not be taken into account any wages paid to, or in employment of, an employee performing domestic services referred to in subsection (8) of this section.

(2) All individuals performing services within this state for an employer who maintains two (2) or more separate establishments within this state shall be deemed to be performing services for a single employer.

(3) Each individual engaged to perform or assist in performing the work of any person in the service of an employer shall be deemed to be employed by such employer for all the purposes of this chapter, whether such individual was engaged or paid directly by such employer or by such person, provided the employer had actual or constructive knowledge of the work.

(4) Any employer, whether or not an employer at the time of acquisition, who acquires the organization, trade, or business or substantially all the assets thereof, of another who at the time of such acquisition was a covered employer.

(5) In the case of agricultural labor, any person who:

(a) During any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of twenty thousand dollars (\$20,000) or more for agricultural labor; or

(b) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day.

(c) Such labor is not agricultural labor when it is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a) (15) (H) of the immigration and nationality act, unless the individual is required to be covered by the federal unemployment tax act.

(6) A licensed farm labor contractor, as provided in [chapter 16, title 44](#), Idaho Code, who furnishes any individual to perform agricultural labor for another person.

(7) An unlicensed, nonexempt farm labor contractor, as provided in [chapter 16, title 44](#), Idaho Code, who furnishes any individual to perform agricultural labor for another person not treated as a covered employer under subsection (5) of this section. If an unlicensed, nonexempt farm labor contractor furnishes any individual to perform agricultural labor for another person who is treated as a covered employer under subsection (5) of this section, both such other person and the unlicensed, nonexempt farm

labor contractor shall be jointly and severally liable for any moneys due under the provisions of this chapter.

(8) In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars (\$1,000) or more for such service.

A person treated as a covered employer under this subsection (8) shall not be treated as a covered employer with respect to wages paid for any service other than domestic service referred to in this subsection (8) unless such person is treated as a covered employer under subsection (1) or (5) of this section, with respect to such other service.

(9) Any governmental entity as defined in section [72-1322C](#), Idaho Code.

(10) A nonprofit organization as defined in section [72-1322D](#), Idaho Code.

(11) An employer who has elected coverage pursuant to the provisions of subsection (3) of section [72-1352](#), Idaho Code.

[72-1315, added 1947, ch. 269, sec. 15, p. 793; am. 1949, ch. 144, sec. 15, p. 252; am. 1955, ch. 18, sec. 1, p. 20; am. 1967, ch. 117, sec. 5, p. 233; am. 1971, ch. 142, sec. 2, p. 595; am. 1977, ch. 179, sec. 1, p. 465; am. 1980, ch. 52, sec. 1, p. 107; am. 1983, ch. 146, sec. 1, p. 383; am. 1989, ch. 57, sec. 1, p. 78; am. 1996, ch. 62, sec. 1, p. 180; am. 1998, ch. 1, sec. 15, p. 10; am. 2008, ch. 44, sec. 1, p. 106.]

72-1315A. COST REIMBURSEMENT EMPLOYER. "Cost reimbursement employer" means a covered employer who is eligible and elects to reimburse the fund for proportionate benefit costs in lieu of contributions as provided in sections [72-1349A](#) and [72-1349B](#), Idaho Code.

[72-1315A, added I.C., sec. 72-1315A, as added by 1971, ch. 142, sec. 3, p. 595; am. 1975, ch. 126, sec. 1, p. 259; am. 1980, ch. 264, sec. 2, p. 683; am. 1998, ch. 1, sec. 16, p. 11.]

72-1316. COVERED EMPLOYMENT. (1) "Covered employment" means an individual's entire service performed by him for wages or under any contract of hire, written or oral, express or implied, for a covered employer or covered employers.

(2) Notwithstanding any other provision of state law, services shall be deemed to be in covered employment if a tax is required to be paid or was required to be paid the previous year on such services under the federal unemployment tax act or if the director determines that as a condition for full tax credit against the tax imposed by the federal unemployment tax act such services are required to be covered under this chapter.

(3) Services covered by an election pursuant to section [72-1352](#), Idaho Code, and services covered by an election approved by the director pursuant to section [72-1344](#), Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(4) Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment unless it is shown:

(a) That the 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; and

(b) That the worker is engaged in an independently established trade, occupation, profession, or business.

(5) "Covered employment" shall include an individual's entire service, performed within or both within and without this state:

(a) If the service is localized in this state; or

(b) If the service is not localized in any state but some of the service is performed in this state, and:

(i) The individual's base of operations or the place from which such service is directed or controlled is in this state; or

(ii) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) Service shall be deemed to be localized within a state if:

(i) The service is performed entirely within such state; or

(ii) The service is performed both within and without such state, but the service performed without such state is incidental, temporary or transitory in nature or consists of isolated transactions, as compared to the individual's service within the state.

(d) "Covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if:

(i) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(ii) The place from which the service is directed or controlled is in this state.

(6) "Covered employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer, other than service which is deemed "covered employment" under the provisions of subsection (5) of this section or the parallel provisions of another state's law, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) Is an individual who is a resident of this state; or

(ii) Is a corporation which is organized under the laws of this state; or

(iii) Is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(c) None of the criteria of provision (a) or (b) of this subsection is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service, under the law of this state;

(d) An "American employer" for purposes of this subparagraph means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(e) For purposes of this subsection, "United States" means the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

[72-1316, added 1947, ch. 269, sec. 16, p. 793; am. 1949, ch. 144, sec. 16, p. 252; am. 1949, ch. 204, sec. 1, p. 425; am. 1951, ch. 235, sec. 2, p. 472; am. 1957, ch. 193, sec. 1, p. 382; am. 1959, ch. 252, sec. 1, p. 537; am. 1963, ch. 316, sec. 2, p. 864; am. 1963, ch. 318, sec. 1, p. 872; am. 1965, ch. 214, sec. 1, p. 490; am. 1970, ch. 13, sec. 1, p. 23; am. 1971, ch. 142, sec. 4, p. 595; am. 1974, ch. 51, sec. 1, p. 1106; am. 1976, ch. 224, sec. 1, p. 797; am. 1977, ch. 179, sec. 2, p. 467, am. 1978, ch. 112, sec. 2, p. 236; am. 1991, ch. 67, sec. 1, p. 162; am. 1993, ch. 119, sec. 1, p. 297; am. 1998, ch. 1, sec. 17, p. 12; am. 2004, ch. 24, sec. 1, p. 32; am. 2008, ch. 44, sec. 2, p. 108.]

72-1316A. EXEMPT EMPLOYMENT. "Exempt employment" means service performed:

- (1) By an individual in the employ of his spouse or child.
- (2) By a person under the age of twenty-one (21) years in the employ of his father or mother.
- (3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This subsection shall not apply to service performed in a program established at the request of an employer or group of employers.
- (4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.
- (5) In the employ of a governmental entity in the exercise of duties:
 - (a) As an elected official;
 - (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;
 - (c) As a member of the state national guard or air national guard;
 - (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;
 - (e) In a position which, pursuant to the laws of this state, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position which ordinarily does not require more than eight (8) hours per week; or
 - (f) As an election official or election worker including, but not limited to, a poll worker, an election judge, an election clerk or any other member of an election board, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars (\$1,000).
- (6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.
- (7) In the employ of:
 - (a) A church or convention or association of churches; or
 - (b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or

(c) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or

(d) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(8) By a program participant in a facility that provides rehabilitation for individuals whose earning capacity is impaired by age, physical or mental limitation, or injury or provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the labor market.

(9) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(10) Service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress other than the social security act.

(11) As a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school approved pursuant to state law.

(12) By an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.

(13) By an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(14) By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(15) Service covered by an election approved by the agency charged with the administration of any other state or federal unemployment insurance law, in accordance with an arrangement pursuant to section [72-1344](#), Idaho Code.

(16) In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.

(17) In the employ of a hospital by a resident patient of such hospital.

(18) By a member of an AmeriCorps program.

(19) By an individual who is paid less than fifty dollars (\$50.00) per calendar quarter for performing work that is not in the course of the employer's trade or business, and who is not regularly employed by such employer to perform such service. For the purposes of this subsection, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(a) On each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(b) Such individual was so employed by such employer in the performance of such service during the preceding calendar quarter.

(20) By an individual who is engaged in the trade or business of selling or soliciting the sale of consumer products in a private home or a location

other than in a permanent retail establishment, provided the following criteria are met:

(a) Substantially all the remuneration, whether or not received in cash, for the performance of the services is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(b) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual shall not be treated as an employee for federal and state tax purposes.

Such exemption applies solely to the individual's engagement in the trade or business of selling or soliciting the sale of consumer products in a private home or location other than in a permanent retail establishment.

(21) By a person who operates a motor vehicle that: (a) such person owns or holds pursuant to a bona fide lease; and (b) is leased to a motor carrier as defined in 49 U.S.C. section 13102, pursuant to a written contract, and in no event will the motor carrier be determined to be the covered employer of such person or the covered employer of an employee of such person.

[72-1316A, added 1977, ch. 179, sec. 4, p. 472, am. 1978, ch. 112, sec. 1, p. 233; am. 1979, ch. 110, sec. 1, p. 348; am. 1982, ch. 326, sec. 4, p. 810; am. 1993, ch. 119, sec. 2, p. 300; am. 1997, ch. 363, sec. 1, p. 1070; am. 1998, ch. 1, sec. 18, p. 14; am. 2005, ch. 5, sec. 2, p. 6; am. 2009, ch. 70, sec. 1, p. 204.; am. 2010, ch. 235, sec. 71, p. 605; am. 2013, ch. 261, sec. 1, p. 637; am. 2015, ch. 176, sec. 1, p. 575.]

72-1317. CUT-OFF DATE. September 30 immediately following the computation date is designated as the cut-off date for experience rating purposes.

[72-1317, added 1947, ch. 269, sec. 17, p. 793; am. 1949, ch. 144, sec. 17, p. 252; am. 1951, ch. 236, sec. 3, p. 482; am. 1998, ch. 1, sec. 20, p. 16.]

72-1318. DIRECTOR -- DEPARTMENT. "Director" means the director of the department of labor, the individual appointed pursuant to section [59-904](#), Idaho Code.

"Department" means the department of labor.

[72-1318, added 1947, ch. 269, sec. 18, p. 793; am. 1949, ch. 144, sec. 18, p. 252; am. 1976, ch. 141, sec. 1, p. 517; am. 1998, ch. 1, sec. 21, p. 17; am. 2004, ch. 346, sec. 11, p. 1036; am. 2007, ch. 360, sec. 7, p. 1065.]

72-1318A. DECISION. "Decision" means any written ruling made by the department's appeals bureau pursuant to section [72-1368](#)(6), Idaho Code, or the commission pursuant to section [72-1368](#)(7), Idaho Code.

[72-1318A, added 2010, ch. 114, sec. 1, p. 233.]

72-1318B. DETERMINATION, REVISED DETERMINATION, REDETERMINATION OR SPECIAL REDETERMINATION. Except for determinations made pursuant to section [72-1349A](#)(3), Idaho Code, and section [72-1382](#), Idaho Code, "determination," "revised determination," "redetermination" or "special

redetermination" are written rulings by the department that include notice of appeal rights.

[72-1318B, added 2010, ch. 114, sec. 2, p. 233.]

72-1319. ELIGIBLE EMPLOYER. (1) "Eligible employer" means a covered employer who has completed a qualifying period as defined in subsection (2) of this section and who has filed all payroll reports required, has paid, on or before the cutoff date, all contributions and penalties due, and has established a record of accumulated contributions in excess of benefits charged to his account. For the purposes of this section, delinquencies of a minor nature may be disregarded if the director is satisfied that such covered employer has acted in good faith and that forfeiture of a reduced taxable wage rate because of such minor delinquency would be inequitable.

(2) "Qualifying period" shall be the period of three (3) consecutive years ending on the computation date in which, during all of said years, the employer shall be subject to the requirements of this chapter, except that a new employer shall have a qualifying period of one (1) year ending on the computation date in which, during all of said year, the employer shall be subject to the requirements of this chapter.

[72-1319, added 1947, ch. 269, sec. 19, p. 793; am. 1949, ch. 144, sec. 19, p. 252; am. 1951, ch. 236, sec. 4, p. 482; am. 1955, ch. 18, sec. 2, p. 20; am. 1957, ch. 158, sec. 1, p. 274; am. 1963, ch. 314, sec. 2, p. 841; am. 1967, ch. 117, sec. 6, p. 233; am. 1991, ch. 119, sec. 2, p. 249; am. 1998, ch. 1, sec. 22, p. 17; am. 2021, ch. 243, sec. 2, p. 752.]

72-1319A. DEFICIT EMPLOYER. "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cut-off date.

[72-1319A, added 1963, ch. 314, sec. 3, p. 841; am. 1998, ch. 1, sec. 23, p. 18.]

72-1319B. TAXABLE WAGE RATE. "Taxable wage rate" means the numerical values calculated in accordance with section [72-1350](#), Idaho Code, for the purpose of establishing contribution rates, training tax rates and reserve tax rates for covered employers.

[72-1319B, added 1991, ch. 119, sec. 3, p. 249; am. 1996, ch. 415, sec. 1, p. 1378; am. 1998, ch. 1, sec. 24, p. 18; am. 2005, ch. 5, sec. 3, p. 8.]

72-1320. CREW LEADER. "Crew leader" means an individual who:

(1) Furnishes individuals to perform agricultural labor for any other person;

(2) Pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them; and

(3) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

[72-1320, added 1977, ch. 179, sec. 7, p. 476; am. 1998, ch. 1, sec. 25, p. 18.]

72-1321. DETERMINING SUITABILITY OF ITS EMPLOYEES, APPLICANTS AND PROSPECTIVE CONTRACTORS FOR EMPLOYMENT AND ACCESS TO FEDERAL TAX INFORMATION. (1) The Idaho department of labor may request a criminal record check of state and national databases by submitting the required fees and a set of fingerprints obtained from an employee, a prospective contractor, subcontractor or applicant for employment who will have access to federal tax information, as defined in internal revenue service publication 1075 (2016), to the Idaho state police, bureau of criminal identification. The submission of the required fees, fingerprints and information required by this section shall be on forms prescribed by the Idaho state police.

(2) The department's human resource director is authorized to receive criminal history information from the Idaho state police and from the federal bureau of investigation for the purpose of evaluating the fitness of employees and applicants for contracting or employment, with the Idaho department of labor and for access to federal tax information.

(3) As required by state and federal law, further dissemination or other use of the criminal history information is prohibited. Criminal background reports received from the Idaho state police and the federal bureau of investigation shall be handled and disposed of in a manner consistent with requirements imposed by the Idaho state police and the federal bureau of investigation.

(4) The department shall review the information received from the applicant's criminal history and background check and:

(a) Determine whether the employee, applicant or contractor has a criminal or other relevant record that would disqualify the individual from having access to federal tax information;

(b) Determine which crimes disqualify the employee, applicant or contractor from having access to federal tax information;

(c) Communicate clearance or denial to the employee, applicant or contractor; and

(d) Provide the employee, applicant or contractor with an opportunity for a formal review of a denial.

(5) The department is immune from liability for an employment decision when it acts in reasonable reliance on the results of the criminal history and background check in making contracting and employment decisions.

(6) Clearance through the criminal history and background check process is not a determination of suitability for employment or contracting.

[72-1321, added 2017, ch. 241, sec. 1, p. 597.]

72-1322. EXPERIENCE RATING. "Experience rating" means a method of determining variable taxable wage rates allowed to covered employers.

[72-1322, added 1947, ch. 269, sec. 22, p. 793; am. 1949, ch. 144, sec. 22, p. 252; am. 1963, ch. 314, sec. 4, p. 841; am. 1991, ch. 119, sec. 4, p. 250; am. 1998, ch. 1, sec. 27, p. 18.]

72-1322A. HOSPITAL. "Hospital" means any institution which has been licensed by, certified, or approved by the state board of health and welfare as a hospital.

[72-1322A, added 1971, ch. 142, sec. 6, p. 595; am. 1998, ch. 1, sec. 28, p. 18.]

72-1322B. EDUCATIONAL INSTITUTION. "Educational institution" means:

(1) An institution of higher education which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; and

(b) Is authorized to provide a program of education beyond high school; and

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or a program of training to prepare students for gainful employment in a recognized occupation.

(2) A primary or secondary school which provides education from preschool and kindergarten through grade twelve (12).

[72-1322B, added I.C., sec. 72-1322B, as added by 1971, ch. 142, sec. 7, p. 595; am. 1977, ch. 179, sec. 8, p. 476, am. 1978, ch. 112, sec. 3, p. 238; am. 1998, ch. 1, sec. 29, p. 18.]

72-1322C. GOVERNMENTAL ENTITY. "Governmental entity" means this state or any of its instrumentalities, political subdivisions, or districts of whatever type or nature including, but not limited to, school districts, cities, counties, taxing districts, or other entities, as well as any instrumentality of one (1) or more of the foregoing or that is jointly owned by this state or a political subdivision thereof and one (1) or more other states or political subdivisions of this or other states, if service for any such governmental entity is excluded from "employment" as defined in the federal unemployment tax act, 26 U.S.C. 3306(c) (7).

[72-1322C, added 1978, ch. 112, sec. 5, p. 239; am. 1998, ch. 1, sec. 30, p. 19.]

72-1322D. NONPROFIT ORGANIZATION. "Nonprofit organization" means a religious, charitable, educational, or other organization which is described in section 501(c) (3) of the federal internal revenue code and which is exempt from tax under section 501(a) of such code.

[72-1322D, added 1998, ch. 1, sec. 31, p. 19.]

72-1323. INTERESTED PARTIES. "Interested party" with respect to a claim for benefits means the claimant, the claimant's last regular employer, the employer whose account is chargeable for experience rating purposes, the cost reimbursement employer who may be billed for any portion of benefits claimed, and the director or an authorized representative of any of them; "interested party" with respect to proceedings involving employer liability means the employer and the director or an authorized representative.

[72-1323, added 1947, ch. 269, sec. 23, p. 793; am. 1949, ch. 144, sec. 23, p. 252; am. 1951, ch. 236, sec. 5, p. 482; am. 1980, ch. 264, sec. 3, p. 683; am. 1998, ch. 1, sec. 32, p. 19.]

72-1324. PAYROLL. "Payroll" means the amount of wages, as defined in section [72-1328](#), Idaho Code, paid by a covered employer for covered employment.

[72-1324, added 1947, ch. 269, sec. 24, p. 793; am. 1949, ch. 144, sec. 24, p. 252; am. 1998, ch. 1, sec. 33, p. 20.]

72-1325. PERSON. "Person" means any individual and any other entity recognized by Idaho law, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person.

[72-1325, added 1947, ch. 269, sec. 25, p. 793; am. 1949, ch. 144, sec. 25, p. 252; am. 1998, ch. 1, sec. 34, p. 20.]

72-1327. STATE. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Dominion of Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

[72-1327, added 1947, ch. 269, sec. 27, p. 793; am. 1949, ch. 144, sec. 27, p. 252; am. 1965, ch. 170, sec. 2, p. 331; am. 1977, ch. 179, sec. 10, p. 477; am. 1998, ch. 1, sec. 36, p. 20.]

72-1327A. VALID CLAIM. "Valid claim" means any application for benefits which is found to be eligible as provided in section [72-1367](#), Idaho Code, and which has been filed in accordance with this chapter and such rules as the director may prescribe.

[72-1327A, added 1967, ch. 117, sec. 7, p. 233; am. 1998, ch. 1, sec. 37, p. 20.]

72-1328. WAGES. (1) "Wages" shall include:

(a) All remuneration for personal services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash;

(b) All tips received while performing services in covered employment totaling twenty dollars (\$20.00) or more in a month, which are reported in writing to the employer as required under federal law;

(c) Any employer contribution under a qualified cash or deferred agreement as defined in 26 U.S.C. 401(k) to the extent such contribution is not included in gross income by reason of 26 U.S.C. 402(a)(8).

(2) The term "wages" shall not include:

(a) Payments (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to or on behalf of an individual or any of his dependents under a plan established by an employer that makes provision generally for individuals performing service for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (i) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments received under a worker's compensation law), or (ii) medical or hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) Payments on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an individual performing services for him after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer;

(c) Payments made by an employer to or on behalf of an individual performing services for him or his beneficiary: (i) from or to a trust described in section 401(a) of the Internal Revenue Code that is exempt from tax under section 501(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of such payments, is a plan described in section 403(a) of the Internal Revenue Code, or (iii) under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code;

(d) Payments made by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in his employ under section 3101 of the Internal Revenue Code; or

(e) Noncash payments for farm work.

(3) Any third party making a sickness or accident disability payment not excluded from wages under subsection (2) (a) (i) of this section shall be treated as the employer with respect to such payment of wages for the purposes of this chapter.

[72-1328, added 1947, ch. 269, sec. 28, p. 793; am. 1949, ch. 144, sec. 28, p. 252; am. 1951, ch. 104, sec. 3, p. 233; am. 1955, ch. 18, sec. 3, p. 20; am. 1963, ch. 314, sec. 5, p. 841; am. 1971, ch. 142, sec. 8, p. 595; am. 1975, ch. 126, sec. 2, p. 259; am. 1981, ch. 144, sec. 1, p. 248; am. 1982, ch. 326, sec. 5, p. 812; am. 1986, ch. 25, sec. 1, p. 77; am. 1989, ch. 57, sec. 2, p. 80; am. 1998, ch. 1, sec. 38, p. 20; am. 2021, ch. 243, sec. 3, p. 753.]

72-1329. WAITING WEEK. "Waiting week" means the first week of a benefit year that meets the criteria for a compensable week in section [72-1312](#) (1) through (4), Idaho Code, but for which no benefits will be paid to the claimant. Every claimant shall have a waiting week each benefit year.

[72-1329, added 1947, ch. 269, sec. 29, p. 793; am. 1949, ch. 144, sec. 29, p. 252; am. 1955, ch. 18, sec. 4, p. 20; am. 1963, ch. 316, sec. 3, p. 864; am. 1965, ch. 170, sec. 3, p. 331; am. 1981, ch. 168, sec. 2, p. 300; am. 1998, ch. 1, sec. 39, p. 21.]

72-1330. WEEK. "Week" means a period of seven (7) consecutive days ending at midnight on Saturday.

[72-1330, added 1947, ch. 269, sec. 30, p. 793; am. 1949, ch. 144, sec. 36, p. 252; am. 1951, ch. 104, sec. 4, p. 233; am. 1998, ch. 1, sec. 40, p. 22.]

72-1331. ADMINISTRATION. The employment security law shall be administered by the director, who shall be appointed by the governor. Any appointments made under this section shall be confirmed by the state senate.

[72-1331, added 1947, ch. 269, sec. 31, p. 793; am. 1949, ch. 144, sec. 31, p. 252; am. 1951, ch. 104, sec. 5, p. 233; am. 1965, ch. 44, sec. 1, p. 67; am. 1974, ch. 16, sec. 2, p. 304; am. 1976, ch. 141, sec. 2, p. 517; am. 1996, ch. 421, sec. 1, p. 1409; am. 1998, ch. 1, sec. 41, p. 22.]

72-1332. AUTHORITY AND DUTIES OF THE COMMISSION. The commission is authorized to hear and decide matters appealed to it in accordance with the provisions of this chapter and the federal unemployment tax act. In addition to salaries paid from the industrial administration fund each member of the commission shall receive a salary to be paid from the employment security administration fund in an amount equal to one-half (1/2) of the salary paid from the industrial administration fund. Prior to the beginning of each fiscal year, the department and the commission shall negotiate an amount to be paid the commission to reimburse it for the cost of personal and nonpersonal services involved in hearing appeals as provided in section [72-1368](#)(6), Idaho Code.

[72-1332, added 1947, ch. 269, sec. 32, p. 793; am. 1949, ch. 144, sec. 32, p. 252; am. 1951, ch. 104, sec. 6, p. 233; am. 1955, ch. 18, sec. 5, p. 20; am. 1955, ch. 198, sec. 2, p. 427; am. 1976, ch. 261, sec. 1, p. 881; am. 1980, ch. 256, sec. 2, p. 668; am. 1998, ch. 1, sec. 42, p. 22.]

72-1333. DEPARTMENT OF LABOR -- AUTHORITY AND DUTIES OF THE DIRECTOR. (1) The director shall administer the employment security law, [chapter 13, title 72](#), Idaho Code, the minimum wage law, [chapter 15, title 44](#), Idaho Code, the provisions of [chapter 6, title 45](#), Idaho Code, relating to claims for wages, the provisions of section [44-1812](#), Idaho Code, relating to minimum medical and health standards for paid firefighters, the disability determinations service established pursuant to 42 U.S.C. 421, and shall perform such other duties relating to labor and workforce development as may be imposed by law. The director shall be the successor in law to the office enumerated in section 1, article XIII, of the constitution of the state of Idaho. The director shall have the authority to employ individuals, make expenditures, require reports, make investigations, perform travel and take other actions deemed necessary. The director shall organize the department of labor, which is hereby created and which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The director shall have the authority pursuant to [chapter 52, title 67](#), Idaho Code, to adopt, amend, or rescind rules as deemed necessary for the proper performance of all duties imposed by law.

(3) Subject to the provisions of [chapter 53, title 67](#), Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators and two (2) exempt positions to serve at the pleasure of the director.

(4) The director shall make recommendations for amendments to the employment security law and other laws the director is charged to implement as deemed proper.

(5) The director shall have all the powers and duties as may have been or could have been exercised by predecessors in law, except those powers and duties granted and reserved to the director of the department of commerce in titles 39, 49 and 67, Idaho Code, and shall be the successor in law to all contractual obligations entered into by predecessors in law, except for

those contracts of the department of commerce, or contracts pertaining to any power or duty granted and reserved to the director of the department of commerce in titles 39, 49 and 67, Idaho Code.

(6) The director shall provide administrative support for the commission on human rights pursuant to section [67-5905](#), Idaho Code.

[72-1333, added 2007, ch. 360, sec. 8, p. 1065; am. 2008, ch. 97, sec. 1, p. 263; am. 2010, ch. 248, sec. 4, p. 638; am. 2018, ch. 47, sec. 2, p. 121; am. 2020, ch. 143, sec. 1, p. 437.]

72-1334. PUBLICATIONS. The director shall print for distribution to the public labor and workforce development information and any other material deemed relevant and shall furnish the same upon request.

[72-1334, added 1947, ch. 269, sec. 34, p. 793; am. 1949, ch. 144, sec. 34, p. 252; am. 1998, ch. 1, sec. 44, p. 24.]

72-1335. PERSONNEL. (1) The director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary. The director may delegate to any such person such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may, in the time, form and manner prescribed by [chapter 8, title 59](#), Idaho Code, bond persons handling moneys or signing checks hereunder, such bond to be paid from the employment security administration fund.

(2) (a) Subject only to the provisions of this chapter and such rules as the director may prescribe, the director is authorized and directed to establish and maintain a group pension plan providing retirement, disability, and death benefits for employees of the department through the means of group contracts negotiated with an insurer, licensed and qualified to do business under the laws of the state of Idaho.

(b) Employees covered by the plan shall include all employees (other than temporary and hourly-rated employees) who are in employee status with the department and whose employment commenced before October 1, 1980.

(c) Credited service shall mean all service by employees in the employ of the department (exclusive of leaves without pay other than military leave) as follows:

(i) Past service rendered prior to the effective date of the plan by employees; for this purpose prior service shall include service in any of the predecessor, component organizations thereof, as determined appropriate by the director on the effective date, and shall also include leave-of-absence for military service occurring within a period of otherwise continuous service in any such predecessor organizations.

(ii) Future service rendered on and after said effective date.

(iii) An employee of the department placed on loan or special duty with other governmental units may be deemed to be in credited service when the costs of continuing credited service are made reimbursable in accordance with an agreement approved by the director.

(d) For each year of credited service each employee covered under the plan shall receive a monthly pension commencing upon retirement at or after age sixty-five (65) and continuing until death, of not less than one and one-half percent (1 1/2%) of monthly earnings, except that

appropriate schedules and conditions for service retirement, early retirement, disability retirement, and contingency annuity options shall be included in the insurance plan. Notwithstanding any other provisions of this section to the contrary, the director is authorized and directed to negotiate with the insurer to invest any interest, dividends, earnings, or other moneys accruing to the funds financing the employees' retirement program with the insurer to purchase additional retirement benefits. The purchase of said additional benefits shall be contingent upon actuarial appraisals of the plan and shall be based on sound actuarial principles. Total retirement benefits to be provided under the program shall meet the requirements of the Internal Revenue Service for integration purposes.

(e) The cost of past service, future service and disability pensions shall be calculated according to sound actuarial principles. The costs of the plan, including funding of past service pensions which shall be funded over a period of time consistent with good insurance practices, shall be paid from administrative funds available to the department. Each employee covered under the plan shall by payroll deduction contribute toward the cost of future service pensions at not less than the rate paid by the department, but not to exceed seven percent (7%) of monthly earnings.

(f) Upon termination of service, an employee may elect to receive the refund of his contributions plus interest or may elect to have the tax-deferred contributions and interest directly rolled over to an individual retirement account or annuity or to another qualified retirement plan that accepts the roll over, pursuant to 26 U.S.C. 402(c). A vested employee, as provided in the insurance contract, who leaves his contributions in the plan will remain entitled to the pension purchased by the contributions made on his behalf, and all other privileges under the plan.

(g) If an employee dies more than ten (10) years before his normal retirement date, all of his contributions plus interest will be returned to a previously-named beneficiary, subject to survivor benefits as provided in the plan. The following provisions of this subsection shall be subject to a contingency annuity option. If an employee dies on or after the date ten (10) years prior to his normal retirement date, it will be assumed that he retired on the first day of the month following his date of death, and his beneficiary shall receive, beginning on the assumed retirement date, one hundred twenty (120) monthly pension payments. The amount of monthly pension payable will be based on the credit accrued to that time and the employee's assumed earlier retirement age. If death occurs after retirement but before one hundred twenty (120) monthly pension payments have been made, the monthly pension will be continued to his beneficiary until a total of one hundred twenty (120) monthly payments have been made.

[72-1335, added 1947, ch. 269, sec. 35, p. 793; am. 1949, ch. 144, sec. 35, p. 252; am. 1959, ch. 29, sec. 1, p. 62; am. 1965, ch. 116, sec. 1, p. 223; am. 1971, ch. 136, sec. 49, p. 522; am. 1973, ch. 107, sec. 1, p. 189; am. 1994, ch. 210, sec. 1, p. 665; am. 1997, ch. 217, sec. 1, p. 639; am. 1998, ch. 1, sec. 45, p. 24.]

72-1337. RECORDS AND REPORTS. (1) Each employer that is a "covered employer," as defined in section [72-1315](#), Idaho Code, shall complete and sub-

mit to the director an Idaho business registration form within six (6) months of becoming a covered employer.

(2) Each employer shall keep accurate records, for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection and be subject to being copied by the director at any reasonable time. The director, a member of the commission or an appeals examiner may require from any employer any sworn or unsworn reports which are deemed necessary in the exercise of their duties.

[72-1337, added 1947, ch. 269, sec. 37, p. 793; am. 1949, ch. 144, sec. 37, p. 252; am. 1998, ch. 1, sec. 47, p. 27; am. 2005, ch. 5, sec. 4, p. 8.]

72-1338. OATHS AND WITNESSES. The director, a member of the commission, and an appeals examiner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of evidence deemed necessary in connection with a disputed claim or in the exercise of their duties.

[72-1338, added 1947, ch. 269, sec. 38, p. 793; am. 1949, ch. 144, sec. 38, p. 252; am. 1998, ch. 1, sec. 48, p. 27.]

72-1339. ENFORCEMENT OF SUBPOENAS. Any subpoena issued pursuant to section [72-1338](#), Idaho Code, may be enforced by the district courts of this state within the jurisdiction in which the inquiry is being conducted or within the jurisdiction in which the person to whom the subpoena was issued resides or conducts his business. The court shall have jurisdiction to hear the parties, determine the reasonableness of the subpoena, and set aside, modify, or enforce the subpoena by its order in accordance with the evidence. Any failure to obey such court order may be punished by the court as a contempt thereof.

[72-1339, added 1947, ch. 269, sec. 39, p. 793; am. 1949, ch. 144, sec. 39, p. 252; am. 1998, ch. 1, sec. 49, p. 28.]

72-1340. PROTECTION AGAINST SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing documentary evidence before the director, the commission, or an appeals examiner, or in obedience to the subpoena of any of them, on the ground that the testimony or documentary evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce documentary evidence except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[72-1340, added 1947, ch. 269, sec. 40, p. 793; am. 1949, ch. 144, sec. 40, p. 252; am. 1998, ch. 1, sec. 50, p. 28.]

72-1341. FEDERAL-STATE COOPERATION. (1) The director shall cooperate with the United States department of labor, and is directed to take such action as may be necessary to secure to Idaho all advantages under federal

laws providing for federal-state cooperation in the administration of unemployment insurance laws, the reduction or prevention of unemployment, and the full development of the workforce resources of this state. The director shall cooperate with the United States department of labor with regards to the receipt or expenditure by this state of moneys granted under any federal acts and shall comply with the requirements of the United States department of labor in preparing reports and ensuring the correctness of the reports.

(2) The director is authorized to make investigations, secure and transmit information, make available services and facilities and exercise other powers provided herein to facilitate the administration of any state or federal unemployment insurance or public employment service law. The director may utilize information, services and facilities made available to the state by any agency charged with the administration of an unemployment insurance or public employment service law.

[72-1341, added 1947, ch. 269, sec. 41, p. 793; am. 1949, ch. 144, sec. 41, p. 252; am. 1949, ch. 272, sec. 2, p. 551; am. 1951, ch. 104, sec. 9, p. 233; am. 1965, ch. 170, sec. 4, p. 331; am. 1969, ch. 170, sec. 2, p. 504; am. 1998, ch. 1, sec. 51, p. 28.]

72-1342. DISCLOSURE OF INFORMATION. Employment security information, as defined in section [74-106](#)(7), Idaho Code, shall be exempt from disclosure as provided in [chapter 1, title 74](#), Idaho Code, except that such information may be disclosed as is necessary for the proper administration of programs under this chapter or may be made available to public officials for use in the performance of official duties subject to such restrictions and fees as the director may by rule prescribe. The director may by rule prescribe the form of written, informed consent by a person that is adequate for disclosure of employment security information pertaining to that person to a third party, as provided in section [74-106](#)(7), Idaho Code, and the security requirements and cost provisions that apply to such disclosures.

[72-1342, added 1947, ch. 269, sec. 42, p. 793; am. 1949, ch. 144, sec. 42, p. 252; am. 1949, ch. 272, sec. 3, p. 551; am. 1951, ch. 104, sec. 10, p. 233; am. 1972, ch. 344, sec. 2, p. 998; am. 1977, ch. 179, sec. 11, p. 477; am. 1982, ch. 326, sec. 6, p. 813; am. 1990, ch. 213, sec. 109, p. 562; am. 1993, ch. 10, sec. 1, p. 30; am. 1998, ch. 1, sec. 52, p. 29; am. 2008, ch. 99, sec. 1, p. 270.; am. 2015, ch. 141, sec. 195, p. 530.]

72-1343. PRESERVATION AND DESTRUCTION OF RECORDS. (1) The director may make such summaries or reproductions of records in his custody in whatever form for the effective and economical preservation of the information contained therein, and such summaries or reproductions, duly authenticated, shall be admissible in any proceeding under this chapter if the original records would have been admissible.

(2) The director may order the destruction or disposition of records in his custody if the preservation of such records is not necessary for the proper performance of his duties.

[72-1343, added 1947, ch. 269, sec. 43, p. 793; am. 1949, ch. 144, sec. 43, p. 252; am. 1951, ch. 104, sec. 11, p. 233; am. 1998, ch. 1, sec. 53, p. 30.]

72-1344. RECIPROCAL ARRANGEMENTS AND COOPERATION. (1) The director is authorized to enter into reciprocal arrangements with appropriate agencies of other states or of the federal government, or both, whereby:

(a) An employer of an individual who customarily provides services for the employer in more than one (1) state may elect to have the services deemed performed entirely in one (1) state if the state is one in which: (i) any part of the individual's services are performed, or (ii) the individual has his residence, or (iii) the employer maintains a place of business, provided the individual agrees with the election and the agency charged with the administration of such state's unemployment insurance law approves it;

(b) Potential rights to benefits accumulated under the unemployment insurance laws of the federal government may constitute the basis for the payment of benefits through a single appropriate agency under terms which the director finds will be fair to all affected interests and will not result in a substantial loss to the employment security fund;

(c) The director shall participate in any wage combining plan that the secretary of labor may approve as provided in 26 U.S.C. 3304 (a) (9) (B) of the federal unemployment tax act. Other arrangements outside the scope of the federal plan may be entered into if fair and reasonable provisions for reimbursement to the employment security fund for any benefits paid are included. Under such a plan, wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment insurance law of another state or of the federal government, may be deemed to be wages for covered employment for the purpose of determining his rights to benefits under this chapter, and wages for covered employment, on the basis of which an individual may become entitled to benefits under this chapter, may be deemed to be wages or services on the basis of which unemployment insurance under the law of another state or of the federal government is payable; and

(d) Contributions due under this act with respect to wages for covered employment shall for the purposes of sections [72-1354](#) through [72-1364](#), Idaho Code, be deemed to have been paid to the employment security fund as of the date payment was made as contributions therefor under another state or federal unemployment insurance law. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund of such contributions as the director finds will be fair to all affected interests.

(2) Reimbursements paid from the employment security fund pursuant to paragraph (c) of subsection (1) of this section shall be deemed to be benefits for the purposes of this chapter. The director is authorized to make and receive reimbursements to and from other state or federal agencies in accordance with arrangements entered into pursuant to subsection (1) of this section.

(3) The director is authorized to enter into arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment insurance law of any foreign government may be utilized for taking claims and paying benefits.

[72-1344, added 1947, ch. 269, sec. 44, p. 793; am. 1949, ch. 144, sec. 44, p. 252; am. 1971, ch. 142, sec. 9, p. 595; am. 1998, ch. 1, sec. 54, p. 30.]

72-1345. STATE EMPLOYMENT SERVICE. A state employment service shall be operated as part of the department. The director shall establish and maintain free public employment offices as may be necessary for the proper administration of this chapter, and for the purpose of performing the functions of the Wagner-Peyser Act, 29 U.S.C. 49. The provisions of said act are accepted by this state, and the department is designated the agency of this state for the purposes of said act. The department shall provide priority service for veterans in cooperation with the United States veterans employment service.

[72-1345, added 1947, ch. 269, sec. 45, p. 793; am. 1949, ch. 144, sec. 45, p. 252; am. 1949, ch. 272, sec. 4, p. 551; am. 1951, ch. 104, sec. 12, p. 233; am. 1998, ch. 1, sec. 55, p. 32.]

72-1346. EMPLOYMENT SECURITY FUND. (1) Establishment and Control. There is established in the state treasury, separate and apart from all other funds of this state, an "Employment Security Fund," which shall be perpetually appropriated to the director to be administered pursuant to the provisions of this chapter and the social security act. This fund shall consist of all contributions collected pursuant to this chapter, payments in lieu of contributions, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, moneys temporarily deposited in the clearing account, and all other moneys received for the fund from any other source.

(2) Accounts and Deposits. The state controller shall maintain within the fund three (3) separate accounts: (i) a clearing account, (ii) an unemployment trust fund account, and (iii) a benefit account. Upon receipt by the director, all moneys payable to the fund shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. After clearance, all moneys in the clearing account shall, except as otherwise provided, be deposited promptly with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act (42 U.S.C. 1104), any provisions of law in this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the federal unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank in the same manner as required by the general public depository law of this state and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund.

(3) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section [72-1357](#), Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the social security act (42 U.S.C. 1103), shall be used exclusively as provided in subsection (4)

of this section. The director through the treasurer shall requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of benefits and refunds for a reasonable period. Upon receipt, such moneys shall be deposited in the benefit account. Expenditures of moneys in the benefit and clearing accounts shall not require the approval of the board of examiners or be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director. Upon agreement between the director and state controller, amounts in the benefit account may be transferred to a revolving account established and maintained in a depository bank from which the director may provide for the payment of benefits and refunds. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in subsection (2) of this section. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account after the expiration of the period for which such sums were requisitioned, may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund.

(4) Reed Act Moneys. Reed act moneys credited to this state's account in the federal unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the social security act (42 U.S.C. 1103) may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Moneys may only be requisitioned and used for the payment of expenses incurred for the administration of this chapter if the expenses are incurred and the money is requisitioned after the enactment of a specific appropriation by the legislature which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(a) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and

(b) The amount which may be obligated at any time may not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the social security act (42 U.S.C. 1103) exceeds the aggregate of the amounts used by this state and charged against the amounts transferred to the account of this state. For the purposes of this subsection, amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(5) Reed act moneys requisitioned for the payment of benefits shall be deposited in the benefit account established in this section. Reed act moneys requisitioned for the payment of administrative expenses pursuant

to a specific appropriation shall be deposited in the employment security administration fund, section [72-1347](#), Idaho Code, except that moneys appropriated for the purchase of lands and buildings shall be deposited in the state employment security administrative and reimbursement fund in accordance with section [72-1348](#), Idaho Code. Money so deposited shall, until expended, remain part of the employment security fund and, if not expended, shall be promptly returned to this state's account in the federal unemployment trust fund.

[72-1346, added 1947, ch. 269, sec. 46, p. 793; am. 1949, ch. 144, sec. 46, p. 252; am. 1957, ch. 157, sec. 1, p. 267; am. 1969, ch. 170, sec. 1, p. 504; am. 1971, ch. 136, sec. 50, p. 522; am. 1972, ch. 144, sec. 1, p. 311; am. 1976, ch. 207, sec. 3, p. 754; am. 1983, ch. 146, sec. 2, p. 385; am. 1993, ch. 119, sec. 3, p. 302; am. 1994, ch. 180, sec. 238, p. 571; am. 1998, ch. 1, sec. 56, p. 32; am. 1999, ch. 101, sec. 1, p. 316; am. 2001, ch. 32, sec. 1, p. 49; am. 2004, ch. 24, sec. 2, p. 34.; am. 2010, ch. 114, sec. 3, p. 234.]

72-1346A. ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT TO EMPLOYMENT SECURITY FUND -- FEDERAL ADVANCE INTEREST REPAYMENT FUND. (1) In the event the director determines that it is necessary to obtain advances from the federal unemployment account in the unemployment trust fund pursuant to title XII of the social security act (42 U.S.C. 1321), and that a request for such advances is authorized under section 1201 of the social security act, or under any other act of congress extending such authority, the director shall request the governor to make application to the secretary of labor of the United States for such advances.

(2) The governor is authorized to make application to the secretary of labor of the United States to obtain advances pursuant to title XII of the social security act (42 U.S.C. 1321 et seq.). Funds so advanced shall be for the payment of unemployment insurance benefits.

(3) Any amount transferred to the employment security fund by the secretary of the treasury of the United States in accordance with this section shall be repaid from the employment security fund as provided in section 1202 of the social security act (42 U.S.C. 1322).

(4) There is established in the state treasury the "Federal Advance Interest Repayment Fund." This fund shall consist of all moneys collected pursuant to subsection (5) of this section and interest earned upon any moneys in the fund. All moneys in the fund are perpetually appropriated to the director for the payment of interest on any advance made to this state pursuant to title XII of the social security act, except that if, at the end of any calendar year, all advances and interest have been repaid, any remaining balance in the fund shall be transferred to the employment security fund. Interest charges due and payable pursuant to section 1202 of the social security act, may be paid by the director from the federal advance interest repayment fund. Such expenditures shall not be subject to any law requiring specific appropriations or other formal release by state officers of money in their custody, nor shall such expenditures require the approval of the board of examiners.

(5) A federal advance interest repayment tax may be levied in accordance with the following provisions when required under paragraph (b) of this subsection:

(a) On the first day of the third month of a calendar quarter, the director shall:

- (i) Estimate the interest payable on federal advances obtained under subsections (1) and (2) of this section;
 - (ii) Estimate the amount of federal advance interest repayment tax receipts expected to be collected during the quarter for any preceding calendar quarter in which such tax was assessed;
 - (iii) Add the amount in the federal advance interest repayment fund on the last day of the immediately preceding calendar quarter to the estimate in paragraph (ii) of this subsection; and
 - (iv) Subtract the sum obtained in paragraph (iii) from the estimate in paragraph (i) of this subsection.
- (b) If the remainder obtained under paragraph (iv) of subsection (5) (a) of this section is more than zero, each covered employer subject to this section may, at the director's sole discretion, be assessed a federal advance interest repayment tax. Such tax shall be a percentage of the contributions payable under sections [72-1349](#) and [72-1350](#), Idaho Code, for the calendar quarter, but in no case shall be less than one dollar (\$1.00). The percentage shall be determined by dividing the remainder in paragraph (iv) of subsection (5) (a) of this section by the estimated amount of contributions due and payable on wages paid during the quarter. The percentage shall be rounded up to the next one-tenth of a percent (0.1%).
- (c) The tax assessed shall be collected and paid in accordance with such rules as the director may prescribe. All such taxes collected shall be deposited in the federal advance interest repayment fund. Any such tax imposed in a calendar quarter shall be paid on or before the last day of the second month following the close of such calendar quarter. An extension of time for payment may be granted for good cause in accordance with section [72-1349](#) (4), Idaho Code.
- (d) If any covered employer fails to pay such tax on or before the date on which they are due, such tax shall bear penalty at a rate of five dollars (\$5.00) for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amount of the tax due and payable. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this subsection shall be paid into the federal advance interest payment fund. Furthermore, if any employer becomes delinquent in making payment of the tax as required by this subsection, such employer shall be subject to the collection provisions in sections [72-1355](#) and [72-1360](#), Idaho Code.
- (e) A covered employer may make application to the director for a refund or credit of any amount erroneously paid as tax under this subsection. Such applications and the director's determinations regarding them shall be made in accordance with the provisions of section [72-1357](#), Idaho Code.
- (f) This section does not apply to covered employers eligible and electing the cost reimbursement payment method under section [72-1349A](#), Idaho Code.

[72-1346A, added 1983, ch. 146, sec. 3, p. 388; am. 1998, ch. 1, sec. 57, p. 36; am. 2001, ch. 32, sec. 2, p. 51.]

72-1346B. UNEMPLOYMENT BENEFIT BONDS. (1) The Idaho housing and finance association, upon the request from and agreement with the director, may contract indebtedness and issue or cause to be issued unemployment ben-

efit bonds or notes evidencing such indebtedness in conformity with [chapter 62, title 67](#), Idaho Code, for the benefit of the department when the director determines that the issuance of bonds for the repayment of federal advances under title XII of the social security act, 42 U.S.C. section 1321 et seq., will result in a savings to the state and to the state's employers.

(2) Until unemployment benefit bonds and notes as authorized in this section and [chapter 62, title 67](#), Idaho Code, have been paid in full, the following provisions shall apply:

(a) In addition to the requirements of section [72-1347A](#), Idaho Code, within the employment security reserve fund there is created a bond principal payment account and a bond interest payment account. Fifty million dollars (\$50,000,000) is hereby appropriated to the bond principal payment account and twenty million dollars (\$20,000,000) is hereby appropriated to the bond interest payment account. Moneys in the bond principal payment account shall be used solely for the payment of bond and note principal and moneys in the bond interest payment account shall be used solely for the payment of bond and note interest and other amounts required for the unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and [chapter 62, title 67](#), Idaho Code.

(b) Moneys in the bond principal payment account and the bond interest payment account are continuously appropriated in such amounts and at such times as, from time to time, shall be certified by the Idaho housing and finance association to the director, the state treasurer and the state controller as necessary for the payment of principal, interest and other amounts required for unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and [chapter 62, title 67](#), Idaho Code, which amounts shall be paid over as directed by the association.

(c) Moneys paid out of the bond principal payment account for principal payments on unemployment benefit bonds or notes shall be repaid from the benefit account in the employment security fund, section [72-1346](#)(2), Idaho Code, out of revenue the department derives from employer contributions payable under sections [72-1349](#) and [72-1350](#), Idaho Code.

(d) Moneys paid out of the benefit account to the bond principal payment account as authorized in this section shall be made as soon as possible and in such amounts as deemed necessary by the director to provide funds for the appropriations contained herein to make subsequent principal payments on unemployment benefit bonds or notes when due.

(e) At any time the balance in the benefit account reaches zero (0), the director shall immediately requisition funds from the state's account in the federal unemployment trust fund, and if funds therein are not then sufficient to pay unemployment insurance benefits, the director shall immediately obtain advances from the federal unemployment account in the unemployment trust fund as provided for in section [72-1346A](#), Idaho Code.

[72-1346B, added 2011, ch. 111, sec. 4, p. 301.]

72-1347. EMPLOYMENT SECURITY ADMINISTRATION FUND. (1) There is established in the state treasury the "Employment Security Administration Fund." All moneys deposited in said fund are perpetually appropriated to the director. Expenditures from the fund shall be in accordance with this chapter on the approval of the director and shall not require approval by

the board of examiners, and shall not lapse at any time or be transferred to any other fund, except that the director may establish a revolving fund for the purpose of paying current cash items in connection with administrative expenses. All moneys in this fund which are received from the federal government shall be expended solely for the purposes and in the amounts found necessary by the secretary, United States department of labor, for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state to this fund, all moneys received from the United States for this fund, all moneys received from any other source for such purpose, and any moneys received from the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies. Such moneys shall be secured by the depository in which they are held as required by the general depository law of the state, [chapter 1, title 57](#), Idaho Code, and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the fund.

(2) Reimbursement of fund. If any moneys received from the United States department of labor under title III of the social security act, are found by the United States department of labor to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the United States department of labor for the proper administration of this chapter, such moneys shall be replaced by moneys in the state employment security administrative and reimbursement fund as provided in section [72-1348](#), Idaho Code, but if the moneys therein are insufficient, the balance shall be replaced by moneys in the department of labor special administration fund, section [72-1347A](#)(3), Idaho Code.

[72-1347, added 1947, ch. 269, sec. 47, p. 793; am. 1949, ch. 144, sec. 47, p. 252; am. 1976, ch. 141, sec. 3, p. 518; am. 1998, ch. 1, sec. 58, p. 37.]

72-1347A. EMPLOYMENT SECURITY RESERVE FUND -- SPECIAL ADMINISTRATION FUND. (1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the employment security reserve fund, hereinafter "reserve fund." Except as provided herein, all proceeds from the reserve tax defined in subsection (2) of this section shall be paid into the reserve fund. The moneys in the reserve fund may be used by the director for loans to the employment security fund, section [72-1346](#), Idaho Code, as security for loans from the federal unemployment insurance trust fund, and for the repayment of any interest-bearing advances, including interest, made under title XII of the social security act, 42 U.S.C. 1321 through 1324, and shall be available to the director for expenditure in accordance with the provisions of this section. The state treasurer shall be the custodian of the reserve fund and shall invest said moneys in accordance with law. The state treasurer shall disburse the moneys from the reserve fund in accordance with the directions of the director.

(2) A reserve tax is imposed on all covered employers required to pay contributions pursuant to section [72-1350](#), Idaho Code, except deficit-rated employers who have been assigned a taxable wage rate from deficit rate class six pursuant to section [72-1350](#)(8)(a), Idaho Code. The reserve tax shall

be due and payable at the same time and in the same manner as contributions. If the reserve fund is less than one percent (1%) of state taxable wages in the penultimate year as of September 30 of the preceding calendar year, the reserve tax rate for all eligible, standard-rated and deficit-rated employers shall be equal to the taxable wage rate then in effect less the assigned contribution rate and training tax rate. The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the reserve tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section and the collection of the reserve tax, the director is granted all rights, authority, and prerogatives granted the director under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions and reserve taxes shall first be applied to pay any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section [72-1346](#), Idaho Code, and delinquent reserve taxes to the reserve fund pursuant to this section. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section [72-1348](#), Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Reserve taxes paid pursuant to this subsection may not be deducted in whole or in part by any employer from the wages of individuals in its employ. All reserve taxes collected pursuant to this subsection shall be deposited in the clearing account of the employment security fund, section [72-1346](#), Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the reserve fund established in subsection (1) of this section. No reserve tax shall be imposed for any calendar year if, as of September 30 of the preceding calendar year, the balance of the reserve fund equals or exceeds one percent (1%) of the state taxable wages for the penultimate calendar year, or exceeds forty-nine percent (49%) of the actual balance of the employment security fund, section [72-1346](#), Idaho Code.

(3) The interest earned from investment of the reserve fund shall be deposited in a fund established in the state treasurer's office, to be known as the department of labor special administration fund, hereinafter "special administration fund." The moneys in the special administration fund shall be held separate and apart from all other public funds of this state. The state treasurer shall be the custodian of this fund and may invest said moneys in accordance with law. Any interest earned on said moneys shall be deposited in the special administration fund.

(4) Administrative costs related to the reserve fund and the special administration fund shall be paid from federal administrative grants received under title III of the social security act, to the extent permitted by federal law, and then from the special administration fund.

[72-1347A, added 1991, ch. 119, sec. 5, p. 250; am. 1995, ch. 98, sec. 1, p. 289; am. 1996, ch. 415, sec. 2, p. 1378; am. 1998, ch. 1, sec. 59, p. 39; am. 2005, ch. 5, sec. 5, p. 8; am. 2006, ch. 48, sec. 1, p. 139; am. 2007, ch. 360, sec. 9, p. 1066; am. 2018, ch. 47, sec. 4, p. 121.]

72-1348. STATE EMPLOYMENT SECURITY ADMINISTRATIVE AND REIMBURSEMENT FUND. (1) There is created in the state treasury the "state employment se-

curity administrative and reimbursement fund." Notwithstanding the provisions of sections [72-1346](#) and [72-1347](#), Idaho Code, the fund shall consist of:

(a) All penalties and all interest on judgments or accounts secured by liens collected pursuant to the provisions of sections [72-1347A](#) and [72-1354](#) through [72-1364](#), Idaho Code, but only after such interest and penalties have been deposited in the clearing account and are thereafter transferred to this fund in such amounts as, in the discretion of the director, will leave a sufficient balance of interest and penalties in the clearing account to pay refunds; and

(b) Reed act moneys appropriated for the purchase of land and buildings pursuant to section [72-1346](#)(5), Idaho Code.

(2) Moneys referred to in subsection (1) (a) of this section are perpetually appropriated to the director and may be used upon written authorization of the board of examiners for any lawful purpose, including, but not limited to:

(a) As a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to reimbursement upon receipt of the federal funds;

(b) For the payment of costs of administration including costs not validly chargeable against federal grants;

(c) For the payment of refunds of penalties pursuant to section [72-1357](#), Idaho Code; and

(d) For the purchase of land and buildings for the purpose of providing office space for the department.

(3) Moneys referred to in subsection (1) (b) of this section may be used by the department to acquire for and in the name of the state by term purchase agreement lands and buildings for office space for the department at such places as the director finds necessary. An agreement made for the purchase of premises pursuant to this subsection shall be subject to the approval of the attorney general as to form and title.

Premises purchased pursuant to this section shall be used for the department or, if it is desirable to move the department, similar space will be furnished by the state to the department without further payment therefor by the United States.

[72-1348, added 1947, ch. 269, sec. 48, p. 793; am. 1949, ch. 144, sec. 48, p. 252; am. 1951, ch. 235, sec. 3, p. 472; am. 1957, ch. 157, sec. 2, p. 267; am. 1998, ch. 1, sec. 61, p. 43; am. 2004, ch. 24, sec. 3, p. 36; am. 2018, ch. 47, sec. 5, p. 123.]

72-1349. PAYMENT OF CONTRIBUTIONS -- LIMITATION OF ACTIONS. (1) Contributions shall be reported and paid to the department on taxable wages for each calendar year equal to the amount determined in accordance with section [72-1350](#), Idaho Code. Contributions on wages paid to an individual under another state unemployment insurance law, or paid by an employer's predecessor during the calendar year, shall be counted in complying with this provision.

(2) Contributions shall accrue and become reportable and payable to the department by each covered employer for each calendar quarter with respect to wages for covered employment. Such contributions shall become due and be paid by each covered employer to the director for the employment security fund and shall not be deducted from the wages of individuals employed by such employer. All moneys required to be paid by a covered employer pursuant to this chapter shall immediately, upon becoming due and payable, become or be deemed money belonging to the state, and every covered employer shall hold

or be deemed to hold said money separately, aside, or in trust from any other funds, moneys or accounts, for the state of Idaho for payment in the manner and at the times provided by law.

(3) The contributions reportable and payable to the department by each covered employer, with respect to covered employment, accruing in each calendar quarter, shall be reported and paid to the department on or before the last day of the month following the close of said calendar quarter.

(4) The director may, for good cause shown by a covered employer, extend the time for payment of his contributions or any part thereof, but no such extension of time shall postpone the due date more than sixty (60) days. Contributions with respect to which an extension of time for payment has been granted shall be paid on or before the last day of the period of the extension.

(5) Whenever it appears to be essential to the proper administration of this chapter that collection of the contributions of a covered employer must be made more often than quarterly, the director shall have authority to demand payment of the contributions forthwith.

(6) In accordance with rules the director may prescribe, any person or persons entering into a formal contract with the state, any county, city, town, school or irrigation district, or any quasi-public corporation of the state, for the construction, alteration, or repair of any public building or public work, the contract price of which exceeds the sum of one thousand dollars (\$1,000) may be required before commencing such work, to execute a surety bond in an amount sufficient to cover contributions when due. If the director, who shall approve said bond, determines that said bond has become insufficient, he may require that a new bond be provided in the amount he directs. Failure on the part of the employer covered by the bond to pay the full amount of his contributions when due shall render the surety liable on said bond as though the surety was the employer and subject to the other provisions of this chapter.

(7) In the payment of any contributions a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar (\$1.00).

(8) The director may commence administrative proceedings to enforce the provisions of this section by issuing a determination at any time within five (5) years of the due date of a quarterly report or the date a quarterly report is filed, whichever is later. The limitation period of this subsection (8) is tolled during any period in which the employer absconds from the state, during any period of the employer's concealment, or during any period when the department's ability to commence administrative proceedings to enforce the provisions of this section is stayed by legal proceedings.

[72-1349, added 1947, ch. 269, sec. 49, p. 793; am. 1949, ch. 144, sec. 49, p. 252; am. 1951, ch. 104, sec. 13, p. 233; am. 1959, ch. 32, sec. 1, p. 68; am. 1971, ch. 142, sec. 10, p. 595; am. 1972, ch. 344, sec. 3, p. 998; am. 1975, ch. 126, sec. 3, p. 259; am. 1976, ch. 141, sec. 4, p. 517; am. 1976, ch. 207, sec. 4, p. 754; am. 1977, ch. 179, sec. 12, p. 478; am. 1998, ch. 1, sec. 62, p. 45; am. 2005, ch. 5, sec. 7, p. 12.; am. 2010, ch. 114, sec. 4, p. 235.]

72-1349A. FINANCING OF BENEFIT PAYMENTS BY NONPROFIT ORGANIZATIONS AND GOVERNMENTAL ENTITIES. (1) Benefits paid to employees of governmental entities and nonprofit organizations shall be financed in accordance with the provisions of this section.

A group of such organizations or entities may elect, with the approval of the director, to act as a group in fulfilling the requirements of this chapter.

(2) Liability for contributions and election of reimbursements. A nonprofit organization or governmental entity shall pay contributions under the provisions of section [72-1349](#), Idaho Code, unless it elects, in accordance with this section, to pay to the director an amount equal to the full amount of regular benefits paid and the amount paid for extended benefits for which the department is not reimbursed by the federal government, for any reason including, but not limited to, payments made as a result of a determination or payments erroneously paid, or paid as a result of a determination of eligibility, which is subsequently reversed if said payment or any portion thereof was made as a result of wages earned in the employ of such organization or entity. Any sums recovered by the department from a claimant as a result of said payments shall be credited to the account of the nonprofit organization or governmental entity that reimbursed the fund for the payment of said benefits. Where such benefits are paid utilizing wages paid by two (2) or more employers, the portion of benefits to be repaid by the organization or entity shall be its proportionate share. This shall be computed on the basis of the relationship between wages utilized that were earned for services performed for such organization or entity and the total wages utilized in paying such benefits.

(3) Any nonprofit organization or governmental entity may elect to become liable for payments in lieu of contributions, provided it files with the director a written notice of election not later than thirty (30) days prior to the beginning of any taxable year or within thirty (30) days after the date of the final determination that such organization or entity is subject to this chapter. Such election shall be effective for not less than two (2) full taxable years after the election is made, and will continue to be in effect until terminated. The organization or entity must file with the director a written notice of termination of such election not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective. The director may, in his discretion, terminate an election as provided in this section or extend the period within which a notice of election or a notice of termination must be filed. The director shall notify each nonprofit organization and governmental entity of any determination he makes of its status as an employer and of the effective date of any election that it makes and of any termination of such election.

(4) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this subsection, including either paragraph (a) or paragraph (b).

(a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the director shall bill each organization or entity (or group of organizations or entities) that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits paid, and the amount paid for extended benefits for which the department is not reimbursed by the federal government, if paid as a result of wages earned in the employ of such organization or entity.

(b) Payment in advance. Nonprofit organizations or governmental entities may elect to make payments in lieu of contributions in advance of actual billing for payment costs. Advance payments shall be made as follows: At the end of each calendar quarter, the nonprofit

organization or governmental entity shall pay one percent (1%) of its total quarterly payroll unless the director determines that a lesser percentage will cover the cost of payment of benefits to the employees of said employer. For purposes of this section, the total quarterly payroll for school districts shall be computed based upon only those school districts that have elected cost reimbursement status. Such payments shall become due and payable within thirty (30) days following the quarter ending.

At the end of such taxable year, the director shall compute the benefit costs attributable to the employer as provided in subsection (2) of this section. The director will then debit the employer's account with these costs. When payments exceed benefit costs, either the employer will be credited on subsequent benefit costs with the overpayment or, at the director's discretion, the overpayment will be refunded to the employer. When payments are not sufficient to pay benefit costs, either the employer will be billed the additional amount necessary to pay such costs or, at the director's discretion, the employer's advance payment rate for the next taxable year will be set at a rate that will cover such costs.

(5) Bond requirements. Any nonprofit organization that elects to become liable for payments in lieu of contributions may be required to obtain and deposit with the director a surety bond approved by the director. The amount of the bond shall be determined by the director on the basis of potential liability for benefit costs of each employing nonprofit organization. Such bond shall be in force for a period of not less than two (2) years, and shall be renewed not less frequently than two (2) year intervals for as long as the organization continues to be liable for payments in lieu of contributions. The director shall require adjustments to be made in the bond filed as deemed appropriate. When upward adjustments are required, the adjusted bond shall be filed within thirty (30) days of the date notice of the required adjustment was mailed. Failure by an organization covered by such bond to pay the full amount of payments due, together with interest and penalties, as provided in section [72-1354](#), Idaho Code, shall render the surety liable on said bond to the extent of the bond, as though the surety was a liable organization.

(6) Failure to pay timely. If any nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the director may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year. Any nonprofit organization or governmental entity becoming delinquent in making payments in lieu of contributions shall be subject to the same penalty provisions as any other covered employer as provided in this chapter.

(7) Appeals procedure. Administrative determinations issued pursuant to this section shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

(8) In the payment of any payments in lieu of contributions, a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar (\$1.00).

[72-1349A, added 1977, ch. 179, sec. 13, p. 483, am. 1978, ch. 112, sec. 6, p. 239; am. 1980, ch. 264, sec. 4, p. 683; am. 1982, ch. 326, sec. 7, p. 814; am. 1998, ch. 1, sec. 63, p. 46; am. 2006, ch. 38, sec. 1, p. 105; am. 2016, ch. 158, sec. 1, p. 429.]

72-1349B. FINANCING OF BENEFITS PAYMENTS BY PROFESSIONAL EMPLOYERS AND THEIR CLIENTS. (1) Nonprofit organizations and governmental entities excepted. Financing of benefits for workers assigned by a professional employer to a nonprofit organization or a governmental entity shall be paid as provided in section [72-1349A](#), Idaho Code. Financing of benefits for workers assigned by a professional employer to any entity other than a nonprofit organization or governmental entity shall be made in accordance with the provisions of this section.

(2) Liability for contributions. Unless a professional employer meets the minimum requirements of this chapter, its client shall remain liable as a covered employer for any payments due under the provisions of this chapter. During the term of a professional employer arrangement, a professional employer is liable for the payment of all moneys due pursuant to this chapter as a result of wages paid to employees assigned to a client company, except compensation paid to sole proprietors or partners in the client company.

(3) Joint and several liability. A client is jointly and severally liable for any unpaid moneys due under the provisions of this chapter from the professional employer for wages paid to workers assigned to the client.

(4) Reporting requirements. The professional employer shall report and make all payments under its state employer account number. The professional employer shall keep separate records and submit separate quarterly wage reports for each of its clients. The professional employer shall pay contributions for its clients collectively using the professional employer's contribution rate unless it elects to pay the contribution for certain clients individually in which instance the contribution shall be paid using the individual client's contribution rate.

(5) Interested party. As between a professional employer and its client, the professional employer company shall be deemed to be the interested party for purposes of section [72-1323](#), Idaho Code, and all proceedings to determine rights to benefits under the provisions of this chapter.

(6) Temporary workers. The provisions of this section do not apply to an entity that provides temporary workers on a temporary help basis, provided that the entity is liable as the employer for all payments due under the provisions of this chapter as a result of wages paid to those temporary workers.

(7) Rebuttable presumption. When a professional employer assigns workers to only one (1) client and its affiliates, there is a rebuttable presumption that the client entered into a professional employer arrangement to avoid calculation of the proper taxable wage rate. If the professional employer fails to rebut this presumption, the director, pursuant to section [72-1353](#), Idaho Code, shall issue an administrative determination of coverage holding the client to be the covered employer for purposes of this chapter.

(8) A client ceasing to pay wages. Whenever a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of sections [72-1351](#) and [72-1352](#), Idaho Code. If a client which has ceased to pay wages subsequently becomes subject

to this chapter because it resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of section [72-1351](#), Idaho Code.

(9) Succession of experience factors. Whenever a professional employer arrangement is entered, the separate account and experience factors of payroll and reserve shall be transferred to the professional employer for the purpose of determining the professional employer's contribution rate to be paid on behalf of the client. Upon the expiration or termination of the professional employer arrangement, so much of the professional employer's separate account and experience factors of payroll and reserve as is attributable to the client shall be transferred to the terminating client for the purpose of determining the client's subsequent rate of contribution. In the event the professional employer elects to pay the client's contribution separately as provided in subsection (4) of this section, then the client's experience factors of payroll and reserve shall remain with the client employer for the duration of the professional employer arrangement.

[(72-1349B), added 1977, ch. 179, sec. 14, p. 486, am. 1978, ch. 112, sec. 7, p. 243; am. 1982, ch. 326, sec. 8, p. 817; am. and redesign. 1998, ch. 1, sec. 65, p. 49.]

72-1349C. TREATMENT OF INDIAN TRIBES. (1) In addition to the definition provided in section [72-1315](#), Idaho Code, the term "covered employer" shall also include any Indian tribe for which service in covered employment is performed.

(2) In addition to the definition provided in section [72-1316](#), Idaho Code, the term "covered employment" shall also include service performed in the employ of an Indian tribe as defined in section 3306(u) of the federal unemployment tax act (FUTA), provided such service is excluded from "employment" as defined in FUTA solely by reason of section 3306(c)(7), FUTA, and is not otherwise excluded from covered employment under this chapter. For purposes of this section, the exemptions from covered employment in sections [72-1316A](#)(5) and (9), Idaho Code, shall be applicable to services performed in the employ of an Indian tribe.

(3) Benefits based on service in covered employment as that term is defined in this section, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service under this chapter.

(4) Indian tribes, or tribal units meaning subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe, subject to this chapter shall pay contributions under the same terms and conditions as all other covered employers unless the tribe elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(a) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in section [72-1349A](#), Idaho Code, pertaining to non-profit organizations and governmental entities subject to this chapter. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(b) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or

tribal unit on the same basis as other employing units that have elected to make payments in lieu of contributions.

(c) At the discretion of the director, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions may be required to obtain and deposit with the director a surety bond approved by the director. The amount of the bond shall be determined by the director based on the employing entity's potential liability for benefit costs. Such bond shall be in force for a period of not less than two (2) years, and shall be renewed not less frequently than two (2) year intervals for as long as the Indian tribe or tribal unit continues to be liable for payments in lieu of contributions. The director may require adjustments to be made in the bond filed. When upward adjustments are required, the adjusted bond shall be filed within thirty (30) days of the date notice of the required adjustment was mailed. Failure by an Indian tribe or tribal unit covered by such bond to pay the full amount of payments due, together with interest and penalties as provided in section [72-1354](#), Idaho Code, shall render the surety liable on said bond to the extent of the bond, as though the surety was a liable organization.

(5) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety (90) days of receipt of the bill shall cause the Indian tribe to lose the option to make payments in lieu of contributions as described in subsection (4) of this section, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(a) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment as described in this subsection (5) of this section, shall have such option reinstated if, after a period of one (1) year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.

(b) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the director have been exhausted, shall cause services performed for such tribe to not be treated as "covered employment" for purposes of subsection (2) of this section.

(c) The director may determine that any Indian tribe that loses coverage under paragraph (b) of this subsection, may have services performed for such tribe again included as "covered employment" for purposes of subsection (2) of this section, if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes and their tribal units shall include information that failure to make full payment within the prescribed time frame:

- (a) Shall cause the Indian tribe to be liable for taxes under the federal unemployment tax act;
- (b) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and
- (c) Could cause the Indian tribe to be excepted from the definition of "covered employer" as provided in subsection (1) of this section, and services in the employ of the Indian tribe as provided in subsection (2) of this section, to be excepted from "covered employment."

(7) An Indian tribe and its tribal units shall be jointly and severally liable for all payments due under this chapter, including assessments of interest and penalties.

(8) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe or tribal unit.

(9) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety (90) days of a final notice of delinquency, or fails to timely file a required bond, the director shall immediately notify the United States internal revenue service and the United States department of labor.

[72-1349C, added 2002, ch. 45, sec. 1, p. 99.]

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (1) All remuneration for personal services as defined in section [72-1328](#), Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars (\$100) or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter.

(2) Prior to December 31 of each year, the director shall determine the taxable wage rates for the following calendar year for all covered employers, except cost reimbursement employers, in accordance with this section. If the desired fund size multiplier set forth in subsection (3) of this section is revised with an effective date that is prior to January 1 of the following year, the director shall issue adjusted taxable wage rates as soon as practicable and in accordance with the revised multiplier's effective date. Employers shall receive a credit against future taxes under this act for any overpayments resulting from tax payments made before the amended taxable wage rates are adjusted.

(3) An average high cost ratio shall be determined by calculating the average of the three (3) highest benefit cost rates in the twenty (20) year period ending with the preceding year. For the purposes of this section, the "benefit cost rate" is the total annual benefits paid, including the state's share of extended benefits but excluding the federal share of extended benefits and cost-reimbursable benefits, divided by the total annual covered wages excluding cost-reimbursable wages. The resulting average high cost ratio is multiplied by the desired fund size multiplier and the result, for the purposes of this section, is referred to as the "average high cost multiple" (AHCM). The desired fund size multiplier shall be eight-tenths (0.8) and shall increase to nine-tenths (0.9) on and after January 1, 2012; to one (1) on and after January 1, 2013; to one and one-tenth (1.1) on and after January 1, 2014; to one and two-tenths (1.2) on and after January 1, 2015; to one and three-tenths (1.3) on and after January 1, 2016; to one and four-tenths (1.4) on and after January 1, 2017; and to one and three-tenths (1.3) on and after January 1, 2018.

(4) The fund balance ratio shall be determined by dividing the actual balance of the employment security fund, section [72-1346](#), Idaho Code, and the reserve fund, section [72-1347A](#), Idaho Code, on September 30 of the current calendar year by the wages paid by all covered employers in Idaho, except cost-reimbursement employers, in the preceding calendar year.

(5) The base tax rate shall be determined as follows:

(a) Divide the fund balance ratio by the AHCM;

(b) Subtract the quotient obtained from the calculation in paragraph (a) of this subsection from the number two (2);

(c) Multiply the remainder obtained from the calculation in paragraph (b) of this subsection by two and one-tenth percent (2.1%). The product obtained from this calculation shall equal the base tax rate, provided that the base tax rate shall not be less than six-tenths percent (0.6%) and shall not exceed three and four-tenths percent (3.4%).

(6) The base tax rate calculated in accordance with subsection (5) of this section shall be used to determine the taxable wage rate effective the following calendar year for all covered employers except cost-reimbursement employers as provided in subsections (7) and (8) of this section, except that the base tax rate for calendar years 2022 and 2023 shall be equal to the base tax rate calculated for calendar year 2021.

(7) Table of rate classes, tax factors and minimum and maximum taxable wage rates:

Cumulative Taxable Payroll Limits			Eligible Employers		
Rate Class	More Than	Equal to	Tax Factor	Minimum	Maximum
	(% of Taxable Payroll)	or Less Than (% of Taxable Payroll)		Taxable Wage Rate	Taxable Wage Rate
1	--	12	0.2857	0.180%	0.960%
2	12	24	0.4762	0.300%	1.600%
3	24	36	0.5714	0.360%	1.920%
4	36	48	0.6667	0.420%	2.240%
5	48	60	0.7619	0.480%	2.560%
6	60	72	0.8571	0.540%	2.880%
7	72	--	0.9524	0.600%	3.200%

Standard-Rated Employers		
Tax Factor	Minimum	Maximum
	Taxable Wage Rate	Taxable Wage Rate
1.000	1.000%	3.4%

Cumulative Taxable Payroll Limits			Deficit Employers		
Rate Class	More Than	Equal to	Tax Factor	Minimum	Maximum
	(% of Taxable Payroll)	or Less Than (% of Taxable Payroll)		Taxable Wage Rate	Taxable Wage Rate
-1	--	30	1.7143	1.080%	4.800%
-2	30	50	1.9048	1.200%	5.200%
-3	50	65	2.0952	1.320%	5.600%
-4	65	80	2.2857	1.440%	6.000%

-5	80	95	2.6667	1.680%	6.400%
-6	95	--	2.6667	5.400%	6.800%

(8) Each covered employer, except cost-reimbursement employers, will be assigned a taxable wage rate and a contribution rate as follows:

(a) Each employer, except standard-rated employers, will be assigned to one (1) of the rate classes for eligible and deficit employers provided in subsection (7) of this section based upon the employer's experience as determined under the provisions of sections [72-1319](#), [72-1319A](#), [72-1351](#) and [72-1351A](#), Idaho Code.

(b) For each rate class provided in subsection (7) of this section, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for that rate class in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for employers assigned to that rate class, provided that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to that rate class and shall not exceed the maximum taxable wage rate assigned to that rate class in the table provided in subsection (7) of this section.

(c) For standard-rated employers, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for standard-rated employers in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for standard-rated employers, provided that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to standard-rated employers and shall not exceed the maximum taxable wage rate assigned to standard-rated employers in the table provided in subsection (7) of this section.

(d) Deficit employers who have been assigned a taxable wage rate from deficit rate class 6 will be assigned contribution rates equal to their taxable wage rate.

(e) All other eligible, standard-rated, and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section [72-1347A](#), Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.

(9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section [72-1351](#), Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, the employer files an application for redetermination, setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination that has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code. Proceedings on the appeal shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1350, added 1983, ch. 146, sec. 5, p. 390; am. 1985, ch. 203, sec. 1, p. 506; am. 1986, ch. 23, sec. 1, p. 68; am. 1987, ch. 317, sec. 1, p. 666; am. 1989, ch. 55, sec. 1, p. 71; am. 1989, ch. 198, sec. 1, p. 497; am. 1991, ch. 119, sec. 6, p. 252; am. 1995, ch. 98, sec. 2, p. 291; am. 1996, ch. 415, sec. 4, p. 1382; am. 1997, ch. 271, sec. 1, p. 787; am. 1998, ch. 1, sec. 66, p. 51; am. 1999, ch. 101, sec. 2, p. 318; am. 2001, ch. 18, sec. 1, p. 22; am. 2003, ch. 2, sec. 1, p. 3; am. 2005, ch. 5, sec. 8, p. 13; am. 2011, ch. 111, sec. 5, p. 302; am. 2016, ch. 158, sec. 2, p. 431; am. 2016, ch. 280, sec. 1, p. 772; am. 2018, ch. 1, sec. 1, p. 3; am. 2022, ch. 5, sec. 1, p. 16.]

72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RATING ACCOUNTS. (1) Subject to the other provisions of this chapter, each eligible and deficit employer's, except cost reimbursement employers, taxable wage rate shall be determined in the manner set forth in this subsection for each calendar year:

- (a) (i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.
- (ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who, on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cutoff date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account, which on the computation date immediately preceding such four (4) fiscal years was in excess of contributions paid, deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.
- (iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with

his previous experience under this chapter for the purpose of computing any future "experience factor."

(iv) Benefits paid to a claimant whose employment terminated because the claimant's employer was called to active military duty shall not be used as a factor in determining the taxable wage rate of that employer.

(b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor: (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

(c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (b) of this subsection shall be segregated into groups whose limits shall be those set out in the table provided in section [72-1350](#) (7), Idaho Code. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned a taxable wage rate in accordance with section [72-1350](#), Idaho Code.

(d) (i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.

(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.

(e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.

(2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided in this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers,

who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

- (a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, with good cause but for reasons not attributable to such covered employer, or who had been discharged for misconduct in connection with such services;
- (b) If paid in accordance with the provisions of section [72-1368](#)(10), Idaho Code, and the decision to pay benefits is subsequently reversed;
- (c) For that portion of benefits paid to multistate claimants pursuant to section [72-1344](#), Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;
- (d) If paid in accordance with the extended benefit program triggered by either national or state indicators;
- (e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is eligible to receive benefits due to layoff or a reduction in earnings from another employer;
- (f) If paid to a worker who turns down an offer of suitable work because of participation in a job training program pursuant to the requirements of section [72-1366](#)(8), Idaho Code.

(3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section [72-1323](#), Idaho Code. A determination of chargeability shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

(4) An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cutoff date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

- (5) (a) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section [72-1315](#), Idaho Code, in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account of the predecessor shall, upon the joint application of the predecessor and the successor within the one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate, and any successor

who was not an employer on the date of acquisition shall, as of such date, become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section [72-1315](#), Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate, and any successor who was not an employer on the date of acquisition shall, as of such date, become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(c) (i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

[72-1351, added 1947, ch. 269, sec. 51, p. 793; am. 1949, ch. 144, sec. 51, p. 252; am. 1951, ch. 236, sec. 6, p. 482; am. 1953, ch. 180, sec. 1, p. 272; am. 1955, ch. 18, sec. 6, p. 20; am. 1957, ch. 158, sec. 2, p. 274; am. 1963, ch. 314, sec. 7, p. 841; am. 1965, ch. 203, sec. 1, p. 456; am. 1967, ch. 117, sec. 8, p. 233; am. 1971, ch. 142, sec. 12, p. 595; am. 1975, ch. 126, sec. 6, p. 259; am. 1980, ch. 264, sec. 5, p. 686; am. 1986, ch. 24, sec. 2, p. 71; am. 1991, ch. 119, sec. 7, p. 254; am. 1998, ch. 1, sec. 67, p. 55; am. 2004, ch. 24, sec. 4, p. 37; am. 2005, ch. 5, sec. 9,

p. 17; am. 2008, ch. 44, sec. 3, p. 110; am. 2010, ch. 183, sec. 2, p. 377; am. 2011, ch. 94, sec. 1, p. 202; am. 2016, ch. 158, sec. 3, p. 434; am. 2020, ch. 143, sec. 2, p. 438.]

72-1351A. MANDATORY TRANSFERS OF EXPERIENCE RATING ACCOUNTS AND FEDERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES. Notwithstanding any other provision of this chapter, the following shall apply regarding transfers of experience and assignment of rates:

(1) (a) If a covered employer transfers its trade or business, or a portion thereof, to another employer, whether or not a covered employer within the meaning of section [72-1315](#), Idaho Code, and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the experience rating account attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated using the methods provided in section [72-1351](#) (5) (b) and either (c) (i) or (c) (ii), Idaho Code. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply the required payroll information, the transfer may be based on estimates of the allocable payrolls.

(b) If, following a transfer of experience under paragraph (a) of this subsection, the director determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(2) Whenever a person who is not a covered employer under this chapter at the time such person acquires the trade or business of a covered employer, the experience rating account of the acquired business shall not be transferred to such person if the director finds that such person acquired the business primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the standard rate for new employers under section [72-1350](#), Idaho Code. In determining whether the trade or business was acquired primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include, but are not limited to, the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(3) (a) It shall be a violation of this section if a person:

(i) Makes any false statement to the department when the maker knows the statement to be false or acts with deliberate ignorance of or reckless disregard for the truth of the matter or willfully fails to disclose a material fact to the department in connection with the transfer of a trade or business;

(ii) Prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true;

(iii) Knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related

to determining the assignment of a contribution rate or an experience rate; or

(iv) Knowingly advises another person in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate.

(b) If a person commits any of the acts described in paragraph (a) of this subsection, the person shall be subject to the following penalties:

(i) If the person is a covered employer, a civil money penalty of ten percent (10%) of such person's taxable wages for the four (4) completed consecutive quarters preceding the violation shall be imposed for such year and said penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section [72-1348](#), Idaho Code.

(ii) If the person is not a covered employer, such person shall be subject to a civil money penalty of not more than five thousand dollars (\$5,000) for each violation. Any such penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section [72-1348](#), Idaho Code.

(4) Every person who knowingly makes any false statement to the department or knowingly fails to disclose a material fact to the department in connection with the transfer of a trade or business, or knowingly prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true, or knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, or knowingly advises another person to act in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, shall be guilty of a felony punishable as provided in section [18-112](#), Idaho Code.

(5) For purposes of this section:

(a) An employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

(b) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(c) "Person" has the meaning given such term by section 7701(a) (1) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a) (1)).

(d) A "transfer of a trade or business" occurs whenever a person in any manner acquires or succeeds to all or a portion of a trade or business. Factors the department may consider when determining whether a transfer of a trade or business has occurred include, but are not limited to, the following:

(i) Whether the successor continued the business enterprise of the acquired business;

- (ii) Whether the successor purchased, leased or assumed machinery and manufacturing equipment, office equipment, business premises, the business or corporate name, inventories, a covenant not to compete or a list of customers;
- (iii) Continuity of business relationships with third parties such as vendors, suppliers and subcontractors;
- (iv) A transfer of good will;
- (v) A transfer of accounts receivable;
- (vi) Possession and use of the predecessor's sales correspondence; and
- (vii) Whether the employees remained the same.

(e) "Trade or business" includes, but is not limited to, the employer's workforce. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of a trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(f) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(6) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

(8) Administrative determinations issued pursuant to this section shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1351A, added 2005, ch. 12, sec. 1, p. 36; am. 2008, ch. 44, sec. 4, p. 113; am. 2016, ch. 158, sec. 4, p. 437.]

72-1351B. FEDERAL CONFORMITY PROVISION PROHIBITING RELIEF FROM LIABILITY. (1) Notwithstanding any other provision of this chapter, an experience rated employer's account may not be relieved of charges and a reimbursing employer may not be relieved of liability for benefits paid to a claimant that are subsequently determined to be overpaid if:

(a) The covered employer or an agent of the covered employer is at fault for failing to respond timely or adequately to the department's written or electronic request for information relating to a claim for unemployment insurance benefits; and

(b) The covered employer or agent of the covered employer has established a pattern of failing to timely or adequately respond.

(2) A response is timely if the requested information is received by the department within seven (7) days from the date the request is mailed or sent electronically. This time limit may be extended by the department at its discretion upon a covered employer's or agent of the covered employer's written request.

(3) A response is adequate if it provides sufficient facts to allow the department to make the correct determination. A response will not be considered inadequate if the department failed to ask for all necessary information.

(4) A pattern of failure to respond timely or adequately means at least two (2) or more instances of such behavior. If a covered employer uses a third party agent to respond on its behalf, then a pattern may be established based upon that agent's behavior with respect to the individual client or covered employer that agent represents.

(5) A covered employer shall be notified in writing of the department's determination, which shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1351B, added 2013, ch. 103, sec. 1, p. 245.]

72-1352. PERIOD, TERMINATION, AND ELECTION OF EMPLOYER COVERAGE. (1) Except as otherwise provided in subsection (3) of this section, any employer who is or becomes a covered employer within any calendar year shall be deemed to be a covered employer until his coverage is terminated.

(2) The coverage of any covered employer may be terminated if:

(a) As of the close of any calendar quarter, it is found that such covered employer had no individuals performing services for him in covered employment, and that the continued operation of his trade, profession, or business is not likely to result in his having a quarterly payroll of one thousand five hundred dollars (\$1,500) or more within the ensuing two (2) calendar quarters; or

(b) As of the close of a calendar year, it is found that such covered employer did not pay or become liable to pay for services rendered to him in covered employment wages amounting to one thousand five hundred dollars (\$1,500) or more in any calendar quarter of such year, and that the continued operation of his trade, profession, or business is not likely to create covered employment as defined in section [72-1316](#), Idaho Code, within the ensuing calendar year.

(c) Notwithstanding the provisions in subsection (2) (a) or (2) (b), the coverage of an employer may not be terminated if he is or was subject under the provisions of the federal unemployment tax act during the current or preceding calendar year.

(3) Any employer for whom services are performed in this state which do not constitute covered employment, may file with the director a written request that all such services shall be deemed to constitute covered employment. Upon approval by the director, such services shall be deemed to constitute covered employment from the date stated in such approval for not less than two (2) calendar years. Such services shall cease to be covered employment as of January 1 of any calendar year subsequent to such two (2) calendar years, if not later than January 31 of such year either such employer has filed with the director a written notice of termination, or the director on his own motion, has given notice of termination of such coverage.

(4) Benefits payable to the employees thus covered will be payable on the same basis and conditions that apply to all other covered employees.

[72-1352, added 1947, ch. 269, sec. 52, p. 793; am. 1949, ch. 144, sec. 52, p. 252; am. 1955, ch. 18, sec. 7, p. 20; am. 1967, ch. 117, sec. 9, p. 233; am. 1971, ch. 142, sec. 13, p. 595; am. 1976, ch. 207, sec. 5, p. 763; am. 1977, ch. 179, sec. 15, p. 489; am. 1997, ch. 217, sec. 2, p. 641; am. 1998, ch. 1, sec. 68, p. 59.]

72-1352A. CORPORATE OFFICERS -- EXEMPTION FROM COVERAGE -- NOTIFICATION -- REINSTATEMENT. (1) A corporation that is a public company, other than those covered in sections [72-1316A](#), [72-1322D](#) and [72-1349C](#), Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer who is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, is a shareholder of the corporation, exercises substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor.

(2) A corporation that is not a public company, other than those covered in sections [72-1316A](#), [72-1322D](#) and [72-1349C](#), Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer, without regard to the corporate officer's performance of manual labor, if the corporate officer is a shareholder of the corporation, voluntarily agrees to be exempted from coverage and exercises substantial control in the daily management of the corporation.

(3) For purposes of this section, a "public company" is a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities and exchange act of 1934 or section 8 of the investment company act of 1940, or any successor statute.

(4) To make the election, a corporation with qualifying corporate officers pursuant to subsection (1) or (2) of this section must register with the department each qualifying corporate officer it elects to exempt from coverage. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department by March 31 of the first year of the election shall be effective January 1 of that year and shall remain in effect for at least two (2) consecutive calendar years.

(5) A newly formed corporation with qualifying corporate officers pursuant to subsections (1) and (2) of this section shall register with the department each corporate officer it elects to exempt within forty-five (45) calendar days after submitting its Idaho business registration form to the department as required by section [72-1337](#), Idaho Code. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department shall become effective as of the date the Idaho business registration form was submitted to the department and shall remain in effect for at least two (2) consecutive calendar years.

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

[72-1352A, added 2011, ch. 82, sec. 2, p. 173; am. 2012, ch. 165, sec. 1, p. 446; am. 2020, ch. 143, sec. 3, p. 441.]

72-1353. ADMINISTRATIVE DETERMINATIONS OF COVERAGE. (1) The director may, upon his own motion or upon application of any employer, make findings of fact and on the basis thereof determine whether such employer is a covered employer and whether services performed for or in connection with the

business of such employer constitute covered employment. The determination shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed with the department setting forth the grounds for such appeal. Proceedings on appeal shall be had in accordance with the provisions of section [72-1361](#), Idaho Code.

(2) In making any determination with respect to whether the services performed by a worker are performed in covered employment, the director may, on the basis of the available evidence, determine that other workers performing similar services for the employer are similarly situated with respect to the coverage of said services under the provision of this chapter, and that such services constitute covered employment.

(3) In any proceeding to determine whether an employer is a covered employer or whether services are performed in covered employment, it shall be the burden of the employer to prove that the employer is not a covered employer, that services were not performed in covered employment, or that workers are not similarly situated with respect to the coverage of their services.

[72-1353, added 1947, ch. 269, sec. 53, p. 793; am. 1949, ch. 144, sec. 53, p. 252; am. 1965, ch. 203, sec. 2, p. 456; am. 1989, ch. 57, sec. 3, p. 81; am. 1998, ch. 1, sec. 69, p. 60; am. 2016, ch. 158, sec. 5, p. 439.]

72-1354. PENALTY ON UNPAID AMOUNTS. If any amounts due under this chapter are not paid by any covered employer on or before the date on which they are due, such amounts shall bear penalty at the rate of four percent (4%) or twenty dollars (\$20.00), whichever is the larger, for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amounts due. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section [72-1348](#), Idaho Code. At the discretion of the director, the department may compromise the amount of penalty collected pursuant to this section if the employer shows he had good cause for failing to timely pay contributions.

[72-1354, added 1947, ch. 269, sec. 54, p. 793; am. 1949, ch. 144, sec. 54, p. 252; am. 1955, ch. 18, sec. 8, p. 20; am. 1976, ch. 191, sec. 1, p. 706; am. 1980, ch. 264, sec. 6, p. 690; am. 1989, ch. 57, sec. 4, p. 82; am. 1991, ch. 151, sec. 1, p. 360; am. 1998, ch. 1, sec. 70, p. 61; am. 2005, ch. 5, sec. 10, p. 21.]

72-1355. COLLECTION BY SUIT. (1) Civil actions in the district court may be brought to collect any amount due under the employment security law of this state or any other state or the federal government in the same manner provided by law for collection of debt. Any person found liable for any amount due under this chapter shall pay the costs of such action. No proceeding or action shall be maintained and no writ or process shall be issued by any court which has the purpose or effect of delaying the collection of any amounts due under this chapter or substituting any collection procedure for those prescribed in this chapter.

(2) Any person who fails to comply with section [72-1349](#) or [72-1349A](#), Idaho Code, for a period of thirty (30) days or more may be enjoined by the

district court of any county in which such person does business from carrying on his business while such delinquency continues.

(3) All proceedings in the courts are to be brought by the director in the name of the state of Idaho.

[72-1355, added 1947, ch. 269, sec. 55, p. 793; am. 1949, ch. 144, sec. 55, p. 252; am. 1998, ch. 1, sec. 71, p. 61.]

72-1355A. CONTRACTORS' AND PRINCIPALS' LIABILITY FOR CONTRIBUTIONS. No covered employer which contracts with any contractor or subcontractor who is a covered employer under the provisions of this chapter shall make final payment to such contractor or subcontractor for any indebtedness due, until after the contractor or subcontractor has paid or has furnished a good and sufficient bond acceptable to the director for payment of contributions due, or to become due, in respect to personal services which have been performed by individuals for such contractor or subcontractor. Failure to comply with the provisions of this section shall render said covered employer directly liable for such contributions; and the director shall have all of the remedies of collection against said covered employer under the provisions of this chapter as though the services in question were performed directly for said covered employer.

[72-1355A, added 1963, ch. 316, sec. 4, p. 864; am. 1998, ch. 1, sec. 72, p. 62.]

72-1356. PRIORITIES. Where the assets of an employer subject to the provisions of this chapter are distributed by an order of court under Idaho law, including any receivership, assignment for the benefit of creditors, adjudication of insolvency, composition, administration of estates of decedents, or similar proceeding, amounts then or thereafter due under this chapter must be paid in full prior to all other unsecured claims except taxes, claims arising under the worker's compensation act, and claims for wages of not more than two hundred fifty dollars (\$250) to each claimant earned within four (4) months of the commencement of proceedings. In the case of such an employer's adjudication of bankruptcy, judicially confirmed extension proposal or composition under the bankruptcy law, amounts then or thereafter due under this chapter are entitled to such priority as is now or may hereafter be granted under 11 U.S.C. 507.

[72-1356, added 1947, ch. 269, sec. 56, p. 793; am. 1949, ch. 144, sec. 56, p. 252; am. 1998, ch. 1, sec. 73, p. 62.]

72-1357. ADJUSTMENTS AND REFUNDS. (1) If any person shall make application for a refund or credit of any amounts paid under this chapter, the director shall, upon determining that such amounts or any portion thereof was erroneously collected, either allow credit therefor, without interest, in connection with subsequent payments, or shall refund from the fund in which the erroneous payment was deposited, without interest, the amount erroneously paid.

(2) No refund or credit shall be allowed unless an application therefor is made on or before whichever of the following dates is later:

- (a) One (1) year from the date on which such payment was made; or
- (b) Three (3) years from the last day of the calendar quarter with respect to which such payment was made. For a like cause and within the

same period a refund may be so made, or credit allowed, on the initiative of the director. Nothing in this chapter shall be construed to authorize any refund or credit of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

(3) In the event that any application for refund or credit is rejected in whole or in part, a written notice of rejection shall be forwarded to the applicant. Within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, the applicant may appeal to the director for a hearing with regard to the rejection, setting forth the grounds for such appeal. Proceedings on the appeal shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1357, added 1947, ch. 269, sec. 57, p. 793; am. 1949, ch. 144, sec. 57, p. 252; am. 1965, ch. 203, sec. 3, p. 456; am. 1976, ch. 207, sec. 6, p. 764; am. 1998, ch. 1, sec. 74, p. 63; am. 2016, ch. 158, sec. 6, p. 440.]

72-1358. DETERMINATION OF AMOUNTS DUE UPON FAILURE TO REPORT. If any covered employer fails to file a report when due under this chapter, or if such report when filed is incorrect or insufficient, the director may, on the basis of available information, determine the amount of wages paid in covered employment during the periods with respect to which the reports were or should have been made and the amount due under this chapter from the employer. The determination shall become final unless the employer, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, files an appeal with the department. Proceedings on the appeal shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1358, added 1947, ch. 269, sec. 58, p. 793; am. 1949, ch. 144, sec. 58, p. 252; am. 1965, ch. 203, sec. 4, p. 456; am. 1998, ch. 1, sec. 75, p. 63; am. 2016, ch. 158, sec. 7, p. 440.]

72-1359. JEOPARDY ASSESSMENTS. If the director determines that the collection of any amounts due from any covered employer under the provisions of this chapter will be jeopardized by delay, he may, whether or not the time prescribed by this chapter or any rules issued pursuant thereto for making reports and payments has expired, determine, on the basis of available information, the wages paid by such employer for covered employment and declare the amount due thereon immediately payable, and shall give written notice of such declaration to such employer. Any amounts, including penalty and interest, that are contained in such written declaration shall be subject to immediate seizure pursuant to section [72-1360A](#), Idaho Code, as well as through any other collection procedures allowed under law. Such jeopardy assessment shall become conclusive and binding upon the employer unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, the employer files an appeal to the department setting forth grounds for such appeal. In such cases, the right of appeal shall be conditioned upon the payment of the amount declared to be due, less any amount already collected, or upon giving appropriate security to the director for the payment thereof. Proceedings on such appeals shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1359, added 1947, ch. 269, sec. 59, p. 793; am. 1949, ch. 144, sec. 59, p. 252; am. 1965, ch. 203, sec. 5, p. 456; am. 1980, ch. 264, sec.

7, p. 691; am. 1991, ch. 119, sec. 8, p. 258; am. 1998, ch. 1, sec. 76, p. 64; am. 2005, ch. 5, sec. 11, p. 21; am. 2016, ch. 158, sec. 8, p. 441.]

72-1360. LIENS. (1) Upon the failure of any person to pay any amount when due under this chapter, including the failure to repay overpayments as that term is defined in section [72-1369](#), Idaho Code, the director may file with the office of the secretary of state, as provided in [chapter 19, title 45](#), Idaho Code, a notice of lien.

(2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with [chapter 19, title 45](#), Idaho Code. When such notice is duly filed, all amounts due shall constitute a lien upon the entire interest, legal or equitable, in any property of such person, real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced by the director or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount secured by the lien shall bear interest at the rate of one and one-half (1 1/2) times the rate computed for judgments pursuant to section [28-22-104](#)(2), Idaho Code, in effect on January 1 of the year in which the lien is filed, rounded up to the nearest one-eighth percent (1/8%). The foregoing remedy shall be in addition to all other remedies provided by law. The amount of interest collected pursuant to this section may be compromised at the discretion of the director when such compromise is in the best interest of the department.

(3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

[72-1360, added 1947, ch. 269, sec. 60, p. 793; am. 1949, ch. 144, sec. 60, p. 252; am. 1963, ch. 316, sec. 5, p. 864; am. 1976, ch. 191, sec. 2, p. 707; am. 1989, ch. 57, sec. 5, p. 82; am. 1997, ch. 205, sec. 6, p. 615; am. 1998, ch. 1, sec. 77, p. 64; am. 2005, ch. 5, sec. 12, p. 22.]

72-1360A. COLLECTION OF LIEN AMOUNTS. (1) In addition to all other remedies or actions provided by this chapter, it shall be lawful for the director or his agent to collect any amounts secured by liens created pursuant to this chapter by seizure and sale of the property of any person liable for such amounts who fails to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof.

(2) Property exempt from seizure shall be the same property as is exempt from execution under the provisions of [chapter 6, title 11](#), Idaho Code.

(3) In exercising his authority under subsection (1) of this section, the director may levy, or by his warrant, authorize any of his representatives, a sheriff or deputy to levy upon, seize and sell any nonexempt property belonging to any person liable for the amounts secured by the lien.

(4) When a warrant is issued by the department for the collection of any amount due pursuant to a lien authorized by this chapter, it shall be directed to any authorized representative of the department, or to any sheriff or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. Upon the completion of his services pursuant to said warrant, the sheriff or deputy shall receive the same fees and expenses as are provided by law for services related to a writ of execution. All such fees and expenses shall be an obligation of the person liable for the amounts due and shall be

collected from such person by virtue of the warrant. Any warrant issued by the director shall contain, at a minimum, the name and address of the liable person; the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.

(5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which seizure is made, any other property subject to seizure shall be seized and sold until the amount due from such person, together with all expenses, is fully paid.

(6) All persons are required, on demand of a representative of the department, a sheriff or deputy acting pursuant to this chapter, to produce all documentary evidence and statements relating to the property or rights in the property subject to seizure.

[72-1360A, added 1997, ch. 205, sec. 7, p. 617; am. 1998, ch. 1, sec. 78, p. 65.]

72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION. Upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of rate of contribution, determination of coverage, determination of chargeability, jeopardy determination, cost reimbursement determination, determination of mandatory transfer of experience rating, or determination of successor liability, the director may transfer the appeal directly to an appeals examiner pursuant to section [72-1368](#)(6), Idaho Code, or he may issue a redetermination affirming, reversing or modifying the initial determination. A redetermination shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#)(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. Appeal procedures shall be governed by the provisions of section [72-1368](#)(4), (6), (7), (8), (9) and (11), Idaho Code. The party appealing shall have the burden of proving each issue appealed by clear and convincing evidence. The provisions of the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving interested employers under this chapter.

[72-1361, added 1947, ch. 269, sec. 61, p. 793; am. 1949, ch. 144, sec. 61, p. 252; am. 1961, ch. 294, sec. 2, p. 517; am. 1965, ch. 203, sec. 6, p. 456; am. 1989, ch. 57, sec. 6, p. 83; am. 1992, ch. 263, sec. 59, p. 818; am. 1998, ch. 1, sec. 79, p. 66; am. 2011, ch. 82, sec. 3, p. 174; am. 2016, ch. 158, sec. 9, p. 441.]

72-1362. LIABILITY OF SUCCESSOR. Any person, whether or not a covered employer, who acquires the organization, trade, or business or a substantial part of the assets thereof, from a covered employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, for any contributions or penalties due or accrued and unpaid by such covered employer, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens; provided, that the lien shall not be valid against one who acquires from the said predecessor any interest in the said property or assets in good faith, for value and without notice of the lien.

The director shall, upon written request therefor, and with permission of the owner, furnish such prospective purchaser with a written statement of the amount of contributions and penalties due or accrued and unpaid by the said covered employer as of the date of such acquisition, and the amount of the liability of the successor or the amount of the said lien shall in no event exceed the liability disclosed by such statement. The foregoing remedies shall be in addition to all other existing remedies against the covered employer or his successor. Administrative determinations issued pursuant to this section shall become final unless, within fourteen (14) days after notice as provided in section [72-1368](#) (5), Idaho Code, an appeal is filed with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of section [72-1361](#), Idaho Code.

[72-1362, added 1947, ch. 269, sec. 62, p. 793; am. 1949, ch. 144, sec. 62, p. 252; am. 1998, ch. 1, sec. 80, p. 67; am. 2016, ch. 158, sec. 10, p. 441.]

72-1364. UNCOLLECTIBLE ACCOUNTS. (1) The director may enter into agreements of compromise with employers with respect to amounts due under this chapter when it is determined by the director that the employer is unable to make full payment.

(2) Amounts due under this chapter, which are uncollected three (3) years after they become due, may be deemed uncollectible by the director if there is no likelihood of collection at a future date.

[72-1364, added 1947, ch. 269, sec. 64, p. 793; am. 1949, ch. 144, sec. 64, p. 252; am. 1989, ch. 57, sec. 7, p. 84; am. 1998, ch. 1, sec. 82, p. 67.]

72-1365. PAYMENT OF BENEFITS. (1) Benefits shall be paid from the employment security fund to any unemployed individual who is eligible for benefits as provided by section [72-1366](#), Idaho Code.

(2) Periodically, the department of health and welfare, bureau of child support enforcement, shall forward to the director a list containing the full name and social security number of persons from whom it is seeking child support. The director shall match the names and social security numbers on the list with its records of individuals eligible for benefits, and shall notify the department of health and welfare, bureau of child support enforcement, of the address and amount of benefits due each individual.

(a) Voluntary withholding. The director shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under paragraph (g) of this subsection, the amount specified by the individual to the director to be deducted and withheld under this subsection, if paragraph (b) of this subsection below is not applicable.

(b) Involuntary withholding. The director shall withhold any benefits of any person within the limits established by section [11-207](#), Idaho Code, upon notification and order by the department of health and welfare, bureau of child support enforcement, to collect any delinquent child support obligation which has been assigned on behalf of any individual to the department of health and welfare under sections [56-203A](#) and [56-203B](#), Idaho Code, or a child support obligation which the department seeks to collect pursuant to [chapter 12, title 7](#), Idaho Code.

The set-off or withholding of any benefits of a claimant shall become final after the following conditions have been met:

(i) The child support payment to be set-off or withheld is a child support obligation established by order as defined in section [7-1202](#), Idaho Code.

(ii) All liabilities owed by reason of the provisions of section [72-1369](#), Idaho Code, have been collected by the director.

(iii) Notice of the set-off or withholding has been mailed by registered or certified mail from the department of health and welfare, bureau of child support enforcement, to the claimant-obligor at the address listed on the claim.

Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday, or state holidays as the 14th day), the claimant-obligor may file a protest in writing, requesting a hearing before the department of health and welfare to determine his liability to the obligee. The hearing, if requested, shall be held within thirty-five (35) days from the date of the initial notice to the claimant-obligor of the proposed set-off. No issues at that hearing may be considered which have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or within ten (10) days of the hearing by mail to the claimant-obligor.

(iv) In its decision, the department of health and welfare may order the withholding and set-off of any subsequent benefits which may be due the claimant-obligor until the debt for which set-off is sought and any additional debts which are incurred by the claimant's failure to make additional periodic payments based upon the same court order are satisfied.

(c) Any amount deducted and withheld under paragraph (a) or (b) of this subsection shall be paid by the director to the appropriate state or local child support enforcement agency.

(d) Any amount deducted and withheld under paragraph (a) or (b) of this subsection shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(e) For purposes of paragraphs (a) through (d) of this subsection, the term "benefits" means any compensation payable under this chapter, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the director under the provisions of this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g) The term "child support obligation" is defined for the purposes of these provisions as including only an obligation which is being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under part D of title IV of the social security act.

(h) The term "state or local child support enforcement agency" as used in these provisions means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (g) of this subsection.

(3) Benefits shall be paid only to the extent that moneys are available for such payments in the employment security fund.

(4) Benefits shall be paid not less frequently than biweekly.

(5) Upon request, the department of health and welfare, bureau of child support enforcement, shall make the procedures established in this section for collecting child support available to county prosecuting attorneys. The provisions of this subsection apply only if appropriate arrangements have been made for reimbursement by the requesting prosecuting attorney for the administrative costs incurred by the bureau, which are attributable to the request.

(6) (a) An individual filing a new claim for benefits shall, at the time of filing such claim, be advised that:

(i) Benefits are subject to federal and state tax and requirements exist pertaining to estimated tax payments;

(ii) The individual may elect to have federal income tax deducted and withheld from the individual's benefits at the amount specified in the federal internal revenue code;

(iii) The individual shall be permitted to change a previously elected withholding status once during each benefit year.

(b) Amounts deducted and withheld from benefits shall remain in the unemployment fund until transferred to the taxing authority as a payment of income tax.

(c) The director shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(d) Amounts shall not be deducted and withheld under this subsection until the following deductions are made and withheld in the following order:

(i) First, amounts owed for overpayments of benefits deducted and withheld pursuant to the provisions of section [72-1369](#), Idaho Code;

(ii) Second, amounts owed for child support obligations deducted and withheld pursuant to the provisions of subsection (2) of this section.

(e) At the director's discretion, the director may promulgate rules allowing individuals to elect to have state income tax deducted and withheld from the individual's payment of benefits.

[72-1365, added 1947, ch. 269, sec. 65, p. 793; am. 1949, ch. 144, sec. 65, p. 252; am. 1951, ch. 104, sec. 14, p. 233; am. 1980, ch. 264, sec. 8, p. 691; am. 1982, ch. 326, sec. 9, p. 819; am. 1985, ch. 159, sec. 6, p. 422; am. 1986, ch. 221, sec. 2, p. 585; am. 1990, ch. 353, sec. 2, p. 947; am. 1996, ch. 62, sec. 3, p. 182; am. 1998, ch. 1, sec. 83, p. 68.]

72-1366. PERSONAL ELIGIBILITY CONDITIONS. The personal eligibility conditions of a benefit claimant are that:

(1) The claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility.

(2) The claimant shall have registered for work and thereafter reported to a job service office or other agency in a manner prescribed by the director.

(3) The claimant shall have met the minimum wage requirements in his base period as provided in section [72-1367](#), Idaho Code.

(4) (a) During the whole of any week with respect to which he claims benefits or credit to his waiting period, the claimant was:

(i) Able to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection if:

1. Such failure is due to a claimant's illness or disability of not more than four (4) weeks that arises after filing a claim, provided that during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or

2. Such failure is due to compelling personal circumstances, provided that such failure does not exceed a minor portion of the claimant's workweek and during which time the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; and

(ii) Living in a state, territory, or country that is included in the interstate benefit payment plan or that is a party to an agreement with the United States or the director with respect to unemployment insurance.

(b) If a claimant who is enrolled in an approved job training course pursuant to subsection (8) of this section fails to attend or otherwise participate in the job training course during any week with respect to which he claims benefits or credit to his waiting period, the claimant shall be ineligible for that week if he was not able to work nor available for suitable work, to be determined as follows: The claimant shall be ineligible unless he is making satisfactory progress in the training and his failure to attend or otherwise participate was due to:

(i) The claimant's illness or disability that occurred after he had filed a claim and the claimant missed fewer than one-half (1/2) of the classes available to him that week; or

(ii) Compelling personal circumstances, provided that the claimant missed fewer than one-half (1/2) of the classes available to him that week.

(c) A claimant shall not be denied regular unemployment benefits under any provision of this chapter relating to availability for work, active search for work or refusal to accept work solely because the claimant is seeking only part-time work, if the department determines that a majority of the weeks of work in the claimant's base period were for less than full-time work. For the purpose of this subsection, "seeking only part-time work" is defined as seeking work that has comparable hours to the claimant's part-time work experience in the base period, except that a claimant must be available for at least twenty (20) hours of work per week.

(5) The claimant's unemployment is not due to the claimant voluntarily leaving employment without good cause connected with the claimant's em-

ployment or because of the claimant's discharge for misconduct in connection with the claimant's employment. The requirement that good cause for a voluntary leaving of employment be in connection with employment does not apply and good cause is shown where a claimant demonstrates that:

- (a) (i) The leaving was necessary to protect the claimant or any minor child of the claimant from domestic violence or the leaving was due to domestic violence that caused the claimant to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or any minor child of the claimant; and
- (ii) The claimant made all reasonable efforts to preserve the employment; or
- (b) The claimant is a military spouse who voluntarily left the claimant's most recent employment to relocate with the claimant's spouse who, because of a permanent change of station orders, was required to move to a location from which the commute to the claimant's most recent employment was impractical, but only if, before leaving, the claimant took reasonable actions to maintain the employment relationship through accommodation discussions with the claimant's employer.
- (c) The following definitions apply to this subsection:
 - (i) "Domestic violence" is as defined in section [39-6303](#), Idaho Code, and also includes the crime of stalking in the second degree pursuant to section [18-7906](#), Idaho Code;
 - (ii) "Military spouse" means the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in this state in accordance with military orders or stationed in this state before a reassignment to duties outside this state; and
 - (iii) "Permanent change of station orders" means the assignment, reassignment, or transfer of a member of the armed forces of the United States or a reserve component of the armed forces of the United States from the member's present duty station or location without return to the previous duty station or location.

(6) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. The longer a claimant has been unemployed, the more willing he must be to seek other types of work and accept work at a lower rate of pay.

(7) In determining whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

- (a) If the vacancy of the position offered is due directly to a strike, lockout, or other labor dispute;
- (b) If the wages, hours, or other conditions of the work offered are below those prevailing for similar work in the locality of the work offered;

(c) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) No claimant who is otherwise eligible shall be denied benefits for any week due to an inability to comply with the requirements contained in subsections (4) (a) (i) and (6) of this section if:

(a) The claimant is a participant in a program sponsored by title I of the workforce innovation and opportunity act (29 U.S.C. 3101 et seq., as amended) and attends a job training course under that program; or

(b) The claimant attends a job training course authorized pursuant to the provisions of section 236(a) (1) of the trade act of 1974 or the North American free trade agreement implementation act.

(c) The claimant lacks skills to compete in the labor market and attends a job training course with the approval of the director. The director may approve job training courses that meet the following criteria:

(i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(ii) The job training can be completed within two (2) years, except that this requirement may be waived pursuant to rules that the director may prescribe.

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment, and wages for such work are not less than eighty percent (80%) of the average weekly wage in the individual's past employment.

(10) A claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that:

(a) The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

(b) The claimant does not belong to a grade or class of workers with members who are employed at the premises at which the labor dispute occurs and who are participating in or directly interested in the dispute.

(11) A claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking benefits under an unemployment insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment insurance law of the United States.

(12) A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week

credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

(13) A claimant shall not be entitled to benefits if his principal occupation is self-employment.

(14) A claimant who has been found ineligible for benefits under the provisions of subsection (5), (6), (7) or (9) of this section shall reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least fourteen (14) times his weekly benefit amount.

(15) Benefits based on service in employment defined in sections [72-1349A](#) and [72-1352](#) (3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act.

(a) If the services performed during one-half (1/2) or more of any contract period by an individual for an educational institution as defined in section [72-1322B](#), Idaho Code, are in an instructional, research, or principal administrative capacity, all the services shall be deemed to be in such capacity.

(b) If the services performed during less than one-half (1/2) of any contract period by an individual for an educational institution are in an instructional, research, or principal administrative capacity, none of the services shall be deemed to be in such capacity.

(c) As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed service and earned an amount equal to not less than six (6) times the weekly benefit amount established during the first benefit year.

(17) (a) Benefits based on wages earned for services performed in an instructional, research, or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual who performs such services in the first academic year (or term) and has a contract to perform services in any such capacity for any educational institution in the second academic year or term or has been given reasonable assurance that such a contract will be offered.

(b) Benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week that commences during a period between two (2) successive school years or terms if the individual performs such services in the first school year or term and there is a contract or reasonable assurance that the individual will perform such services in the second school year or term. If benefits are denied to any individual under this

paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

(c) With respect to any services described in paragraphs (a) and (b) of this subsection, benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week that commences during an established and customary vacation period or holiday recess if the individual performed the services in the period immediately before the vacation period or holiday recess and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection, benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph, the term "educational service agency" means a governmental entity that is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(18) Benefits shall not be payable on the basis of services that substantially consist of participating in sports or athletic events or training or preparing to participate for any week that commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such season (or similar period).

(19) (a) Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the immigration and nationality act).

(b) Any data or information required of individuals applying for benefits to determine eligibility under this subsection shall be uniformly required from all applicants for benefits.

(c) A decision to deny benefits under this subsection must be based on a preponderance of the evidence.

(20) An individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director must participate in those reemployment services, unless:

(a) The individual has completed such services; or

(b) There is justifiable cause, as determined by the director, for the claimant's failure to participate in such services.

(21) (a) A claimant:

(i) Who has been assigned to work for one (1) or more customers of a staffing service; and

(ii) Who, at the time of hire by the staffing service, signed a written notice informing him that completion or termination of an assignment for a customer would not, of itself, terminate the employment relationship with the staffing service;

will not be considered unemployed upon completion or termination of an assignment until such time as he contacts the staffing service to determine if further suitable work is available. If the claimant:

1. Contacts the staffing service and refuses a suitable work assignment that is offered to him at that time, he will be considered to have voluntarily quit that employment; or

2. Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or

3. Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

(b) For the purposes of this subsection, the term "staffing service" means any person who assigns individuals to work for its customers and includes, but is not limited to, professional employers as defined in [chapter 24, title 44](#), Idaho Code, and the employers of temporary employees as defined in section [44-2403](#) (7), Idaho Code.

(22) (a) A claimant who is otherwise eligible for regular benefits as defined in section [72-1367A](#) (1) (e), Idaho Code, shall be eligible for training extension benefits if the department determines that all of the following criteria are met:

- (i) The claimant is unemployed;

- (ii) The claimant has exhausted all rights to regular unemployment benefits as defined in section [72-1367A](#) (1) (e), Idaho Code, and all rights to extended benefits as defined in section [72-1367A](#) (1) (f), Idaho Code, and all rights to benefits under section 2002 ("increase in unemployment compensation benefits") of division B, title II, the assistance for unemployed workers and struggling families act, of the American recovery and reinvestment act of 2009, P.L. 111-5, as enacted on February 17, 2009;

- (iii) The claimant is enrolled in a training program approved by the department or in a job training program authorized under the workforce innovation and opportunity act; except that the training program must prepare the claimant for entry into a high-demand occupation if the department determines that the claimant separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant's place of employment. For the purposes of this subsection, a "declining occupation" is one where there is a lack of sufficient current demand in the claimant's labor market area for the occupational skills for which the claimant is qualified by training and experience or current physical or mental capacity and the lack of employment opportunities is expected to continue for an extended period of time, or the claimant's occupation is one for which there is a seasonal variation in demand in the labor market and the claimant has no

other skills for which there is current demand. For the purposes of this subsection, a "high-demand occupation" is an occupation in a labor market area where work opportunities are available and qualified applicants are lacking as determined by the use of available labor market information;

(iv) The claimant is making satisfactory progress to complete the training as determined by the department; and

(v) The claimant is not receiving similar stipends or other training allowances for nontraining costs. For the purposes of this subsection, "similar stipend" means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(b) The weekly training extension benefit amount shall equal the claimant's weekly benefit amount for the most recent benefit year less any deductible income as determined by the provisions of this chapter. The total amount of training extension benefits payable to a claimant shall be equal to twenty-six (26) times the claimant's average weekly benefit amount for the most recent benefit year. A claimant who is receiving training extension benefits shall not be denied training extension benefits due to the application of subsections (4) (a) (i) and (6) of this section, and an employer's account shall not be charged for training extension benefits paid to the claimant.

[72-1366, added 1947, ch. 269, sec. 66, p. 793; am. 1949, ch. 144, sec. 66, p. 252; am. 1951, ch. 235, sec. 4, p. 472; am. 1955, ch. 18, sec. 9, p. 20; am. 1959, ch. 51, sec. 1, p. 107; am. 1961, ch. 294, sec. 3, p. 517; am. 1963, ch. 271, sec. 1, p. 691; am. 1965, ch. 170, sec. 5, p. 331; am. 1969, ch. 57, sec. 1, p. 197; am. 1971, ch. 341, sec. 1, p. 1328; am. 1972, ch. 344, sec. 4, p. 998; am. 1973, ch. 89, sec. 1, p. 146; am. 1974, ch. 102, sec. 1, p. 1204; am. 1975, ch. 47, sec. 1, p. 86; am. 1976, ch. 141, sec. 5, p. 523; am. 1977, ch. 179, sec. 16, p. 491; am. 1978, ch. 112, sec. 9, p. 246; am. 1979, ch. 110, sec. 2, p. 351; am. 1980, ch. 264, sec. 9, p. 691; am. 1982, ch. 295, sec. 1, p. 751; am. 1982, ch. 326, sec. 10, p. 820; am. 1983, ch. 146, sec. 6, p. 392; am. 1985, ch. 203, sec. 2, p. 509; am. 1986, ch. 22, sec. 1, p. 63; am. 1987, ch. 352, sec. 1, p. 781; am. 1989, ch. 57, sec. 8, p. 84; am. 1990, ch. 353, sec. 3, p. 949; am. 1992, ch. 192, sec. 1, p. 597; am. 1995, ch. 98, sec. 3, p. 294; am. 1997, ch. 271, sec. 2, p. 790; am. 1998, ch. 1, sec. 84, p. 70; am. 1999, ch. 53, sec. 1, p. 131; am. 2000, ch. 137, sec. 1, p. 359; am. 2005, ch. 5, sec. 13, p. 22; am. 2006, ch. 38, sec. 2, p. 107; am. 2008, ch. 99, sec. 2, p. 271; am. 2009, ch. 238, sec. 2, p. 734; am. 2017, ch. 120, sec. 3, p. 274; am. 2021, ch. 243, sec. 4, p. 754; am. 2023, ch. 75, sec. 1, p. 255.]

72-1367. BENEFIT FORMULA. (1) To be eligible an individual shall have the minimum qualifying amount of wages in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each January 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section [44-1502](#), Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

(2) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be estab-

lished by the director, who shall determine the state average weekly wage paid by covered employers for the preceding calendar year and the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under this subsection. The maximum weekly benefit amount shall be fifty-five percent (55%) of the state average weekly wage paid by covered employers for the preceding calendar year.

(3) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on his ratio of total base period earnings to highest quarter base period earnings. The maximum weeks of entitlement are based on a sliding scale of the official forecasted, seasonally adjusted unemployment rate for the state for a minimum of ten (10) weeks to a maximum of twenty-six (26) weeks depending on the unemployment rate in effect for the months of February, May, August and November as follows:

(a) For any benefit week commencing in January through March of a calendar year, the maximum allowed number of benefit weeks shall be based on the unemployment rate for the preceding month of November;

(b) For any benefit week commencing in April through June of a calendar year, the maximum allowed number of benefit weeks shall be based on the unemployment rate for the preceding month of February;

(c) For any benefit week commencing in July through September of a calendar year, the maximum allowed number of benefit weeks shall be based on the unemployment rate for the preceding month of May; and

(d) For any benefit week commencing in October through December of a calendar year, the maximum allowed number of benefit weeks shall be based on the unemployment rate for the preceding month of August.

Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement Adjusted By the Unemployment Rate						
At Least	Up To	8% or Higher	7% to 7.9%	6% to 6.9%	5% to 5.9%	4% to 4.9%	3% to 3.9%	2.9% or Lower
1.25	1.60	10	10	10	10	10	10	10
1.6001	1.80	11	10	10	10	10	10	10
1.8001	1.92	12	11	10	10	10	10	10
1.9201	2.01	13	12	11	10	10	10	10
2.0101	2.08	14	13	12	11	10	10	10
2.0801	2.14	15	14	13	12	11	10	10
2.1401	2.21	16	15	14	13	12	11	10
2.2101	2.29	17	16	15	14	13	12	11
2.2901	2.38	18	17	16	15	14	13	12
2.3801	2.49	19	18	17	16	15	14	13
2.4901	2.61	20	19	18	17	16	15	14
2.6101	2.75	21	20	19	18	17	16	15
2.7501	2.91	22	21	20	19	18	17	16
2.9101	3.10	23	22	21	20	19	18	17
3.1001	3.32	24	23	22	21	20	19	18
3.3201	3.56	25	24	23	22	21	20	19
3.5601	4.00	26	25	24	23	22	21	20

(4) If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half (1/2) of his weekly benefit amount, the amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from the benefits payable to the claimant. For purposes of this subsection, severance pay shall be deemed wages, even if the claimant was required to sign a release of claims as a condition of receiving the pay from the employer. "Severance pay" means a payment or payments made to a claimant by an employer as a result of the severance of the employment relationship.

(5) Benefits payable to an individual shall be rounded to the next lower full dollar amount.

[72-1367, added 1947, ch. 269, sec. 67, p. 793; am. 1949, ch. 144, sec. 67, p. 252; am. 1951, ch. 236, sec. 7, p. 482; am. 1955, ch. 18, sec. 10, p. 20; am. 1957, ch. 53, sec. 1, p. 90; am. 1961, ch. 298, sec. 4, p. 539; am. 1967, ch. 117, sec. 10, p. 233; am. 1970, ch. 83, sec. 1, p. 201; am. 1971, ch. 341, sec. 2, p. 1328; am. 1973, ch. 114, sec. 1, p. 206; am. 1980, ch. 256, sec. 3, p. 669; am. 1980, ch. 264, sec. 10, p. 695; am. 1983, ch. 146, sec. 7, p. 396; am. 1987, ch. 317, sec. 2, p. 668; am. 1997, ch. 271, sec. 3, p. 795; am. 1998, ch. 1, sec. 85, p. 75; am. 2005, ch. 5, sec. 14, p. 27.; am. 2011, ch. 113, sec. 1, p. 311; am. 2016, ch. 280, sec. 2, p. 775.]

72-1367A. EXTENDED BENEFITS. The extended benefits program shall be administered pursuant to the provisions of this section.

(1) Definitions. As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which:

- (i) Begins with the third week after a week for which there is a state "on" indicator; and
- (ii) Ends with either of the following weeks, whichever occurs later:

- 1. The third week after the first week for which there is a state "off" indicator; or
- 2. The thirteenth consecutive week of such period;

provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(b) (i) There is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted):

- 1. Equalled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and equalled or exceeded five percent (5%); or
- 2. Equalled or exceeded six percent (6%).

(ii) With respect to weeks of unemployment beginning on or after February 1, 2009, and ending four (4) weeks prior to the last week for which federal sharing is authorized by section 2005(a) ("full federal funding of extended unemployment compensation for a limited period") of division B, title II, the assistance for unemployed workers and struggling families act, of the American recov-

ery and reinvestment act of 2009, P.L. 111-5, as amended, there is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor that:

1. The average rate of seasonally adjusted total unemployment, as determined by the United States secretary of labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of such week equals or exceeds six and five-tenths percent (6.5%); and
2. The average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.
3. With respect to weeks of unemployment beginning on or after January 1, 2011, and ending on December 31, 2011, or the expiration date in section 502 of the tax relief, unemployment insurance reauthorization and job creation act of 2010, P.L. 111-312, as amended, whichever is later, the average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for any and all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(c) There is a state "off" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks:

- (i) The rate of insured unemployment (not seasonally adjusted) was less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or
- (ii) The rate of insured unemployment (not seasonally adjusted) was less than five percent (5%); or
- (iii) The option specified in subsection (1)(b)(ii) does not result in an "on" indicator.

(d) "Rate of insured unemployment," for purposes of paragraphs (b) and (c) of this subsection, means the percentage derived by dividing:

- (i) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment for the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by
- (ii) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(f) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Eligibility period of an individual also means the period consisting of weeks which begin in his extended benefit period, without regard to his benefit year end date, if the individual qualifies for one hundred percent (100%) federally financed federal-state extended benefits and the one hundred percent (100%) federally financed federal-state extended benefit payment period began on or before the individual exhausted his rights to benefits under the federal emergency unemployment compensation program of 2008.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(iii) Has no right to unemployment benefits or allowances under the railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada; but if he is seeking such benefits and the appropriate agency determines that he is not entitled to benefits under such law he is considered an exhaustee.

(i) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(j) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short pe-

riod are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with applicable state law.

(2) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(a) The claimant is an "exhaustee" as defined in subsection (1) (h) of this section;

(b) The claimant has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) The claimant has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(d) (i) Notwithstanding the provisions of this section, payment of extended benefits under this chapter shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (1) (j) of this section, or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(ii) If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection (3) (d) (i) 1. or (3) (d) (i) 2. of this section, the individual shall be ineligible to receive extended benefits for any week which begins during a period which:

1. Begins with the week following the week in which such failure occurs; and

2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(iii) Extended benefits shall not be denied under subsection (3) (d) (i) 1. of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

- (A) The individual's average weekly benefit amount, as determined for purposes of subsection (b) (1) (C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus
 - (B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c) (17) (D) of the Internal Revenue Code of 1954, payable to such individual for such week.
- 2. If the position was not offered to such individual in writing or was not listed with the department;
- 3. If such failure would not result in a denial of benefits under the provisions of this chapter to the extent that such provisions are not inconsistent with the provisions of subsections (1) (j) and (3) (d) (iv) of this section; or
- 4. If the position pays wages less than the higher of:
 - (A) The minimum wage provided by section 6(a) (1) of the fair labor standards act of 1938, without regard to any exemption; or
 - (B) Any applicable state or local minimum wage.
- (iv) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:
 - 1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and
 - 2. The individual provides tangible evidence to the department that he has engaged in such an effort during such week.
- (v) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1., 2., 3. and 4. of subsection (3) (d) (iii) of this section would not apply.
- (4) (a) Except as provided in paragraph (b) of this subsection, payment of extended benefits shall not be made to any individual for any week if:
 - (i) Extended benefits would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and
 - (ii) An extended benefit period is not in effect for such week in such state.
- (b) Paragraph (a) of this subsection shall not apply with respect to the first two (2) weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefits account established for the benefit year.
- (c) Section 3304 (a) (9) (A) of the Internal Revenue Code of 1954 shall not apply to any denial of benefits required under this subsection.
- (5) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.
- (6) (a) Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:
 - (i) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(ii) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year;

(iii) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(iv) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero (0), by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(b) (i) Effective with respect to weeks beginning in a high unemployment period, subsection (6) (a) of this section shall be applied by substituting:

1. "Eighty percent (80%)" for "fifty percent (50%)" in subsection (6) (a) (i) of this section; and

2. "Twenty (20)" for "thirteen (13)" in subsection (6) (a) (ii) of this section.

(ii) For purposes of subsection (6) (b) (i) of this section, the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (1) (b) (ii) were applied by substituting "eight percent (8%)" in subsection (1) (b) (ii) 1. for "six and five-tenths percent (6.5%)."

(7) (a) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make a public announcement.

(b) Computations required by the provisions of subsection (1) (d) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(8) Notwithstanding any other provisions of this chapter, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(9) Whenever a program of unemployment benefits becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (1) (a) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor

shall, by executive order, trigger extended benefits on if the criteria of subsection (1) (b) of this section are otherwise met.

(10) Until conformity with the federal-state extended unemployment compensation act of 1970 requires otherwise, the eligibility requirements in subsections (1) (j) and (3) (d) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section [72-1366](#), Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

[72-1367A, added 1971, ch. 4, sec. 2, p. 6; am. 1975, ch. 127, sec. 1, p. 275; am. 1977, ch. 179, sec. 17, p. 495, am. 1978, ch. 112, sec. 11, p. 250; am. 1981, ch. 168, sec. 1, p. 294; am. 1982, ch. 326, sec. 11, p. 824; am. 1992, ch. 12, sec. 1, p. 26; am. 1993, ch. 10, sec. 2, p. 31.; am. 1993, ch. 20, sec. 1, p. 73; am. 1998, ch. 1, sec. 86, p. 76.; am. 2009, ch. 300, sec. 1, p. 891; am. 2011, ch. 112, sec. 1, p. 306.]

72-1368. CLAIMS FOR BENEFITS -- APPELLATE PROCEDURE -- LIMITATION OF ACTIONS. (1) Claims for benefits shall be made in accordance with such rules as the director may prescribe.

(2) Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights under this chapter which shall be provided by the department without cost to the employer.

(3) (a) Following the filing of a claim pursuant to subsection (1) of this section the department shall:

(i) Verify the claimant's monetary eligibility pursuant to the requirements of section [72-1367](#), Idaho Code, and issue a determination. If monetarily eligible, the department shall establish the date the claimant's benefit year begins, the weekly benefit amount, the total benefit amount, the base period wages, and the base period covered employers.

(ii) If a claimant is monetarily eligible, the department shall verify, based on information provided by the claimant, whether the week claimed is a compensable week as defined in section [72-1312](#), Idaho Code. To receive benefits, a claimant must certify that each week claimed is a compensable week. In the event the week claimed is not a compensable week, the department shall issue a determination denying benefits and shall include the reasons for the ineligibility.

(b) If the department has reason to believe at any time within five (5) years from the week ending date for any week in which benefits were paid that a claimant was not eligible for benefits, the department may investigate the claim and on the basis of facts found issue a determination denying or allowing benefits for the week(s) in question. If the department determines a claimant was not entitled to benefits received, the department shall issue a determination requiring repayment of the overpaid benefits, and assess any applicable penalties and interest.

(c) Before a determination provided for in subsection (3) of this section becomes final or an appeal is filed, the department, on its own motion, may issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by an interested party with the department.

(4) (a) Upon appeal of a determination or revised determination, the director shall transfer the appeal directly to an appeals examiner pursuant to subsection (6) of this section, unless the director finds, in his sole discretion, that a redetermination should be issued affirming, reversing or modifying the determination or revised determination. The redetermination shall become final unless, within fourteen (14) days after notice as provided in subsection (5) of this section, an appeal is filed by an interested party with the department in accordance with the department's rules.

(b) The director may, in his sole discretion, make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, revised determination or redetermination that has become final, or that additional wages of the claimant or other facts pertinent to such final determination, revised determination or redetermination have become available or have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentation of fact. The special redetermination must be made within one (1) year from the date the determination, revised determination or redetermination became final, except that a special redetermination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosures or misrepresentations of fact may be made within two (2) years from the date the determination, revised determination or redetermination became final.

(5) All interested parties shall be entitled to prompt service of notice of written or digital communications from the department providing notice of an administrative or other deadline including, but not limited to, determinations, revised determinations, redeterminations, special redeterminations, decisions and letters from the department requiring a response within a specified time. Notice shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

(6) To hear and decide appeals from determinations, revised determinations, redeterminations, and special redeterminations, the director shall appoint appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination, revised determination, redetermination, or special redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the department for further action. The appeals examiner shall notify the interested parties of his decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing shall be recorded. If a claim for review of the appeals examiner's decision is filed with the commission, the testi-

mony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

(7) The commission shall decide all claims for review filed by any interested party in accordance with its own rules of procedure not in conflict herewith. The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing or may remand the matter back to the appeals examiner for an additional hearing and decision. On the basis of the record of proceedings before the appeals examiner as well as additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings. The commission shall file its decision and shall promptly serve notice of its decision to all interested parties. A decision of the commission shall be final and conclusive as to all matters adjudicated by the commission upon filing the decision in the office of the commission; provided, within twenty (20) days from the date of filing the decision, any party may move for reconsideration of the decision or the commission may rehear or reconsider its decision on its own initiative. The decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on reconsideration.

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

(9) An appeal may be made to the Supreme Court from decisions and orders of the commission within the times and in the manner prescribed by rule of the Supreme Court.

(10) (a) Benefits shall be paid promptly in accordance with any decision allowing benefits, regardless of:

- (i) The pendency of a time period for filing an appeal or petitioning for commission review; or
- (ii) The pendency of an appeal or petition for review.

(b) Such payments shall not be withheld until a subsequent appeals examiner decision or commission decision modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

(11) (a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination, redetermination, decision of the appeals examiner or decision of the commission which has become final, shall be conclusive for all the purposes of this chapter as between the interested parties who had notice of such determination, redetermination or decision. Subject to appeal proceedings and judicial review by the Supreme Court as set forth in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive

for all purposes of this chapter and shall not be subject to collateral attack irrespective of notice.

(b) No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this chapter by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought (i) pursuant to this chapter, (ii) to collect unemployment insurance contributions, (iii) to recover overpayments of unemployment insurance benefits, or (iv) to challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

(12) The provisions of the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving claimants under the provisions of this chapter.

[72-1368, added 1947, ch. 269, sec. 68, p. 793; am. 1949, ch. 144, sec. 68, p. 252; am. 1951, ch. 104, sec. 15, p. 233; am. 1965, ch. 203, sec. 7, p. 456; am. 1972, ch. 344, sec. 5, p. 998; am. 1973, ch. 89, sec. 2, p. 146; am. 1977, ch. 300, sec. 2, p. 839; am. 1980, ch. 264, sec. 11, p. 696; am. 1982, ch. 296, sec. 1, p. 755; am. 1989, ch. 57, sec. 9, p. 89; am. 1993, ch. 119, sec. 4, p. 305; am. 1998, ch. 1, sec. 87, p. 82; am. 2001, ch. 37, sec. 1, p. 68.; am. 2010, ch. 114, sec. 5, p. 236; am. 2016, ch. 126, sec. 1, p. 361.]

72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND WAIVER. (1) Any person who received benefits to which he was not entitled under the provisions of this chapter or under an unemployment insurance law of any state or of the federal government shall be liable to repay the benefits, and the benefits shall, for the purpose of this chapter, be considered to be overpayments.

(2) Civil penalties. The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:

(a) Twenty-five percent (25%) of any resulting overpayment for the first determination;

(b) Fifty percent (50%) of any resulting overpayment for the second determination; and

(c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

(3) Any overpayment, civil penalty and/or interest that has not been repaid may, in addition to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section [72-1360](#), Idaho Code, be collected with interest thereon at the rate prescribed in section [72-1360](#)(2), Idaho Code. The director may also file a civil action in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, penalties and interest, the director shall have all the rights and remedies provided by the laws of this state, and any person adjudged liable in such civil action for any overpayments shall pay the costs of such action. A civil action filed pursuant to this subsection shall be commenced within five (5) years from the date of the final determination establishing liability to repay. Any judgment obtained pursuant to this section shall, upon compliance with the requirements

of [chapter 19, title 45](#), Idaho Code, become a lien of the same type, duration and priority as if it were created pursuant to section [72-1360](#), Idaho Code.

(4) Collection of overpayments and civil penalties.

(a) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, that have not been repaid or collected may, at the discretion of the director, be deducted from any future benefits payable to the claimant under the provisions of this chapter. Such overpayments not recovered within five (5) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(b) Overpayments resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant that have not been recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(c) The civil penalty assessed pursuant to subsection (2) of this section shall be paid as follows:

(i) An amount totaling fifteen percent (15%) of the overpayment shall be paid into the employment security fund created in section [72-1346](#), Idaho Code; and

(ii) Any additional amounts collected shall be paid into the employment security administrative and reimbursement fund created in section [72-1348](#), Idaho Code.

(5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if:

(a) The benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error; or

(b) Such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(6) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this chapter if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

(7) The director shall have discretion to compromise any or all of an overpayment, civil penalty, interest, or fifty-two (52) week disqualification assessed under subsections (1) and (2) of this section and section [72-1366](#)(12), Idaho Code, when the director finds it is in the best interest of the department.

[72-1369, added 1947, ch. 269, sec. 69, p. 793; am. 1949, ch. 144, sec. 69, p. 252; am. 1973, ch. 89, sec. 3, p. 146; am. 1980, ch. 264, sec. 12, p. 699; am. 1983, ch. 146, sec. 8, p. 397; am. 1986, ch. 24, sec. 3, p. 76; am. 1990, ch. 353, sec. 4, p. 955; am. 1993, ch. 181, sec. 2, p. 462; am. 1997, ch. 205, sec. 8, p. 618; am. 1998, ch. 1, sec. 88, p. 86; am. 1999, ch. 101, sec. 3, p. 321; am. 2005, ch. 5, sec. 15, p. 29; am. 2010, ch. 114, sec. 6, p. 239; am. 2013, ch. 103, sec. 2, p. 245; am. 2015, ch. 195, sec. 1, p. 603; am. 2021, ch. 243, sec. 5, p. 759.]

72-1370. DISTRIBUTION OF BENEFIT PAYMENTS UPON DEATH. Whenever a benefit claimant dies, having completed a compensable period prior to his death, benefits due the deceased claimant at the time of death shall be payable, without administration, to the surviving spouse, if any, or, if there be no surviving spouse, to the dependent child or children.

[72-1370, added 1947, ch. 269, sec. 70, p. 793; am. 1949, ch. 144, sec. 70, p. 252; am. 1951, ch. 104, sec. 16, p. 233; am. 1998, ch. 1, sec. 89, p. 88.]

72-1371. MISREPRESENTATION TO OBTAIN BENEFITS OR TO PREVENT PAYMENTS OR TO EVADE CONTRIBUTION LIABILITY -- CRIMINAL PENALTY. (1) The making of a false statement when the maker knows the statement to be false, or the wilful [willful] failure to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an unemployment insurance law of any state or of the federal government, either for the benefit of the maker or for any other person, is hereby declared to be a felony.

(2) The making by an employer or any officer or agent of an employer or any other person of a false statement or representation when the maker knows the statement or representation to be false, or the willful failure to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining a covered employer or to avoid or reduce any contribution or other payment required from a covered employer under this chapter or under any unemployment insurance law of any state or of the federal government, or the willful failure or refusal to make such contributions or other payment or to furnish any such reports required under this chapter is hereby declared to be a misdemeanor.

[72-1371, added 1947, ch. 269, sec. 71, p. 793; am. 1949, ch. 144, sec. 71, p. 252; am. 1951, ch. 235, sec. 5, p. 472; am. 1961, ch. 294, sec. 5, p. 517; am. 1963, ch. 316, sec. 6, p. 864; am. 1998, ch. 1, sec. 90, p. 88.]

72-1372. CIVIL PENALTIES. (1) The following civil penalties shall be assessed by the director:

(a) If a determination is made finding that an employer willfully filed a false report, a monetary penalty equal to one hundred percent (100%) of the amount that would be due if the employer had filed a correct report or two hundred fifty dollars (\$250), whichever is greater, shall be added to the liability of the employer for each quarter for which the employer willfully filed a false report. For the purposes of this section, a false report includes, but is not limited to, a report for a period wherein an employer pays remuneration for personal services which meets the definition of "wages" under section [72-1328](#), Idaho Code, and the payment is concealed, hidden, or otherwise not reported to the department.

(b) If a determination is made finding that an employer willfully failed to file the employer's quarterly unemployment insurance tax report when due, the director shall assess a monetary penalty equal to:

(i) Seventy-five dollars (\$75.00) or twenty-five percent (25%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had not been found in any previous determination to have willfully failed

to file a timely quarterly report for any of the sixteen (16) preceding consecutive calendar quarters; or

(ii) One hundred fifty dollars (\$150) or fifty percent (50%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination to have willfully failed to file a timely quarterly report for no more than one (1) of the sixteen (16) preceding consecutive calendar quarters; or

(iii) Two hundred fifty dollars (\$250) or one hundred percent (100%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination or determinations to have willfully failed to file a timely quarterly report for two (2) or more of the sixteen (16) preceding consecutive calendar quarters.

(c) If a determination is made finding that an employer, or any officer or agent or employee of the employer with the employer's knowledge, willfully made a false statement or representation or willfully failed to report a material fact when submitting facts to the department concerning a claimant's separation from the employer, a penalty in an amount equal to ten (10) times the weekly benefit amount of such claimant shall be added to the liability of the employer.

(d) If a determination is made finding that an employer has induced, solicited, coerced or colluded with an employee or former employee to file a false or fraudulent claim for benefits under this chapter, a penalty in an amount equal to ten (10) times the weekly benefit amount of such employee or former employee shall be added to the liability of the employer.

(e) If a determination is made finding that an employer failed to complete and submit an Idaho business registration form when due, as required by section [72-1337](#)(1), Idaho Code, a penalty of five hundred dollars (\$500) shall be assessed against the employer.

(f) For purposes of paragraphs (c) and (d) of this subsection, the term "weekly benefit amount" means the amount determined by the director pursuant to section [72-1367](#)(2), Idaho Code.

(g) If a determination is made finding that a person has made any unauthorized disclosure of employment security information in violation of the provisions of [chapter 1, title 74](#), Idaho Code, or section [72-1342](#), Idaho Code, or rules promulgated thereunder, a penalty of five hundred dollars (\$500) for each act of unauthorized disclosure shall be assessed against the person.

(h) If a determination is made finding that a professional employer failed to submit a separate quarterly wage report for each client as required in section [72-1349B](#)(4), Idaho Code, the director shall assess a monetary penalty equal to one hundred dollars (\$100) for each client not separately reported by the professional employer; provided that the maximum penalty for any quarter shall not exceed five thousand dollars (\$5,000).

(2) At the discretion of the director, the department may waive all or any part of the penalties imposed pursuant to subsection (1) of this section if the employer shows to the satisfaction of the director that it had good cause for failing to comply with the requirements of this chapter and rules promulgated thereunder.

(3) Determinations imposing civil penalties pursuant to this section shall be served in accordance with section [72-1368](#)(5), Idaho Code. Penalties imposed pursuant to this section shall be due and payable twenty (20) days after the date the determination was served unless an appeal is filed in accordance with section [72-1368](#), Idaho Code, and rules promulgated thereunder. Such appeals shall be conducted in accordance with section [72-1368](#), Idaho Code, and rules promulgated thereunder.

(4) Civil penalties imposed by this section shall be in addition to any other penalties authorized by this chapter. The provisions of this chapter that apply to the collection of contributions, and the rules promulgated thereunder, shall also apply to the collection of penalties imposed pursuant to this section. Amounts collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section [72-1348](#), Idaho Code.

[72-1372, added 2005, ch. 5, sec. 16, p. 31; am. 2007, ch. 64, sec. 1, p. 157; am. 2008, ch. 44, sec. 5, p. 116; am. 2008, ch. 99, sec. 3, p. 276; am. 2011, ch. 117, sec. 1, p. 326; am. 2015, ch. 141, sec. 196, p. 530; am. 2016, ch. 280, sec. 3, p. 777.]

72-1373. VIOLATION OF THIS LAW OR RULES THEREUNDER. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed in this chapter, nor provided by any other applicable statute, shall be guilty of a misdemeanor, and each day such violation continues shall be deemed to be a separate misdemeanor.

[72-1373, added 1947, ch. 269, sec. 73, p. 793; am. 1949, ch. 144, sec. 73, p. 252; am. 1998, ch. 1, sec. 91, p. 88.]

72-1374. UNAUTHORIZED DISCLOSURE OF INFORMATION. If any of the following persons, in violation of the provisions of [chapter 1, title 74](#), Idaho Code, or section [72-1342](#), Idaho Code, or rules promulgated thereunder, makes any unauthorized disclosure of employment security information, each act of unauthorized disclosure shall constitute a separate misdemeanor:

- (1) Any employee of the department;
- (2) Any employee or member of the commission;
- (3) Any third party or employee thereof who has obtained employment security information pertaining to a person with the written, informed consent of that person;
- (4) Any public official who has obtained employment security information for use in the performance of official duties; or
- (5) Any person who has obtained employment security information through means that violate the provisions of [chapter 1, title 74](#), Idaho Code, or this chapter, or rules promulgated thereunder.

[72-1374, added 1947, ch. 269, sec. 74, p. 793; am. 1949, ch. 144, sec. 74, p. 252; am. 1990, ch. 213, sec. 110, p. 563; am. 1998, ch. 1, sec. 92, p. 89; am. 2008, ch. 99, sec. 4, p. 277; am. 2015, ch. 141, sec. 197, p. 532.]

72-1375. PROTECTION OF RIGHTS AND BENEFITS. (1) Any agreement to waive, release, or commute any right to benefits or other rights under this chap-

ter shall be void. Any agreement by any individual performing services for a covered employer to pay all or any portion of any contributions or penalties required under this chapter from such employer, shall be void. No covered employer shall directly or indirectly make or require or accept any deduction from wages to finance the contributions required from him, require or accept any waiver of any right under this chapter by any individual rendering service for him, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his claiming benefits under this chapter, or in any manner obstruct or impede the claiming of benefits. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a misdemeanor.

(2) No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the commission, the director, any of its or his employees or representatives, or by any court or any officer thereof, except that a court may assess costs if the court determines that the proceedings have been instituted or continued without reasonable ground. Any individual claiming benefits in any proceeding before the department, the commission, or a court may be represented by counsel or other duly authorized agent. Any person who violates any provision of this subsection shall, for each such offense, be guilty of a misdemeanor.

(3) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or an order for the payment of attorney's fees. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of debts. Any waiver of any exemption provided for in this subsection shall be void.

(4) The provisions of this section shall not apply to any action taken pursuant to section [72-1365](#)(2), Idaho Code.

[72-1375, added 1947, ch. 269, sec. 75, p. 793; am. 1949, ch. 144, sec. 75, p. 252; am. 1951, ch. 235, sec. 6, p. 472; am. 1982, ch. 326, sec. 12, p. 830; am. 1998, ch. 1, sec. 93, p. 89.]

72-1376. REPRESENTATION IN COURT. (1) In any civil action to enforce the provisions of this chapter the director, the commission, and the state shall be represented by the attorney general, or if the action is brought in the courts of any other state, by any attorneys qualified to appear in the courts of that state.

(2) All criminal actions for violation of any provision of this chapter, or of any rules issued pursuant thereto, shall be prosecuted by the attorney general of the state, or, at his request and under his direction, by the prosecuting attorney of any county wherein the defendant resides or has a place of business.

[72-1376, added 1947, ch. 269, sec. 76, p. 793; am. 1949, ch. 144, sec. 76, p. 252; am. 1998, ch. 1, sec. 94, p. 90.]

72-1377. SAVING CLAUSE. The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done

pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

[72-1377, added 1947, ch. 269, sec. 77, p. 793; am. 1949, ch. 144, sec. 77, p. 252; am. 1998, ch. 1, sec. 95, p. 90.]

72-1378. SEPARABILITY OF PROVISIONS. If any provision of this chapter, or the application thereof to any person or circumstance, shall be declared by the courts to be unconstitutional, inoperative or void, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

[72-1378, added 1947, ch. 269, sec. 78, p. 793; am. 1949, ch. 144, sec. 78, p. 252; am. 1998, ch. 1, sec. 96, p. 90.]

72-1379. REFERENCES IN CHAPTER. A reference in this chapter to any state or federal law means the law as it existed on the effective date of this chapter and any amendments or recodifications thereto.

[72-1379, added 1947, ch. 269, sec. 79, p. 793; am. 1949, ch. 144, sec. 79, p. 252; am. 1951, ch. 104, sec. 17, p. 233; am. 1998, ch. 1, sec. 97, p. 90.]

72-1381. DIRECTOR TO COOPERATE WITH GOVERNOR IN MEDIATION OF DISPUTES. Upon the request of any interested party to an actual or potential labor dispute, the director shall have the power to mediate the dispute. The director or any interested party may apply to the governor for appointment of a mediator or a mediation panel of not less than three (3) citizens who are objective in matters involving labor disputes, and the governor shall, if the public interest will be served thereby, appoint such a mediator or mediation panel. Such mediator or mediation panel shall be paid actual expenses by the interested parties while engaged in such public business. Neither the director, the governor, nor any mediator or member of any mediation panel shall be authorized to arbitrate any labor dispute.

[(72-1381) 1949, ch. 254, sec. 6, p. 511; am. 1974, ch. 39, sec. 7, p. 1023; am. and redesign. 1996, ch. 421, sec. 10, p. 1417; am. 1998, ch. 1, sec. 99, p. 92.]

72-1382. DUTIES OF DIRECTOR -- DETERMINATION OF REPRESENTATIVES. The director shall, when a question arises concerning the representation of employees in a collective bargaining unit, investigate such controversy and certify to the parties the name or names of the representatives who have been selected. In any such investigation the director shall provide for an appropriate hearing, and may take a secret ballot of employees to ascertain such representatives. In all cases where a secret ballot is taken, the ballot shall permit a vote against representation by anyone named on the ballot; provided, however, that nothing in this section shall be construed as authorizing the director to conduct an election on any matter which is within the exclusive jurisdiction of any federal official or board; and provided further that no election shall be directed in any bargaining unit or subdivision within which, in the preceding twelve (12) month period, a valid election was held.

[(72-1382) 1949, ch. 254, sec. 7, p. 511; am. 1963, ch. 110, sec. 1, p. 332; am. 1974, ch. 39, sec. 8, p. 1023; am. and redesisg. 1996, ch. 421, sec. 11, p. 1417; am. 1998, ch. 1, sec. 100, p. 92.]

72-1383. INTEGRITY OF THE EMPLOYMENT SECURITY PROGRAM. (1) The purpose of this section is to enhance program integrity for the state's unemployment insurance program. The department shall be required to perform routine cross-matches, review eligibility of suspicious claims, implement identity protection protocols, recover overpayments, and report the results of such activities to the legislature.

(2) The department shall establish and follow procedures to verify claimant eligibility and perform cross-match activities by:

(a) Engaging with and utilizing the integrity data hub operated by the national association of state workforce agencies;

(b) On a weekly basis, cross-checking the unemployment insurance rolls against the national directory of new hires and the state directory of new hires;

(c) On a weekly basis, cross-checking the unemployment insurance rolls with the department of correction's list of incarcerated individuals; and

(d) Cross-checking the unemployment insurance rolls against the most recent state death records list available to the department.

(3) The department shall verify a claimant's identity by methods including but not limited to:

(a) Verifying the identity of an applicant prior to awarding benefits;

(b) Requiring multifactor authentication as part of online applications; or

(c) Requiring an applicant to identify himself at a state office in a manner to be established by the department.

(4) The department shall perform a full eligibility review of suspicious or potentially improper claims, including but not limited to:

(a) Multiple or duplicative claims filed online originating from suspicious internet protocol addresses;

(b) Claims filed online from foreign internet protocol addresses; or

(c) Multiple or duplicative claims filed that are associated with the same mailing address or bank account.

[72-1383, added 2023, ch. 250, sec. 1, p. 767.]

72-1385. PROVISIONS NOT TO APPLY TO AGRICULTURAL OR DOMESTIC LABOR. The provisions of sections [72-1381](#) and [72-1382](#), Idaho Code, shall not apply to labor engaged in agricultural labor as that term is defined in section [72-1304](#), Idaho Code, nor to anyone engaged in domestic service in homes.

[(72-1385) 1949, ch. 254, sec. 8, p. 511; am. and redesisg. 1996, ch. 421, sec. 14, p. 1418; am. 1998, ch. 1, sec. 102, p. 93.]