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**IDAPA 09
TITLE 05
Chapter 02**

**09.05.02 - RULES GOVERNING PRACTICE AND PROCEDURE
BEFORE THE WAGE AND HOUR SECTION**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 45-616, Idaho Code, and Title 67, Chapter 52, Idaho Code, to adopt rules concerning practice and procedure before the department. (2-26-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 09, Title 05, Chapter 02, Rules Governing Practice and Procedure Before the Wage and Hour Section, Department of Labor and Industrial Services. The rules contained in this chapter govern all wage collection proceedings before the Idaho Department of Labor and Industrial Services unless otherwise indicated in the rules of the Wage and Hour Section. (2-26-93)

002. WRITTEN INTERPRETATIONS.

This agency has written statements which pertain to the interpretation of the rules of this chapter. To the extent not privileged, and unless otherwise exempt from disclosure under Idaho law, these documents are available for public inspection and copying at cost in the main office of this agency. (2-26-93)

003. ADMINISTRATIVE APPEALS.

This chapter governs appeals of wage and hour proceedings unless otherwise indicated in the rules of the Wage and Hour Section. (2-26-93)

004. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of these rules the definitions contained in IDAPA 09.05.01.010 shall apply. (2-26-93)

011. GENERAL PROVISIONS.

01. Department's Address. The office of the Department of Labor and Industrial Services is at Boise, Idaho. The department's address unless otherwise indicated in a particular manner will be the Idaho Department of Labor and Industrial Services, 227 North 6th Street, P.O. Box 83720 Boise Idaho 83720-4801. (1-21-74)

02. Communications and Documents Addressed to Department. All communications and documents concerning any matter covered by these rules should be addressed to the above mentioned office of the Idaho Department of Labor and Industrial Services and not to individual staff members of the Idaho Department of Labor and Industrial Services. (1-21-74)

03. Transcripts of Hearings. Transcripts of hearings will be taken in accordance with the provisions of Section 67-5209(f), Idaho Code. In all contested hearings, a transcript will be furnished at cost to all parties involved upon request. (1-21-74)

04. Court Reporter. Any party desiring the taking of stenographic notes by a qualified court reporter must make a request for such court reporter at least five (5) days before the date of the hearing and must submit to the department the name of a qualified court reporter who is available on the date set for the hearing. The party requesting the court reporter shall bear the expense of the court reporter's fees and costs and shall furnish the department with a copy of said transcript of the hearing. (1-21-74)

012. APPEARANCES, PRACTICE AND RIGHTS OF PARTIES.

01. Parties Entitled to Appear. At any hearing, all parties to the proceeding shall be entitled to enter an appearance, to introduce evidence, to examine and cross-examine witnesses, to make arguments and to generally participate in the conduct of the proceedings. (1-21-74)

02. Parties Directly or Substantially Affected. Other parties determined by the director or presiding

officer to be directly or substantially affected by the proceedings may enter an appearance, introduce evidence, and subject to the discretion of the department or presiding officer, may otherwise participate in the conduct of the meeting of the proceeding. (1-21-74)

03. **Entering Appearance.** Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses, stating their positions and who they represent or what their interest in the proceeding is. (1-21-74)

04. **Representation.** A party may appear in person, may be represented by an agent, or by an attorney admitted to practice in the state of Idaho. (1-21-74)

05. **Attorneys From Other States.** Attorneys from other states may appear when associated with an attorney admitted to practice in the state of Idaho. (1-21-74)

06. **Service of Documents.** Copies of all notices, pleadings, and other documents in any proceeding before the Department of Labor and Industrial Services will be served upon all the parties involved in the hearing or proceeding. (1-21-74)

07. **Service of Documents Upon Attorneys or Representatives.** Notices, pleadings and documents may be served upon the attorneys or representatives of the parties who have such attorneys or representatives. (1-21-74)

08. **Exclusion of Former Employees.** No former employee of the Department of Labor and Industrial Services or member of the attorney general's staff may at any time after serving his employment with the department or with the attorney general's office appear as a representative on behalf of other parties in a proceeding in which he previously took an active part as a representative of the department or attorney general's office, and no former employee of the department shall appear as an expert witness in relation to any matter in which he took an active part on behalf of the department. (1-21-74)

013. PLEADINGS AND PARTIES.

01. **Verification.** All pleadings before the department shall be verified. (1-21-74)

02. **Defective or Insufficient Documents.** Upon the filing of any pleading with the department it will be inspected by the department and if found to be defective or insufficient, the department, on the motion of any party, may after notice to all parties strike the document from the records or require its amendment as the case may indicate. (1-21-74)

03. **Amended Pleadings.** Pleadings may be amended only by or with leave of the department or the presiding officer. (1-21-74)

04. **Full Advisement of Nature and Material Allegations of Party.** All pleadings shall be so drawn as to advise the department and all parties to the proceedings, fully and completely, of the nature and material allegations of the party. (1-21-74)

05. **Petitions.** Petitions are pleadings by which an administrative proceeding is commenced and also all other pleadings praying for affirmative relief and requests to be permitted to intervene or requests for rehearing. (1-21-74)

06. **Response to Petition.** Whenever a petition is filed with the department, the respondent shall satisfy or answer the petition. (1-21-74)

07. **Filing Answer to Petition.** A party against whom a petition is directed who desires to contest the same or make any representation to the department connected therewith may file an answer thereto. (1-21-74)

08. **Deadline for Filing of Answer to Petition.** Answers shall be filed with the department within ten (10) days after service of the petition. Upon proper showing, time within which to file an answer may be extended by the director. (1-21-74)

09. Answer. An answer is a pleading in response to a petition. (1-21-74)

10. Failure of Party to Answer Within Prescribed Time. If a party fails to answer within the prescribed time, but appears at a hearing, he shall be deemed to have denied generally the allegations of the petition, and shall be precluded except with the consent of the opposing parties and the agency from setting up any affirmative defenses in the proceeding, and the department shall proceed with the matter solely upon the issues set forth in the petition. (1-21-74)

11. Plaintiff and Respondents. Persons filing petitions shall be referred to as plaintiffs. Persons against whom petitions are filed shall be referred to as respondents. (1-21-74)

12. Protest. Any person adversely affected by a ruling or order made as a result of a proceeding before the director of the Department of Labor and Industrial Services or his representative shall have the right to file a written protest with the department. The agency may proceed with the protest either summarily or by hearing, at its discretion, but shall give notice of the manner in which it will proceed to all parties involved in the particular proceeding. Any such protest shall be in writing and filed with the department within five (5) days from the date of hearing. (1-21-74)

014. INTERVENTION.

01. Participation of Persons Not Directly and Substantially Affected. Persons other than the original parties to the proceeding who are directly and substantially affected by the proceeding shall secure an order from the department or presiding officer granting leave for being allowed to participate. (1-21-74)

02. Scope of Granting of Leave to Intervene. The granting of leave to intervene or otherwise appear in a proceeding shall not be construed to be a finding or determination of the department that such party will or may be a party aggrieved by such ruling or decision of the department for purposes of court review or appeal. (1-21-74)

03. Petitions for Leave to Intervene. Petitions for leave to intervene must be in writing, must clearly identify the proceeding in which it is sought to intervene, must set forth name and address of petitioner and make clear and concise statement of the direct and substantial interest of the petitioner in such proceedings, and must state in the manner in which the petitioner will be affected by such proceedings. (1-21-74)

04. Requesting Affirmative Relief. If the petitioner for intervention desires affirmative relief, his petition must contain a clear and concise statement of relief sought and the basis thereof. (1-21-74)

015. FILING AND SERVICE.

01. Filing of Pleadings. An original and one legible copy of all pleadings shall be filed with the department after service upon the opposing party. Proof of service shall be made as outlined in this rule. (1-21-74)

02. Service by Certified Mail. All notices and other documents served by the department may be served by certified mail, return receipt requested, and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed to the person's last known address and stamped, is deposited in the United States mail. (1-21-74)

03. Proof of Service. There shall appear on the original of every pleading filed with the department, proof of service thereof by acknowledgement of service or on a certificate substantially as follows:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to _____) or (by mailing a copy thereof properly addressed with postage prepaid to _____)
Dated at _____, this _____ day

of _____, 19_____.

(1-21-74)

04. Deadline for Filing of Answer to Petitions. Answer to petitions shall be filed with the department and service thereof made upon the parties of record within ten (10) days after the service of the petition, unless for good cause, the department or the presiding officer has extended the time within which answer may be made.

(2-26-93)

05. Filing of Motions. All motions must be filed before the answer is due; otherwise such objections must be raised by answer.

(1-21-74)

06. Deadline for Filing of Motions. All motions must be filed within five (5) days after service of the pleadings to which they are directed, unless otherwise provided by the department.

(1-21-74)

07. Computation of Time. Computation of time under these rules shall be provided for by law and the Idaho Rules of Civil Procedure in district courts.

(1-21-74)

016. PREHEARING CONFERENCES.

01. Prehearing Conferences. The department may, upon written notice to all interested parties, hold a prehearing conference in any matter before it for any of the purposes set forth in the Idaho Rules of Civil Procedure.

(1-21-74)

02. Action Taken at Prehearing Conferences. The action taken at such prehearing conference and the agreements there made by the parties shall be made a part of the record of the proceedings and when approved, such actions will control the course of all subsequent proceedings in the matter, unless later modified.

(1-21-74)

017. HEARINGS.

01. Hearing Officer. Hearings will be held before the director of the Department of Labor and Industrial Services or his duly appointed presiding officer, as the case may be.

(1-21-74)

02. Notice of Hearing. The director of the Department of Labor and Industrial Services or his authorized representative will give notice of the place, date, and hour for the hearing to all parties concerned in the matter within a reasonable time before the time set for such hearing.

(1-21-74)

03. Plaintiff's Failure to Appear at Hearing. If the plaintiff fails to appear at the hearing, the department may, with or without prejudice, dismiss the petition or wage claim, or may for good and sufficient cause recess said hearing to a later date.

(1-21-74)

04. Respondent's Failure to Appear at Hearing. If the respondent or employer fails to appear at the hearing, the department may find in favor of the plaintiff and grant the plaintiff such relief for the petition or wage claim as is provided for by law, or may for good and sufficient cause recess the hearing to a later date.

(1-21-74)

05. Costs. All costs incurred by reason of any party's nonappearance may be assessed against such nonappearing party, and no proceeding or action shall be entertained on behalf of the nonappearing party by the department until such assessed costs are paid.

(1-21-74)

06. Exception to Requirement of Sworn Testimony. All testimony to be considered by the department, except in matters relating to rule making, shall be sworn testimony.

(1-21-74)

07. Requirement of Sworn Testimony. Except as provided for in Subsection 07.05.02.017.06, each person, before taking the witness stand, shall swear or affirm that the testimony he is about to give in the hearing before the agency shall be the truth, the whole truth, and nothing but the truth.

(1-21-74)

08. Affidavits. All written testimony is required to be in affidavit form, except as otherwise provided by these rules.

(1-21-74)

09. Order of Procedure. The order of procedure shall be determined by the director of the Department of Labor and Industrial Services or the presiding officer, as the case may be. (1-21-74)
10. Evidence. Evidence will ordinarily be received and presented in the following order: (1-21-74)
- a. Plaintiff. (1-21-74)
 - b. Agency staff. (1-21-74)
 - c. Respondents, Intervenors, or Protestants. (1-21-74)
 - d. Rebuttal by Plaintiff. (1-21-74)
 - e. Rebuttal by the parties listed in Subsections 017.10.b, 017.10.c, and 017.10.d. (1-21-74)
 - f. With the approval of the director of the Department of Labor and Industrial Services or presiding officer, the parties may stipulate as to any fact or facts in issue, either in writing or by oral statements shown in the record. (1-21-74)
11. Stipulations. Any stipulation shall be binding upon all parties so stipulating and may be regarded by the department as evidence at the hearing. (1-21-74)
12. Proof of Evidence. The department may, if it deems necessary, require proof by evidence of any facts so stipulated, notwithstanding the stipulation of the parties. Rules of evidence and the Idaho Rules of Civil Procedure shall not apply. (1-21-74)
13. Issuance of Subpoenas for Witnesses. Subpoenas requiring the attendance of a witness from any place in the state to any designated place of hearing for the purpose of taking testimony of such witness orally before the department or presiding officer may be issued, as provided by law, by the director of the Department of Labor and Industrial Services or presiding officer upon application in writing. (1-21-74)
14. Prepayment of Fees of Subpoenas. The department, as a condition of issuing such a subpoena, may require the party applying therefor to prepay fees of the witness. (1-21-74)
15. Issuance of Subpoenas for Documents. Subpoenas for the production of books, papers, accounts, records or other documents will be issued only upon written application specifying the particular documents desired to be subpoenaed and the use to be made thereof. (1-21-74)
16. Unreasonable or Oppressive Requests. The department may, upon motion promptly made, limit or quash a subpoena if the request is unreasonable or oppressive. (1-21-74)
17. Deposition of Witnesses. The director or his representative may, in any investigation or hearing before the department, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state; and to that end, may compel the attendance of witnesses and the production of documents, papers, and accounts as above set forth. (1-21-74)
18. The department is directed by law to deal with evidentiary matters as provided for in Section 67-5210, Idaho Code. Opportunity to contest such matters shall be afforded to all parties. (1-21-74)
19. Admissibility of Evidence. The director of the Department of Labor and Industrial Services or presiding officer shall rule on the admissibility of all evidence subject to the requirements of law. If objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to such rulings are unnecessary and need not be taken. (1-21-74)
20. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objections have been sustained and the names and addresses of the persons who would so testify.

(1-21-74)

018. DECISIONS AND ORDERS.

01. Proceeding Submitted for Decision. A proceeding shall stand submitted for decision by the department after the taking of evidence and after the time for submission of any additional evidence and/or filing of briefs and presentation of oral arguments unless otherwise specifically provided for in the hearing. (1-21-74)

02. Final Decision. When a proceeding stands submitted for final decision on the merits, the department shall decide the issue presented thereby and issue a final decision, findings of fact, and conclusions of law and orders. (1-21-74)

03. Request for Findings of Fact, Conclusions of Law and Orders. The department may, in its discretion, request proposed findings of fact, conclusions of law and orders. (1-21-74)

04. Services of Orders or Decisions. Parties and their representatives shall be served copies of any orders or decisions, either personally or by mail. (1-21-74)

019. REHEARINGS.

01. Application for Rehearing. Any party to a proceeding who is affected by an order of the department may apply for a rehearing within fifteen (15) days after service of the order. (1-21-74)

02. Conformance of Petitions for Rehearing. Petitions for rehearing shall conform to the requirements of these rules. (1-21-74)

03. Determinations Concerning Petitions for Rehearing. Petitions for rehearings may be determined either summarily or in accordance with the procedure for regular hearing, at the discretion of the department or presiding officer. (1-21-74)

020. -- 999. (RESERVED).