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**IDAPA 09  
TITLE 05  
Chapter 01**

**09.05.01 - RULES GOVERNING WAGE COLLECTION PROCEEDINGS  
DEPARTMENT OF LABOR**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 45-616, Idaho Code, and Title 67, Chapter 52, Idaho Code. (2-26-93)

**001. TITLE AND SCOPE.**

These rules shall be cited as IDAPA 09, Title 05, Chapter 01, Rules Governing Wage Collection Proceedings, Department of Labor. The rules contained in this chapter apply to all wage and hour proceedings. (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 administrative 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.**

01. Director. The director of the Department of Labor of the state of Idaho. (1-21-74)
02. Department. The Department of Labor of the state of Idaho. (1-21-74)
03. Employee. Any person suffered or permitted to work, whether paid on a time, task, piece, or commission basis. The terms professional, executive, administrative employees, and outside salesman shall have the same meaning as defined in the Fair Labor Standards Act, CFR 29, Part 541, as amended in the Federal Register. (1-21-74)
04. Employer. Any person or group of persons employing employees or acting in the interest of or as an agent of an employer, directly or indirectly, in relation to an employee. (1-21-74)
05. Labor Dispute. Any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right, process, or details of collective bargaining or the designation of bargaining representatives. (1-21-74)
06. Labor Organization. Any organization of any kind, or any employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (1-21-74)
07. Wages. Compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, or commission basis. (1-21-74)
08. Deductions for a Lawful Purpose. As used in Section 45-609(2), Idaho Code, shall mean deductions made for the benefit or convenience of the employee: i.e., insurance premiums; payments to a qualified pension plan; union dues; voluntary contributions; payment to a credit union; or deductions pursuant to a savings or bond purchase plan. (1-21-74)

**011. TRAINEES AND STUDENT-TRAINEES.**

01. To Suffer or Permit to Work. The words "to suffer or permit to work" as used in Section 44-1503, Idaho Code, to define "employee" do not make all persons employees, who without any express or implied compensation agreement may work for their own advantages on the premises of another. (1-21-74)

02. Criteria for Trainees/Student-Trainees. Whether trainees or students are employees of an employer under Section 44-1503, Idaho Code, will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all six (6) of the following criteria apply, the trainees or students are not employees within the meaning of Section 44-1503, Idaho Code. (1-21-74)

a. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school (such programs shall be submitted to the Department of Labor for prior approval and such training shall not include unskilled or semiskilled jobs; also, such on-the-job training shall not exceed fifty percent (50%) of classroom hours, and time spent in employment may only be cumulative for each calendar week). (1-21-74)

b. The training is for the benefit of the trainees or students. (1-21-74)

c. The trainees or students do not displace regular employees, but work under their close observation. (1-21-74)

d. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded. (1-21-74)

e. The trainees or students are not necessarily entitled to a job at the conclusion of the training period. (1-21-74)

f. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training. (6-28-78)

**012. GARNISHMENT.**

Amount subject to garnishment for pay periods other than one week means: The amount garnished pursuant to Section 11-207, Idaho Code. (8-20-80)

01. Twenty-Five Percent (25%) Limitation. The twenty-five percent (25%) limitation contained in Section 11-207, Idaho Code, shall apply to the aggregate disposable earnings for all workweeks compensated for. (8-20-80)

02. Computation. For the purposes of computing the amount by which an individual's disposable earnings exceed a prescribed multiple of the federal minimum hourly wage, as set out in Section 11-207(1)(b), Idaho Code, the multiple shall be computed as follows for pay periods other than one week: (8-20-80)

a. A calendar month is considered to consist of four and one third ( $4 \frac{1}{3}$ ) workweeks; (8-20-80)

b. For a two (2) week pay period, the multiple shall be two (2) x thirty (30) x the federal minimum hourly wage; (8-20-80)

c. For a semimonthly pay period, the multiple shall be two and one sixth ( $2 \frac{1}{6}$ ) x thirty (30) x the federal minimum hourly wage; (8-20-80)

d. For a monthly pay period, the multiple shall be four and one third ( $4 \frac{1}{3}$ ) x thirty (30) x the federal minimum hourly wage; (8-20-80)

e. For pay periods other than those specified above, the multiple shall be computed on the basis of a calendar month consisting of four and one third ( $4 \frac{1}{3}$ ) workweeks. (8-20-80)

**013. FILING PROCEDURES.**

01. Claim Form. An employee who is denied full payment of wages due and owing by an employer may file a wage claim with the department on a form provided for that purpose. Such forms will be available at all locations of department offices, and made available to the Department of Labor for distribution. The claim shall be accompanied by copies of all documents which the claimant wishes to have considered in conjunction with his claim. (1-21-74)

02. Service of Wage Claim Upon Employer. Upon receipt of a wage claim by the department, the employer's copy of the completed form and copies of the documents, if any, submitted by the claimant, together with a blank employer answer form and a covering letter of instruction, will be sent by regular mail to the employer's last known address. The employer shall have fifteen (15) calendar days from the date of the postmark to answer such claim, and such answer shall be accompanied by copies of all documents which the employer wishes to have considered in conjunction with its answer. (1-21-74)

03. Determination. Upon receipt of a completed employer answer form, the department may thereafter issue a determination based on the statements in the claim, answer, and any documents submitted by either party. Such determination shall be sent to the parties in the same manner as other determinations issued pursuant to these rules, and shall indicate that if either party is not satisfied with the determination they have the right to request a hearing on the claim. If no hearing is requested within ten (10) days of the date of the postmark of the determination, such determination shall become final. For determinations issued in this manner, the provisions in existing department rules relative to requests for rehearing on other determinations shall be inapplicable, no hearing having actually been held. The department may also, in lieu of such determination prior to hearing, forward a copy of the employer's answer form to the employee together with a letter of instruction. The wage claimant shall have fifteen (15) calendar days from the date of postmark to accept such answer as final or request an investigatory hearing. (1-21-74)

04. Claimant's Request for Hearing. In all cases where an employer's answer is not received within the time limit stated above, and no determination is issued prior to hearing in the manner set out above, the claimant will be notified by regular mail that he must notify the department in writing if he desires the department to schedule an investigatory hearing dealing with his wage claim. (1-21-74)

#### **014. INVESTIGATORY HEARING.**

01. Scheduling of Hearing. The director or his authorized representative may at their discretion schedule an investigatory hearing to aid in the determination of facts pertaining to a wage claim filed with the department. (1-21-74)

02. Notice of Hearing. The director or his authorized representative shall give ten (10) days advance written notice of such investigatory hearing to all employees and employers who are parties to the wage claim. (1-21-74)

03. Subpoenas. The director or his authorized representative may subpoena parties and records relating to the wage claim. (1-21-74)

04. Costs of Subpoenas. Any party to the controversy requesting issuance of a subpoena for witnesses or documents shall be responsible for all costs incurred thereto and shall submit the required fees to the department prior to the issuance of said subpoena. (1-21-74)

05. Compensation Rate. Any witness subpoenaed by a party to the controversy shall be compensated by that party at the rate of pay established by the judicial system for the state of Idaho. (1-21-74)

06. Rights of the Department. The department may, on its own initiative, issue subpoenas for witnesses or documents. (1-21-74)

07. Non-Compliance. Any party to the wage claim failing to comply with any compulsory process lawfully issued shall be subject to citation for contempt. (1-21-74)

08. Hearing Officer. The hearing officer shall be the director or his authorized representative. (1-21-74)

09. Representation by Counsel. Parties appearing at investigatory hearings may be represented by counsel, but such representation is not required. (1-21-74)

10. Hearing Rules. Rules of evidence and the Idaho Rules of Civil Procedure shall not apply in investigatory hearings. (1-21-74)

11. Decision. Where no agreement is reached during an investigatory hearing, all evidence submitted, testimony taken, and all other documents and evidence gathered by the department through other means, will be considered by the hearing officer who shall render a decision therefrom. (1-21-74)

12. Compromise Agreement. The hearing officer may at any time during the investigation meet separately with the parties to propose or attempt a resolution of the matter by compromise agreement, including time payment agreements. Any such compromise or time payment agreement shall be reduced to writing and signed by each party to the controversy at the conclusion of the investigation. (1-21-74)

13. Telephone Hearings and Production of Documents. At the sole discretion of the department, hearings in wage claim matters may be conducted by telephone. If a hearing is to be conducted by telephone, the hearing notice shall specify how the hearing is to be conducted. If either party to the proceeding has documents which it wishes to have considered at the hearing, it shall provide the original of such document to the department at least seven (7) days prior to the hearing, and the department will mail a copy of it to the adverse party. The hearing officer shall rule on the admission of such document at the time of the hearing. Subpoenas may be issued requiring individuals to be available to give testimony at a specified time and place, or for production of documents, setting a time and place for production of the documents prior to the hearing. (1-21-74)

**015. DECISION.**

01. Rendering of Decision. A decision which finds wages due and owing shall be mailed to the prevailing party together with an assignment of claim form by regular mail. The assignment form must be signed and returned to the department before any judicial proceedings are initiated. (1-21-74)

02. Service of Decision. The decision which found money due and owing will be sent to the losing party by certified mail, return receipt requested, and service thereof shall be deemed complete when said document, properly addressed to the person or persons' last known address and stamped, is deposited in the United States mail, and such party shall have ten (10) calendar days from the postmark of the certified letter to request a rehearing in writing which must state in particular the reasons why a rehearing should be granted, or remit the amount awarded minus statutory deductions within the said ten (10) days to the department, together with an itemized statement listing such statutory deductions. (1-21-74)

03. Service of Decision Against Claimant. A decision finding against the claimant will be sent to the claimant by verified mail, return receipt requested, and service thereof shall be deemed complete when said document, properly addressed to the person or parties' last known address and stamped, is deposited in the United States mail and such party shall have ten (10) calendar days to request a rehearing on the matter in writing to the department. Such request must state in particular why a rehearing should be granted, and the department shall notify the claimant of its decision on such request. A copy of the decision referred to above shall be sent to the prevailing party by regular mail. (1-21-74)

04. Payments on Wage Claims. All wages paid on a wage claim following investigative and determination procedures by the department shall be paid to the department and made payable to the department. (1-21-74)

05. Wage and Hour Fund. All monies so collected shall be placed in a special fund established by the department, to facilitate receipt and disbursement of such monies. (1-21-74)

06. Receipts. Upon receipt of wages paid to the department on behalf of a claimant, the department will forward two (2) copies of a receipt stating the amount of wages remitted minus statutory deductions to the claimant. Both copies of said receipt shall be signed by the claimant and returned to the department, and the department after

receiving the signed receipts shall remit the stated amount to the claimant by check written on the account established for that purpose as specified above. (1-21-74)

07. Trust Account. All monies recovered on behalf of a wage claimant shall be held in trust for such claimant for a period of two (2) years. Wages collected by the director and remaining unclaimed for a period of more than two (2) years from the date collected shall on June 1st of each year be forfeited and retained by the department and used for the administration of this act. (1-21-74)

**016. ASSESSMENT OF PENALTIES.**

When it has been determined that an employer has failed to pay wages due and owing to an employee and that said employer has failed to pay such wages immediately upon discharge or layoff, both the treble damage penalty provided in Section 45-617(4), Idaho Code, for failure to pay wages due and owing and the penalty for failure to pay wages immediately upon termination, contained in Section 45-607, Idaho Code, may be imposed by the department. The penalty imposed against an employer under Section 45-607, Idaho Code, shall not be trebled as unpaid wages pursuant to Section 45-617(4), Idaho Code, but shall be added to the wages due and owing and treble damages awarded pursuant to Section 45-617(4), Idaho Code. The department is authorized to enforce these penalty and damage provisions in a court of competent jurisdiction. (1-21-74)

**017. LEGAL PROCEDURE.**

01. Demand Letter. In the event payment by the losing party is not made within ten (10) days of the date of the certified letter referred to in Subsection 015.02, the department will cause a demand letter to be served on such party through the office of the attorney general of the state of Idaho. (1-21-74)

02. Payments Submitted After Date of Demand Letter. Payments submitted after the date of the demand letter may, at the department's discretion, include penalties provided for in Sections 45-607 and 45-617(4), Idaho Code, in order to stay any judicial proceeding. (1-21-74)

03. Treble Damages. The department will include allegations and a prayer for fixed damages equal to three (3) times the amount of such unpaid wages in any court action that the department brings for the collection of such unpaid wages. (1-21-74)

**018. -- 999. (RESERVED).**