

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1301

#### NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 72-1333, Idaho Code.

**METHOD OF PARTICIPATION:** Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 18, 2013.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency's website at <http://labor.idaho.gov>.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website at <http://labor.idaho.gov>.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Persons wishing to participate in the negotiated rulemaking may do any of the following:

1. Attend a scheduled negotiated rulemaking meeting and participate in the negotiation process;
2. Attend through a teleconference;
3. Provide oral or written recommendations, or both, at a scheduled negotiated rulemaking meeting; and/or
4. Submit written recommendations or comments to the address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

A new rule is being promulgated to require employers to report contributions online unless a waiver is granted by the Department. Waivers will be granted to employers if the online filing requirement poses a significant burden. The Department currently allows the reporting of contributions by either paper or online filing. The online reporting of employer contributions will allow the Department to process quarterly reports from nearly 50,000 employers more quickly with fewer resources and at a lower cost. The online reporting system corrects errors hundreds of employers typically make in paper reports. This will help employers avoid thousands of dollars in fines for reporting less quarterly taxes by the reporting deadline than the employer legally owes.

A new rule is being promulgated to revise the current "independently established" prong of the independent contractor test for unemployment insurance tax purposes with a more straight forward, common sense economic reality test. The current test has 15 factors and is too complicated to enforce and gives employers poor guidance as to which workers may or may not be independent contractors. The economic reality test is currently used by the U.S. Department of Labor and the Social Security Administration and focuses on whether workers are economically dependent upon the business to which they render services.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this negotiated rulemaking, contact Michael Johnson (208) 332-3570 ext. 3082. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency web site at the following web address: <http://labor.idaho.gov>. All written comments must be directed to the undersigned and must be delivered on or before July 18, 2013.

DATED this 29th day of May, 2013.

Michael Johnson  
Bureau Chief  
Department of Labor  
317 West Main Street  
Boise, ID 83735  
(208) 332-3570 ext. 3082  
[michael.johnson@labor.idaho.gov](mailto:michael.johnson@labor.idaho.gov)