

Dear Senators PATRICK, Guthrie, Ward-Engelking, and
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Office of the Governor - Division of Human Resources and Personnel Commission:
IDAPA 15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission -
Proposed Rule (Docket No. 15-0401-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/22/2017. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/21/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

FROM: Principal Legislative Research Analyst - Ryan Bush

DATE: November 2, 2017

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

IDAPA 15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission - Proposed Rule (Docket No. 15-0401-1701)

The Division of Human Resources submits notice of proposed rulemaking at IDAPA 15.04.01 - Rules of the Division of Human Resources and Idaho Personnel Commission. This rule change removes all references to provisional appointments, removes reference to Hay Management Consultants, removes provisions on coordination of recruitment with the Director of the Department of Labor and amends provisions on the closure of state offices due to weather or other disruptions and subsequent administrative leave. The Division states that the references to provisional appointments and coordination with the Department of Labor are unnecessary.

The Division states that negotiated rulemaking was conducted and that notice was published in the September edition of the Idaho Administrative Bulletin. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Division in Section 67-5309, Idaho Code.

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

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

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

DOCKET NO. 15-0401-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Deleting references to “provisional appointment,” which has not been used since 2004 and used only seven times from 1990 – 2004; deleting references to a specific company, Hay Management Consultants; deleting reference to coordination of recruitment with Director of Department of Labor as it is redundant and the applicant tracking system at Labor is being returned to the Division of Human Resources; and amending approval for closure of state offices or state facilities, or both, due to weather or other disruptions.

FEE SUMMARY: N/A

FISCAL IMPACT: There will be no fiscal impact, positive or negative, as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, page 100](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Shelli Boggie, DHR Consultant, (208) 854-3083.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 22, 2017.

DATED this 28th day of September, 2017.

Susan E. Buxton, Administrator
304 North 8th Street
P.O. Box 83720
Boise, ID 83720-0066
Susan.Buxton@dhr.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS -- A THROUGH E.

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

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits remain intact. (3-20-14)

02. Administrator. The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. (5-8-09)

03. Agency Classification. A classification of positions unique to an agency. (5-8-09)

04. Allocation. The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

05. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

06. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

07. Appointing Authority. The officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)

08. Appointment, Limited. The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

09. Appointment, Nonclassified. The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

10. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

11. Appointment, Probationary. The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

12. Appointment, Project Exempt. The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

~~**13. Appointment, Provisional.** The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)~~

143. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods defined by a season (summer, fall winter, spring, holiday or harvest). (Ref. Section 67-5302(32), Idaho Code) (3-29-17)

154. Appointment, Temporary. The appointment of a person to a nonclassified position which is of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve-month (12) period for any one (1) agency. Temporary appointments may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) (5-8-09)

165. Base Pay. The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)

176. Certifiable Range. An examination score and a rank on an eligibility register sufficiently high to be among the top twenty-five (25) available names, plus names of all individuals with scores identical to the twenty-fifth ranking eligible, for certification to fill a position in the classification for which the register was established. (4-7-11)

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

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

2019. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division of Human Resources and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. (5-8-09)

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

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

232. Disabled Veteran. Those veterans separated under honorable conditions who: (3-20-14)

a. Have served on active duty in the armed forces and have a current service-connected disability rating of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or (3-20-14)

b. Are Purple Heart recipients. (Ref. Section 65-502(4), Idaho Code) (3-20-14)

243. Dismissal. The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. (5-8-09)

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

265. Employment History. The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

040. NONCLASSIFIED EMPLOYEES SUBJECT TO CLASSIFIED SERVICE SUBSEQUENT TO APRIL 5, 1985.

The provisions of this rule shall apply to all employees exempt from classified service who, subsequent to April 5, 1985, become subject to the provisions of Chapter 53, Title 67, Idaho Code. (3-30-01)

01. Probationary Period. A nonclassified employee brought under classified service under Rule 040 must serve a probationary period appropriate for the classification assigned to the employee's position. Service uninterrupted by resignation, termination, or dismissal immediately prior to inclusion in classified service shall be considered as probationary service. (3-16-04)

02. Certification to Permanent Status. An employee who has completed a probationary period as required above and who is certified in writing by the appointing authority as serving satisfactorily shall be certified to permanent status without examination. (3-30-01)

03. Examination. An employee who has not completed a classified entrance probationary period as required ~~above~~ shall be required to meet the minimum qualifications by passing an examination for the classification assigned to the employee's position. ~~Prior to passing such examination, the employee's status shall be provisional. The employee will be hired from a hiring list and serve a period of entrance probation.~~ (3-16-04)()

04. Separation. An employee who is not certified by the appointing authority as serving satisfactorily shall be separated from state service no later than thirty (30) calendar days after inclusion in classified service. An employee who fails to pass the examination or had an opportunity to have such examination and not availed himself or herself thereof shall be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-30-01)

05. Salary Protection. If the salary of an employee, brought under classified service under Rule 040, is greater than the highest rate of the pay grade of the classification to which assigned, the employee's salary shall be protected; to the maximum of their new paygrade. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

074. ASSIGNMENT OF HAY EVALUATION POINTS.

01. Assignment to Pay Grade. Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-16-04)

02. Guide Charts. The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-16-04)

03. Factoring Benchmarks. The established factoring benchmarks ~~correlated by Hay Management Consultants~~ shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-16-04)()

04. Factoring Process. Hay evaluation points shall be assigned to a classification through the following methods, which may be used separately or in combination with the others: (3-16-04)

a. Factoring Session. The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference. (3-16-04)

~~b. Hay Management Consultants. After consultation with the appointing authority, the administrator may refer the classification to Hay Management Consultants for a factoring analysis. (3-16-04)~~

05. Approval. After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division of Human Resources shall have final approval of the Hay evaluation points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

080. RECRUITMENT.

The administrator will cooperate with the appointing authority of each agency ~~and with the director of the Department of Labor~~ in the operation of a coordinated recruiting program. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

111. ADEQUATE REGISTERS.

A register with at least five (5) eligible candidates is adequate. If no register exists or if there are less than five (5) eligible candidates, appointing authorities may: (5-8-09)

01. Selection from Inadequate Register. Hire an eligible candidate listed on an inadequate register. (3-30-01)

~~02. Provisional Appointment. Make a provisional appointment pursuant to Rule 119.04. (5-8-09)~~

~~03. Request Certification. Request the administrator authorize certification from an eligibility register for a comparable classification. (3-16-04)~~

04. Special Request. Request specialized recruitment. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

01. Reemployment Preference Register. New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule 101.01) for that classification with names of eligibles who are willing to accept employment. (5-8-09)

02. Probationary Period Required. All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise provided in Rules 040 and 150. (5-8-09)

~~03. Provisional Appointment. (7-1-93)~~

~~a. A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code) (5-8-09)~~

~~b. In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position~~

~~for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator. (3-16-04)~~

~~e. Provisional incumbents will be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so will be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.

01. Identification of Classifications. The appointing authority will identify the classification of positions to be reduced or eliminated. (5-8-09)

02. Calculation of Retention Points. Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions. Retention points need not be calculated where layoff involves a single-incumbent class. (5-8-09)

03. Order of Reduction in Force. The order of reduction in force will be by type of appointment held by the employee in the affected classification as follows: first to be laid off are ~~provisional appointees, next~~ the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention will be determined in the following sequence: (Ref. Rule 150.02.c.) (5-8-09)()

a. The employee with the highest total retention points for the past thirty-six (36) months. (3-16-04)

b. Random selection. (4-5-85)

04. Notification to Affected Employees. Each employee affected will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification will include a copy of the agency layoff procedure and a copy of the computation of retention points when required (Ref. Rule 143.02). (5-8-09)

05. Notification to Administrator. The appointing authority must give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and must provide a list of persons affected by the layoff with their retention point calculations and must indicate which employees will be laid off. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Rule 040, every appointment and promotion to a classified position is probationary, ~~or in the absence of adequate registers, provisional.~~ (5-8-09)()

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: (5-8-09)

a. Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

c. Voluntary probation is an agreement between employees and the appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. (5-8-09)

03. Extension of Probationary Period. Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) (5-8-09)

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single agency uninterrupted by termination (Ref. Rule 152.02) or dismissal (Ref. Rule 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (5-8-09)

05. Temporary Service Credit. At the request of the hiring agency, the administrator will allow temporary service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code, and Rules 122 and 150.01) (3-29-12)

06. Acting Service Credit. At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(y), Idaho Code, and Rules 129 and 150.01) (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. (3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions may be appealed in accordance with Rule 201. (5-8-09)

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. (5-8-09)

02. Establishment of Agency Problem-Solving and Due Process Procedures. Each participating

agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Rule 200. (5-8-09)

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, *provisional* or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. (5-8-09) ()

04. Elements of the Problem-Solving Procedure. The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code, and Rule 152). (3-29-17)

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and must require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (5-8-09)

06. Elements of Due Process Procedure. An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than ten (10) working days after the employee has received notice, unless both the employee and agency agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agency's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and agency agree otherwise in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code, and; Rules 150 through 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. (5-8-09)

07. Notification. A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, *provisional* or entrance probationary status in the agency concerned. (5-8-09) ()

08. Assistance to Agencies. The administrator will assist agencies whenever requested in the development or revision of their agency problem-solving and due process procedures. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and must establish reasonable justification for approval. (5-8-09)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave or compensatory time off for overtime before commencing leave without pay. (Ref. Rule 240) (3-29-17)

d. Resignation. If vacation leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (3-29-17)

02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Rule 240.07. (5-8-09)

03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (5-8-09)

04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule 124.05. The employee will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (5-8-09)

05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: (5-8-09)

a. Vacation leave; (5-8-09)

b. Sick leave; (5-8-09)

- c. Special leave situations; (3-20-14)
- d. Compensatory time off for overtime worked; and (3-20-14)
- e. Administrative leave. (3-20-14)
- 06. Court and Jury Services and Problem-Solving and Due Process Leave.** (7-1-98)
- a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (5-8-09)
- b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (5-8-09)
- c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (5-8-09)
- d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (5-8-09)
- e. Notification. An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. (3-20-14)
- 07. Religious Leave.** Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (5-8-09)
- 08. Leave During Facility Closure or Inaccessibility.** (7-1-93)
- a. Authorization. When a state office/facility is closed or declared inaccessible by the Governor or Governor's designee because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees are authorized administrative leave to cover their scheduled hours of work during the closure or inaccessibility. If an employee was not scheduled to work on a day the Governor or Governor's designee declares a state office/facility closed or inaccessible in accordance with Rule 250.08.a. ~~(3-20-14)~~ ()
- ~~b. Early release. When the appointing authority or designated representative authorizes early release of employees, the resulting time off will be charged to administrative leave. (3-20-14)~~
- b. In the interest of employee safety, appointing authorities may approve employee early release, delayed start time, or absence from work due to weather or other emergency conditions. Those affected employees will use their appropriate accrued leave balances or leave without pay. Administrative leave will be granted to affected employees scheduled to work on a day the Governor or Governor's designee declares a state office/facility closed or inaccessible in accordance with Rule 250.08.a. ()
- 09. Red Cross Disaster Services Leave.** Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (5-8-09)

10. Employee Assistance Program Leave. Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours. (3-29-17)

11. Bone Marrow and Organ Donor Leave With Pay. (5-8-09)

a. Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (5-8-09)

b. Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (5-8-09)

251. ADMINISTRATIVE LEAVE.

a. Administrative leave may be granted by an appointing authority for employee investigations, and due process procedures; in accordance with Rule 190.02. ()

b. Administrative leave for closure or inaccessibility of a state office/facility due to severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others must be granted in accordance with Rule 250.08. ()

c. Administrative leave for ~~other~~ reasons other than those listed above must be approved in advance ~~(3-20-14)~~() by the administrator.