

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**House Commerce &**  
**Human Resources Committee**  
**64th Idaho Legislature**  
**Second Regular Session – 2018**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2018*

# **HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE**

## **ADMINISTRATIVE RULES REVIEW**

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## IDAPA 09 – IDAHO DEPARTMENT OF LABOR

### 09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The adoption of the pending rule is necessary to clarify the misconception that leads unemployment insurance claimants to believe that in order to file for unemployment insurance benefits they must call a Boise telephone number; and the pending rule provides the department greater flexibility in the event the state needs to relocate its claims processing center for budgetary reasons or due to a natural disaster such as fire or flooding.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 34-41](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Josh McKenna, Benefits Bureau Chief, (208) 332-3577.

DATED this 4th day of December, 2017.

Josh McKenna  
Benefits Bureau Chief  
Unemployment Insurance, Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
Phone: (208) 332 3577  
Fax: (208) 334-6400

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is June 2, 2017.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, 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 July 19, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**A. The Proposed / Temporary Rule Change:**

1. Clarifies the misperception that leads unemployment insurance claimants to believe in order to file for unemployment insurance benefits they must call a Boise telephone number; and
2. Provides the department greater flexibility in the event the state needs to relocate its claims processing center for budgetary reasons or due to a natural disaster such as fire or flooding.

**B. Supporting Reasons for Adopting a Temporary Rule:**

1. The current language leaves a misperception that in order to file benefits a claimant:
  - a. Cannot access the claim center through their nearest Idaho Department of Labor office; and
  - b. Must contact a facility in Boise.
2. Should the need arise to move the Idaho Unemployment Insurance claims center for budgetary reasons or due to a natural disaster such as fire or flood, the department will have the flexibility to relocate the claims center outside of Boise.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Conferring a benefit (c)

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary.

**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 temporary and proposed rule, contact Josh McKenna, Benefits Bureau Chief, (208) 332-3577.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2017.

DATED this 26th day of May, 2017

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0130-1701**

**010. DEFINITIONS.**

Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Labor. (3-19-99)

**01. Additional Claim.** An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

**02. Administrative Office.** The main office in Boise, Idaho, wherein the administrative functions of the Department of Labor are performed. (3-19-99)

**03. Appealed Claim.** An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

**04. Average Annual Wage.** For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. (3-19-99)

**05. Average Weekly Wage.** For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). (4-11-06)

**06. Benefit Balance.** The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

**07. ~~Boise Central~~ Claims Office.** ~~The central~~ A claims office ~~located in Boise, Idaho;~~ designated by the director, where unemployment claims throughout the state are processed. (3-29-17)( )

**08. Chargeability Determination.** A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

**09. Claim.** An application for unemployment insurance or "benefits." (3-19-99)

**10. Combined Wage Claim.** A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

11. **Compensable Claim.** An application for benefits which certifies to the completion of a benefit period (one (1) or more weeks). (3-19-99)
12. **Contested Claim.** A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)
13. **Continued Claim.** An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)
14. **Corporate Officer.** Any individual empowered in good faith by stockholders or directors in accordance with the corporation's articles of incorporation or bylaws to discharge the duties of a corporate officer. (4-4-13)
15. **Employment.** For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, "employment" means that employment subsequent to which a claimant has not earned fourteen (14) times his weekly benefit amount. (4-11-06)
16. **Full-Time Employment.** A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one half (1-1/2) times his weekly benefit amount. (4-5-00)
17. **Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. (3-19-99)
18. **Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)
19. **Intrastate Claim.** A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)
20. **Itinerant Point.** A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)
21. **Liability Determination.** A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)
22. **Local Office.** A community office of the Department of Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)
23. **Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)
24. **New Claim.** The first initial claim made in a benefit year. (3-19-99)
25. **Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)
26. **Personal Identification Number (PIN).** A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)
27. **Regular Claim.** A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)

**28. Signature, Signed.** The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)

**29. Telephone Claim.** A claim filed by telephone rather than in person at a local office. (3-19-99)

**30. Total Benefit Amount.** The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)

**31. Unemployment.** An individual shall be deemed “unemployed” in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him 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. (3-19-99)

**32. Weekly Benefit Amount.** The full amount of benefits to which a claimant may be entitled for one (1) week of total unemployment. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**  
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

**01. Claims for Benefits, Delayed Filing.** When the [Boise Central](#) Claims Office has determined that a claimant’s attempt to file an initial claim was delayed due to problems with the Department’s telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to the [Boise Central](#) Claims Office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. ~~(3-29-17)~~( )

**02. Effective Date of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the [Boise Central](#) Claims Office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. ~~(3-29-17)~~( )

**03. Filing of New Claims.** New intrastate and interstate claims may be filed electronically or by telephone at the Department’s discretion. (3-29-17)

**a. Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho’s Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department’s Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

**b. Interstate Claims.** Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department’s interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

**c. Itinerant Locations.** Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant’s separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

**04. Itinerant Claims.** Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

**05. Registration for Work.** All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

**06. Registration/Reporting Requirements -- Interstate Claimants.** Interstate claimants shall be required to register for work in the State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

**07. Requirement to Provide Information.** If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)
- j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (4-11-06)

**08. Right to Claim Benefits.** In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

**09. Separation Information.** Unless separation information has been provided by other means, such



as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed fourteen (14) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (4-11-06)

**10. Separation Notice.** (3-19-99)

**a.** Notice to Employer of Separation. At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. A Department representative will then contact the employer within seven (7) business days for a response, unless the claimant indicated he quit the job for reasons not attributable to the employer. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, shall respond to the Department with the reasons for the separation whenever the claimant: (3-30-07)

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; (3-30-07)
- iv. Is not working due to a suspension; or (3-30-07)
- v. Was separated for any other reason except lack of available work. (3-19-99)

**b.** Employer Response. The employer's response shall be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-30-07)

**11. Filing of an Additional Claim or Reopening a Claim.** A claim series may be reestablished electronically or by telephone at the Department's discretion. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-29-17)

**a.** Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

**b.** Telephone Filing. A claimant may file an AC/RO by telephone by calling the ~~Boise Central~~ Claims Office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. ~~(3-29-17)~~ ( )

**c.** Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim. (3-29-17)

**12. Use of Wage Credits.** All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

**13. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the

claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code.

(3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**575. SEEKING WORK.**

Ref. Sec. 72-1366(4), (6), Idaho Code.

(3-19-99)

**01. Attitude and Behavior.** A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

**02. Effort to Secure Employment.** A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

**03. Employer's Hiring Practices.** An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

**04. Job Attachment Classifications.** For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: (3-19-99)

**a.** Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment shall be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. (3-25-16)

**b.** Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. (3-19-99)

**c.** Code C. A claimant who has no marketable skills or whose skills have become obsolete and who is unable to return to his former occupation, or who has a special need for employment-related services. (3-19-99)

**d.** Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

**05. Jobs Availability.** A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

**06. No Employment Prospects.** A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

**07. Registering and Reporting on Work-Seeking Activity.** A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

**08. Seasonal Availability.** A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

**09. Work-Seeking Requirement Categories.** A claimant shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. A claimant that has not registered for work when filing his claim and that is required to secure employment must register with the local office within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking

requirements may result in a denial of benefits. (4-11-06)

a. Code O claimant must maintain regular contact with their employer(s) or union. (3-29-17)

b. Code 1 claimant will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the *Boise Central* Claims Office; ~~(3-29-17)~~ ( )

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

c. Code 2 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the *Boise Central* Claims Office; ~~(3-29-17)~~ ( )

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

d. Code 3 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least three (3) employer contacts per week in the manner prescribed by the *Boise Central* Claims Office; ~~(3-29-17)~~ ( )

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

**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 – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2018 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5309, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 81-90](#).

**FISCAL IMPACT:** There is no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Shelli Boggie, DHR Consultant, (208) 854-3083.

DATED this 24th day of November, 2017.

Susan E. Buxton  
Administrator  
304 North 8th Street  
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Boise, ID 83720-0066  
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<p><b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b></p>
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**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.

[LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-1701**

**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)

**209. 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)

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

**242. 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 the day when an office/facility is declared closed, the employee is not eligible for administrative leave. (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.



**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**  
**17.02.04 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION**  
**UNDER THE WORKERS' COMPENSATION LAW -- BENEFITS**

**DOCKET NO. 17-0204-1701**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 17-508, 72-1103, and 72-1104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 91-92](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nick Landry, Fiscal Manager, (208) 334-6042.

DATED this 22nd day of November 2017.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321



<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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**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 Sections 72-508, 72-1103, and 72-1104, 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:

The change in rule eliminates situational eligibility for officers subsequent to July 1, 2015.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to conform to statute.

**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 rule, contact Nick Landry, Fiscal Manager, (208) 334-6042.

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 20th day of September, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0204-1701

**004. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY FUND.**

**01. Eligibility.** An employer who has paid the full base salary due to a peace officer or detention officer, as defined in Section 72-1103, Idaho Code, may apply for reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund under the provisions of Section 72-1104, Idaho Code, for the amount of that salary not covered by the workers' compensation income benefit payments remitted to the employer during the time that such officer is: (5-8-09)

a. Temporarily incapacitated and unable to perform employment duties; (5-8-09)

b. Is otherwise eligible to receive workers' compensation benefits; and (5-8-09)

c. Is one whose incapacitating injury was incurred in the performance of employment duties on or after July 1, 2008, either: (5-8-09)

i. When responding to an emergency; or (5-8-09)

ii. When in the pursuit of an actual or suspected violator of the law; or (4-4-13)

iii. The injury was caused by the actions of another person after July 1, 2012 ~~and before July 1, 2015.~~ (4-4-13) ( )

**02. Application.** An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall make application on the form provided by the Commission for that purpose. Applications shall be sent to: Idaho Industrial Commission, ATTN: Peace Officer Fund, PO Box 83720, Boise, Idaho 83720-0041. (5-8-09)

**03. Payments.** Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. (5-8-09)

**04. Disputes.** Disputes regarding eligibility for reimbursement from The Peace Officer and Detention Officer Temporary Disability Fund will be decided by the Commission upon written request by the employer. There is no appeal from the reimbursement dispute decisions of the Commission under this section. Disputes regarding eligibility of an injured peace officer or detention officer for workers' compensation benefits, including the continuation of salary benefit set out in Section 72-1104, Idaho Code, will be decided in accordance with the Commission's current rules and procedures governing disputes in all other workers' compensation claims. (5-8-09)

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**  
**17.02.07 – PROCEDURES TO OBTAIN COMPENSATION**  
**DOCKET NO. 17-0207-1701**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 17-508, 72-1103, and 72-1104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 95-97](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

DATED this 22nd day of November 2017.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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**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 Sections 72-508, 72-432, 72-448, 72-602, 72-701 and 72-806, 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:

The rule is necessary to extend the implementation date for EDI Claims Release 3.0 an additional four months, from July 1, 2017 to November 4, 2017, to allow trading partners the amount of time necessary for testing and development of their reporting systems to adapt to the new reporting requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking. The temporary rule under this same docket number published in the May 3, 2017 Idaho Administrative Bulletin, [Vol. 17-5, pages 71-73](#). It is necessary to extend the implementation date from July 1, 2017 to November 4, 2017, allowing affected companies additional time to adapt and test their operating systems to the new standard for reporting of worker's compensation claims data to the Industrial Commission under EDI Release 3.0.

**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 rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

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 20th day of September, 2017.

[LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0207-1701**

**012. SUBMISSION OF FIRST REPORTS OF INJURY AND CLAIMS FOR COMPENSATION TO THE INDUSTRIAL COMMISSION.**

**01. Purpose.** The Industrial Commission seeks to develop a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. This will allow for more timely entry of information into the database system from which statistical reports are generated by the Commission, reduce the paper that the Commission currently receives, and is expected to reduce the cost of reporting for insurance carriers, employers and the Commission. (3-25-16)

**02. Procedure for Submitting Claims.** (3-25-16)

**a.** FROI Reporting Prior to EDI Mandate. Prior to ~~July 1, 2017~~ November 4, 2017, all FROI information shall be submitted to the Commission on single-sided eight and one-half inch by eleven inch (8½" x 11") white paper in a format substantially similar to Form 1A-1. Form 1A-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). At the Commission's discretion, claims may be submitted electronically in accordance with EDI Release 1.0 standards and any additional requirements of the Commission. ~~(3-25-16)~~ ( )

**b.** FROI & SROI EDI Reporting. The Commission will require electronic submission of a First Report of Injury (FROI), effective ~~July 1, 2017~~ November 4, 2017, and a Supplemental or Subsequent Report of Injury (SROI), effective ~~July 1, 2017~~ November 4, 2017, in accordance with IAIABC EDI Release 3.0 and the Commission's EDI Guides and Tables, for insurance carriers, in-state Claims Administrators, and self-insured employers, as those entities are not otherwise exempted by these rules. ~~(3-25-16)~~ ( )

**c.** Trading Partner Agreements. Before commencing electronic reporting, self-insured employers and insurance carriers shall sign a Trading Partner Agreement with the Commission, which must be approved by the Commission prior to initial data submission. This agreement will provide the effective date to send and receive electronic reports, which may be earlier but not later than the date above in Paragraph 012.02.b., the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements. To ensure the accuracy of reported data, the Commission may make periodic audits of insurance carrier and self-insured employer files. In the event that a Trading Partner Agreement is entered into by a claims administrator, notice to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. (3-25-16)

**d.** FROI. Each electronic First Report of Injury (FROI) must comply with the formatting requirements of the IAIABC EDI Claims Release 3.0 Implementation Guide and Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. (3-25-16)

**e.** SROI. Each electronic Supplemental or Subsequent Report of Injury (SROI) must comply with the formatting requirements of the IAIABC EDI Claims Release 3.0 Implementation Guide and the Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. (3-25-16)

**f. Report Form and Content for Parties Exempt from EDI Requirements:** (3-25-16)

**i.** Individual injured workers, injured workers' legal counsel, and employers that are not insured are not required to comply with IAIABC EDI requirements for filing of the FROI and SROI. SROIs filed on legacy claims will not be accepted via IAIABC EDI Release 3.0 standards. (3-25-16)

**ii.** Employers that are not insured, individual injured workers, and injured workers' legal counsel shall

submit all FROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form 1A-1. Form 1A-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-25-16)

iii. Employers that are not insured, individual injured workers, and injured workers' legal counsel, shall submit all SROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form SROI-1. Form SROI-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-25-16)

**03. Retaining Claims Files.** All insurance carriers and their claims administrators shall maintain their respective claim files in accordance with IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers," Section 051. IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers," Section 051. Upon request of the Commission, insurance carriers, claims administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. (3-25-16)

a. All insurance carriers, claims administrators, or employers shall retain complete copies of claims files for the life of the claim or a minimum of five (5) years from the date of closure, whichever is shorter. (3-25-16)

b. For time-loss claims, closure will be the date upon which the insurance carrier, claims administrator, or employer files the final summary of payments, either as an appropriate EDI transaction, or as a hardcopy document for legacy claims. The Commission recommends that an insurance carrier, claims administrator, or employer retain a closed claim file for a minimum of five (5) years. (3-25-16)

**04. Filing Not an Admission.** Filing a claim is not an admission of liability and is not conclusive evidence of any fact stated therein. If a claim is submitted electronically, no signatures are required. (7-1-97)

**05. Filing Considered Authorization.** Filing of a claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the claimant is seeking compensation. (7-1-97)

**06. Timely Response Requirement.** When the Commission requests additional information in order to process the Claim, the claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. (7-1-97)

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**  
**17.02.08 – MISCELLANEOUS PROVISIONS**  
**DOCKET NO. 17-0208-1701**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 17-508, 72-1103, and 72-1104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 98-99](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

DATED this 22nd day of November 2017.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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**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 Sections 72-508, and 72-806, 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:

The Commission believes it important to clarify the regulations that define how benefits must be calculated and paid, and the time frame within which sureties must take certain actions. Without these changes, sureties may not know the Industrial Commission's expectations, and workers will not be protected against untimely payment.

This change would require that a worker receives notice of the acceptance, commencement, denial, reduction or cessation of medical or monetary compensation benefits to which the worker might presently or ultimately be entitled.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**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 June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 45-46](#).

**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 rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

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 20th day of September 2017.

[LSO Rules Analysis Memo](#)



**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-1701**

**061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.**

**01. Notice of Change of Status.** As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition, including, but not limited to, whenever there is an acceptance, commencement, denial, reduction, or cessation of medical or monetary compensation benefits to which the worker might presently or ultimately be entitled. Such notice is required when benefits are reduced to recoup any overpayment of benefits in accordance with the provisions of Section 72-316, Idaho Code. (4-7-11)( )

**02. By Whom Given.** Any notice to a worker required by Idaho Code, Section 72-806 shall be given by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. (4-7-11)

**03. Form of Notice.** Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given in a format substantially similar to IC Form 8, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-11-15)

**04. Medical Reports.** As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. (4-7-11)

**05. Copies of Notice.** The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. The party giving notice may supply the copy to the Industrial Commission in accordance with the Commission's rule on electronic submission of documents. (3-25-16)

## **IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**

### **17.02.10 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS**

**DOCKET NO. 17-0210-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 17-508, 72-1103, and 72-1104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 100-103](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

DATED this 22nd day of November 2017.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
---

**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 Sections 72-508, 72-408, and 72-806, 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:

The Commission believes it important to clarify the regulations that define how benefits must be calculated and paid, and the time frame within which sureties must take certain actions. Without these changes, sureties may not know the Industrial Commission's expectations, and workers will not be protected against untimely payment.

This change would require sureties or third-party administrators to make an initial decision to accept or deny a claim for an injury or occupational disease within 30 days after the surety and/or third-party claims administrator receives knowledge of the same, in accordance with Section 72-806, Idaho Code; further, the change allows Temporary Partial Disability (TPD) payments to be calculated using the employee's pay period and establishes when TPD payments are due.

This language would 'mirror' the language in IDAPA 17.02.11 for Self-insureds.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**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 June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 48-49](#).

**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 rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063. 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 20th day of September 2017.

[LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0210-1701**

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Adjuster.** An individual who adjusts workers' compensation claims. (3-25-16)

**02. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. (3-25-16)

**03. Indemnity Benefits.** All payments made to or on behalf of workers' compensation claimants, including temporary or permanent total or partial disability benefits, ~~permanent partial impairment benefits~~, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (4-7-11)( )

**04. Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** (4-7-11)

**a.** All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (4-7-11)

**b.** The insurance carrier shall authorize and require a member of its in-state staff or a licensed, resident claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: (3-25-16)

i. Investigate and adjust all claims for compensation; (4-7-11)

ii. Pay all compensation benefits due; (4-7-11)

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; (4-7-11)

iv. Enter into compensation agreements and lump sum settlements with Claimants; and (4-7-11)

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

**c.** As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) claims

administrator for each policy of workers' compensation insurance. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

**a.** First Report of Injury and Claim for Benefits; (4-7-11)

**b.** Copies of bills for medical care; (4-7-11)

**c.** Copy of lost-time computations, if applicable; (4-7-11)

**d.** Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

**e.** Employer's Supplemental Report; and (4-7-11)

**f.** Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (3-25-16)

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days after the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. ( )

**b.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. (4-7-11)

**c.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**i.** The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the insurance carrier for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. ( )

**ii.** Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. ( )

**iii.** If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the insurance carrier has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the insurance carrier an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the insurance carrier to comply with the requirements of Subsection 051.09.c. of this rule. ( )

**d.** Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. ( )

**e.** Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. ( )

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## **IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**

### **17.02.11 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS**

**DOCKET NO. 17-0211-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 17-508, 72-1103 and 72-1104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2017 Idaho Administrative Bulletin, [Vol. 17-11, pages 104-107](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Patti Vaughn, Benefits Administration Manager, and (208) 334-6063.

DATED this 22nd day of November 2017.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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**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 Sections 72-508, 72-408, and 72-806, 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:

The Commission believes it important to clarify the regulations that define how benefits must be calculated and paid, and the time frame within which sureties must take certain actions. Without these changes, sureties may not know the Industrial Commission's expectations, and workers will not be protected against untimely payment.

This change would require self-insured employers or third-party administrators to make an initial decision to accept or deny a claim for an injury or occupational disease within 30 days after the self-insured employer and/or third-party claims administrator receives knowledge of the same, in accordance with Section 72-806, Idaho Code; further, the change allows Temporary Partial Disability (TPD) payments to be calculated using the employee's pay period and establishes when TPD payments are due.

This language would 'mirror' the language in IDAPA 17.02.10 for Insurance Carriers.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**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 June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 50-51](#).

**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 rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063. 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 20th day of September, 2017.

**[LSO Rules Analysis Memo](#)**



THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0211-1701

**010. DEFINITIONS.**

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

**01. Adjuster.** An individual who adjusts workers' compensation claims. (3-25-16)

**02. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. (3-25-16)

**03. Compensation.** All benefits payable under the provisions of the Idaho Workers Compensation Law. (3-29-12)

**04. Indemnity Benefits.** All payments made to or on behalf of workers' compensation claimants, including temporary or permanent total or partial disability benefits, ~~permanent partial impairment benefits~~, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (4-7-11)(      )

**05. Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

**06. Payroll.** The gross amount paid by an employer for salaries, wages or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate and require an Idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a. First Report of Injury and Claim for Benefits; (4-7-11)
- b. Copies of bills for medical care; (4-7-11)
- c. Copy of lost-time computations, if applicable; (4-7-11)
- d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports,

clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

e. Employer's Supplemental Report; and (4-7-11)

f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (3-25-16)

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

a. Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days of the date the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. ( )

~~a~~**b.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

~~b~~**c.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

i. The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the self-insured employer for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. ( )

ii. Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. ( )

iii. If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the self-insured employer has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the employer an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the self-insured employer to comply with the requirements of Subsection 051.09.c. of this rule. ( )

d. Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. ( )

e. Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. ( )

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## **IDAPA 21 – DIVISION OF VETERANS SERVICES**

### **21.01.01 – RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

**DOCKET NO. 21-0101-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rulemaking is necessary to be in compliance with the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services. CMS recently updated regulations for long-term care facilities as set forth in Code of Federal Regulations, Title 42, Chapter IV, Part 483. The Idaho Division of Veterans Services is currently abiding by 42 CFR 483.15(a)(2)(iii). However, to be in full compliance with this Code of Federal Regulations, Rule Section 203 of this Chapter needs removed.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 72-73](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has an estimated fiscal impact to the dedicated and federal funds in the amount of \$20,000 annually for all three State Veteran Homes. No impact on the state general fund is expected.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Tracy Schaner, Deputy Administrator, (208) 780-1320.

DATED this 7th day of August, 2017.

Tracy Schaner, Deputy Administrator  
Division of Veterans Services  
351 Collins Road  
Boise, ID 83702  
Phone: (208) 780-1320  
Fax: (208) 780-1301

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2017.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202 and 65-204, 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 July 19, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is necessary to be in compliance with the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services. CMS recently updated regulations for long-term care facilities as set forth in Code of Federal Regulations, Title 42, Chapter IV, Part 483. The Idaho Division of Veterans Services is currently abiding by 42 CFR 483.15(a)(2)(iii). However, to be in full compliance with this Code of Federal Regulations, Rule Section 203 of this Chapter is being removed.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with 42 CFR 483.15(a)(2)(iii).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has an estimated fiscal impact to the dedicated and federal funds in the amount of \$20,000 annually for all three State Veteran Homes. No impact on the state general fund is expected.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is necessary to meet federal regulations.

**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 temporary and proposed rule, contact Tracy Schaner, Deputy Administrator, (208) 780-1320.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2017



# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.02 – PERSI RULES FOR ELIGIBILITY**

### **DOCKET NO. 59-0102-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective on Sine Die, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 59-1306, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Section 59-1302(15), Idaho Code, was amended in the 2017 legislative session. The definition of “Employer” as applied to all new employers must be in compliance with the Internal Revenue Service regulations governing governmental retirement plans.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 71-74](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 6th day of July, 2017.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408

**THE FOLLOWING NOTICE PUBLISHED WITH THE 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 59-1306, 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 June 21, 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:

Section 59-1302(15), Idaho Code, was amended in the 2017 legislative session. The definition of “Employer” as applied to all new employers must be in compliance with the Internal Revenue Service regulations governing governmental retirement plans.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible as it would be inconsistent with the Retirement Board’s obligation under Section 59-1306, Idaho Code, to conform to the federal tax code to maintain qualified plan tax status. The 2017 legislative change requires following Internal Revenue Service regulations. The requirement to follow Internal Revenue Service regulations contradicts the need for negotiated rulemaking.

**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 rule, contact Cheryl George at (208) 287-9231.

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 June 28, 2017.

DATED this 27th day of April, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0102-1701**

**005. DEFINITIONS (RULE 5).**

The following definitions are supplemental to those provided by Section 59-1302, Idaho Code.

(1-1-94)



**01. Board.** “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

**02. Compensation.** “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. (1-1-94)

**03. Date of Retirement.** “Date of retirement” means the effective date on which a retirement allowance becomes payable. (1-1-94)

**04. Employee.** “Employee” means a person as defined in Section 59-1302(14), Idaho Code. (1-1-94)

**05. Employer.** “Employer” means the state of Idaho or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. A political subdivision and government entity also means an entity that meets each of the requirements of Paragraphs 005.05.a. through c. of this subsection, taking into account all of the facts and circumstances. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. ( )

**a. Sovereign powers.** Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one (1) of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power. ( )

**b. Governmental purpose.** The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity’s enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit. ( )

**c. Governmental control.** A State or local governmental unit exercises control over the entity. For this purpose, control is defined in Subparagraph 005.05.c.i. of this rule and a State or local governmental unit exercises such control only if the control is vested in persons described in Subparagraph 005.05.c.ii. of this rule. ( )

**i. Definition of control.** “Control” means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations. ( )

**ii. Control vested in a State or local governmental unit or an electorate.** Control is vested in persons described as a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities or an electorate established under applicable State or local law of general application, provided the electorate is not a private faction.. ( )

**iii. Definition of “private faction”.** A private faction is any electorate if the outcome of the exercise of control described in 005.05.c.i. of this rule is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all

of the facts and circumstances, including, without limitation, the entity's governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity's actions. For purposes of this definition, an electorate is a private faction if any three (3) private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control. Provided however, an electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than ten (10) persons. For example, if an electorate consists of twenty (20) private persons with equal, five-percent (5%) shares of the total votes, that electorate is not a private faction because a minimum of eleven (11) members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of twenty (20) private persons with unequal voting shares in which some combination of ten (10) or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this subparagraph. The following rules apply for purposes of determining numbers of voters and voting control in Subparagraph 005.05.c.iii. of this rule, related parties (as defined in 26 CFR § 1.150-1(b)) are treated as a single person; and in computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled. ( )

**056. Employment.** "Employment" as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member's date of hire to the member's succeeding date of separation from that employer. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. (1-1-94)

**067. Firefighters' Retirement Fund.** "Firefighters' Retirement Fund" or "FRF" is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (1-1-94)

**078. General Member.** "General member" is a PERSI member not classified as a police officer, firefighter, or paid firefighter. (1-1-94)

**089. Paid Firefighter.** "Paid firefighter" includes a former FRF members and paid firefighters as defined by Section 59-1391(f), Idaho Code, hired October 1, 1980, and thereafter. (4-7-11)

**109. Police Officer.** "Police officer" means an employee who is serving in a position designated by Section 59-1303(3), Idaho Code, or in a position so designated by the Retirement Board as provided by Section 59-1303(4), Idaho Code. (1-1-94)

**101. Primary Employer.** The primary employer is the employer from whom the employee receives the highest aggregate salary per month. (1-1-94)

**142. Public Employee Retirement System of Idaho.** "Public Employee Retirement System of Idaho" or "PERSI" is the retirement system created by Chapter 13, Title 59, Idaho Code. (1-1-94)

**123. Retirement Board.** "Retirement Board" means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, and of the Firefighters' Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman's Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

**134. Same Position.** "Same position" as set forth in Section 59-1303(7), Idaho Code, means the same job classification or position title including continued employment in any revised job classification or new position title evolving from that same position as the result of personnel reclassification procedures provided the continued employment remains within the same state agency or within the same department of a political subdivision. (1-1-94)

**145. Surviving Spouse.** "Surviving spouse" is a person as defined in Section 15-2-802, Idaho Code. (1-1-94)

**156. Teacher.** "Teacher" is defined as a school employee who is required to be certified. (1-1-94)

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.03 – PERSI CONTRIBUTION RULES**

**DOCKET NO. 59-0103-1702**

### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 59-1314(1), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule applies to the PERSI Employee General member Contribution Rate. The actuarial valuation for the period ending June 30, 2016 reflected that the amortization period is above the maximum 25 year amortization period contained in Section 59-1322, Idaho Code. The PERSI Board has acted to adopt the rate increase as it is required to do to bring the amortization period to 25 years or less as required by Section 59-1322, Idaho Code. The rate increase becomes effective July 1, 2018.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 3, 2017 Idaho Administrative Bulletin, [Vol. 17-5, pages 94-97](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Employer contribution rates will increase by 0.62% of salaries, beginning July 1, 2018. This will affect the general fund to the extent the contributions required of the employer (State of Idaho and political subdivisions and government entities electing to participate in the system) are made from general fund dollars.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cheryl George, (208) 287-9231.

DATED this 5th day of July, 2017.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3408

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is February 1, 2017.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 59-1314(1).

**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 May 17, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule applies to the PERSI Employee General Member and Class II Member Contribution Rates. The actuarial valuation for the period ending June 30, 2016 reflected that the amortization period is above the maximum 25 year amortization period contained in Idaho Code section 59-1322. The PERSI Board has acted to adopt the rate increase as it is required to do to bring the amortization period to 25 years or less as required by Idaho Code section 59-1322. The rate increase becomes effective July 1, 2018.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rate increase is required to bring the amortization period to 25 years or less as required by section 59-1322, Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Employer contribution rates will increase by 0.62% of salaries, beginning July 1, 2018. This will affect the general fund to the extent the contributions required of the employer (State of Idaho and political subdivisions and government entities electing to participate in the system) are made from general fund dollars.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the PERSI Board's need to bring the amortization rate to 25 years or less and with the Board's exclusive fiduciary responsibility for plan operations.

**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 temporary and proposed rule, contact Cheryl George, (208) 287-9231.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 24, 2017.

DATED this 18th day of April, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0103-1702**

**026. PERSI EMPLOYER GENERAL MEMBER CONTRIBUTION RATE (RULE 26).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, shall be nine point seventy-seven percent (9.77%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point thirty-nine percent (10.39%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point thirty-two percent (11.32%) of payroll until June 30, 2018. Beginning July 1, 2018, the rate shall be eleven point ninety-four percent (11.94%) until next determined by the Board.

Statutory Reference: Sections 59-1302(16), 59-1391, 59-1394, and 59-1397, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) (10-21-14)( )

**027. FIREFIGHTER RETIREMENT FUND EMPLOYER RATE (RULE 27).**

The Firefighter Retirement Fund employer rate shall be: (10-1-94)

**01. Option I and II Firefighters.** For option I and II firefighters hired before October 1, 1980, as follows:

Option I And II Firefighters	
PERSI Employer Contribution Rate:	<del>Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty six percent (11.66%) of payroll until next determined by the Board</del> <u>The employer contribution rate as provided in Rule 28.</u>
Additional Employer Rate:	One percent (1%)
Social Security Rate:	Seven point sixty-five percent (7.65%)
Excess Merger Costs Rate:	Seventeen point twenty-four percent (17.24%) through December 31, 2014. Beginning January 1, 2015, five percent (5%) until next determined by the Board.
TOTAL Contribution Rate:	The total contribution rate is the sum of the PERSI employer contribution rate, the additional employer rate, the social security rate and the excess merger costs rate.

(10-21-14)( )

**02. Class D Firefighters.** For class D firefighters (firefighters employed on or after October 1, 1980, by a city or fire district that employs paid firefighters who are participating in the Firefighters' Retirement Fund), as follows:

Class D Firefighters	
PERSI Employer Contribution Rate:	<del>Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll until next determined by the Board</del> <u>The employer contribution rate as provided in Rule 28.</u>
Excess Merger Costs Rate:	Seventeen point twenty-four percent (17.24%) through December 31, 2014. Beginning January 1, 2015, five percent (5%) until next determined by the Board.
TOTAL Contribution Rate:	The total contribution rate is the sum of the PERSI employer contribution rate and the excess merger costs rate.

Statutory References: Sections 59-1302(16), 59-1391, 59-1394, 59-1397, 72-1403, and 72-1434, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ~~(10-21-14)~~( )

**03. Class E Members.** For class E members (general members who meet the definition of paid firefighter under Section 59-1391(f), Idaho Code, but are not firefighters as defined in Section 59-1302(16), Idaho Code) the employer general member contribution rate as provided in Rule 26, plus the excess merger costs specified in Subsection 027.01. (3-20-04)

**028. PERSI EMPLOYER CLASS II CONTRIBUTION RATE (RULE 28).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, for an employee classified as a police officer member excluding those listed in Rule 29 of this chapter when applicable, and firefighters excluding those listed in Rule 27 of this chapter, shall be ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2013. Beginning July 1, 2013, the rate shall be eleven point sixty-six percent (11.66%) of payroll June 30, 2018. Beginning July 1, 2018, the rate shall be twelve point twenty-eight percent (12.28%) until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) ~~(10-21-14)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PERSI EMPLOYEE GENERAL MEMBER CONTRIBUTION RATE (RULE 100).**

The PERSI employee contribution rate as provided in Section 59-1333, Idaho Code, for all members not classified as police members or firefighters, shall be five point eighty-six percent (5.86%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be six point twenty-three percent (6.23%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be six point seventy-nine percent (6.79%) through June 30, 2018. Beginning

July 1, 2018, the rate shall be seven point sixteen percent (7.16%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ~~(10-21-14)~~( )

**101. PERSI EMPLOYEE CLASS II CONTRIBUTION RATE (RULE 101).**

The employee contribution rate as provided in Section 59-1334, Idaho Code, for an employee classified as a police officer member is seven point twenty-one percent (7.21%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be seven point sixty-five percent (7.65%) of salary through June 30, 2013. Beginning July 1, 2013, the rate shall be eight point thirty-two percent (8.32%) of salary through June 30, 2018. Beginning July 1, 2018, the rate shall be eight point seventy-seven percent (8.77%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) ~~(10-21-14)~~( )