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**IDAPA 17
TITLE 05
CHAPTER 01**

17.05.01 - RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

000. LEGAL AUTHORITY.

In accordance with Section 72-1004(1)(a), Idaho Code, the Industrial Commission shall promulgate rules implementing the provisions of Sections 72-1001 through 72-1025. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.05.01, "Rules Under the Crime Victims Compensation Act". (7-1-93)

002. WRITTEN INTERPRETATIONS.

There are no written statements which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. (7-1-93)

003. ADMINISTRATIVE APPEALS.

Chapter 1, Section 11, Subsection 5, provides for appeals to the Commission from decisions of the Crime Victims Supervisor. (7-1-93)

004. (RESERVED).

005. INCLUSIVE GENDER.

For all sections and subsections of this rule, the terms and references used in the masculine include the feminine and vice versa, as appropriate. (7-1-93)

006. SEVERABILITY.

The sections and subsections of this chapter are severable. If any rule, or part thereof, or the application of such rule, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (7-1-93)

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Commission. Where appropriate, references to the Commission in these rules includes the Commission and its employees. (11-17-86)

02. Gender. Reference within these rules to the masculine shall also include the feminine. (11-17-86)

03. Wages and Employer. The terms "wages" and "employer" shall mean the wages and employer at the time of the criminally injurious conduct on which the Application for Compensation is based. (11-17-86)

04. Wages. In addition to cash remuneration, the term "wages" shall include non-cash remuneration such as lodging and meals provided by the employer and gratuities such as tips, which are not paid by the employer, but which are received by the victim in the normal course of his employment. (11-17-86)

05. Vacation. Vacation pay shall not be considered a collateral source. (11-17-86)

06. Compensation. For the purposes of Section 72-1023(1), Idaho Code, the term "compensation paid under this chapter" shall include attorney's fees awarded pursuant to Section 72-1006, Idaho Code. (11-17-86)

07. Welfare Benefits. Pursuant to Section 72-1003(8), Idaho Code, funds payable to or on behalf of an indigent person under Chapter 35, Title 31, Idaho Code, shall be considered welfare only in those cases involving criminally injurious conduct that occurred on or after July 1, 1996. (7-1-97)

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Commission. Applications for Compensation by victims shall be made using the form approved by the Commission which is attached hereto as Appendix A. Applications for Compensation by dependents of deceased victims shall be made using the form approved by the Commission which is attached hereto as Appendix B. An Application for Compensation shall be deemed filed when it is received at the Commission's office in Boise. (11-17-86)

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. (11-17-86)

03. Employment Verification. To verify information concerning a victim's employment, the Commission may require the victim's employer or employers to complete an Employment Verification form or the Commission may obtain such information from an employer by telephone. (11-17-86)

04. Order. The Commission shall appoint one (1) of its employees to be the Crime Victims Supervisor. After sufficient information has been gathered pursuant to IDAPA 17.04.02, the Crime Victims Supervisor may enter an award granting or partially granting benefits or an order denying benefits. The Crime Victims Supervisor may also enter orders necessary to further the purposes of the Act. Such awards and orders shall be deemed to be awards and orders of the Commission. (11-17-86)

05. Finality of Order. An award or order issued by the Crime Victims Supervisor shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the Crime Victims Supervisor reconsider the order or award, or the Crime Victims Supervisor may reconsider the matter on his own motion, and the award or order of the Crime Victims Supervisor shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any award or order is issued by the Crime Victims Supervisor, a claimant may file a Request for Hearing. Requests for Hearing and requests that the Crime Victims Supervisor reconsider an order or award shall be deemed filed when received at the Commission's office in Boise. (11-17-86)

06. Payment for Services. If, pursuant to any order of the Commission or the Crime Victims Supervisor, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. (11-17-86)

07. Benefits. For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, "wages received at the time of the criminally injurious conduct" shall be the victim's gross weekly wage which shall be determined as follows: (11-17-86)

a. If the wages were fixed by the year, the weekly wage shall be the yearly wage divided by fifty-two (52). (11-17-86)

b. If the wages were fixed by the month, the weekly wage shall be the monthly wage multiplied by twelve (12) and divided by fifty-two (52). (11-17-86)

c. If the wages were fixed by the week, the amount so fixed shall be the weekly wage. (11-17-86)

d. If the wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time-and-a-half for work in excess of forty (40) hours per week. (11-17-86)

e. If the wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging

the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with parts 1 through 3 of this rule; provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked. (11-17-86)

f. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. (11-17-86)

08. Treating Physician. A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination. (11-17-86)

09. Overpayment. If the Commission erroneously makes payments to which a claimant is not entitled, the Commission may reduce future payments to that claimant by an amount equal to the overpayment. (11-17-86)

10. Limit on Compensation. Compensation payable under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, may not exceed twenty thousand dollars (\$20,000). Compensation payable to a victim or his dependents under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, when added to compensation payable, Sections 72-1019(2) and 72-1019(4), Idaho Code, may not exceed twenty-five thousand dollars (\$25,000). (11-17-86)

11. Benefits If Victim Employable But Not Employed. If a victim was employable but not employed at the time of the criminally injurious conduct, he shall receive benefits pursuant to Section 72-1019(7)(a), Idaho Code, as follows: (11-17-86)

a. If, at the time of the injurious conduct the victim was receiving unemployment benefits, and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law. (11-17-86)

b. If, at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain, and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. (11-17-86)

c. If, prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct, and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred and fifty dollars (\$150) per week. (11-17-86)

d. In other circumstances the Commission may award an amount it deems appropriate. (11-17-86)

12. Effective Date. Benefits shall be paid only to claimants whose Applications for Compensation are based upon criminally injurious conduct which occurred on or after July 1, 1986. (11-17-86)

012. PROCEDURES.

01. Request for Hearing. If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. (11-17-86)

02. Recommendations. If the Commission does not approve the recommendations of a member or Referee, the commission may (1) review the record and enter its own findings and decision, (2) conduct another informal hearing and issue a decision based upon the record of both hearings, or (3) assign the matter to another

member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 201.01 above based upon the record of both hearings. (11-17-86)

03. Notice of Hearing. The Commission shall give the claimant at least ten (10) days' written notice of the time and place of hearing and of the issues to be heard, either by personal services or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. (11-17-86)

04. Transcript of Hearing. All hearings shall be tape-recorded. In addition, the Commission may arrange for a stenographic or machine transcription of any hearing. (11-17-86)

05. Record. At hearing, the Application for Compensation filed by the claimant and any other documents in the Commission's file which contain information relevant to the issues in the case, shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. (11-17-86)

06. Evidence. At hearing, after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing, shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. (11-17-86)

07. Finality of Decision. After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated; provided that, within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion, and the decision shall be final upon issuance of the order on reconsideration. (11-17-86)

08. Commission Review. At the request of the claimant or on its own motion, the Commission may review and amend any final order or award, within three (3) years of the date of issue of such order or award; (11-17-86)

- a.** If there is a change in circumstances which affects the claimant's entitlement to benefits; (11-17-86)
- b.** To correct a manifest injustice; (11-17-86)
- c.** If the order or award is based upon facts which were misrepresented or which were not fully disclosed; or (11-17-86)
- d.** To comply with the annual review requirements of Section 72-1021, Idaho Code. (11-17-86)

09. Subpoenas. Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. (11-17-86)

013. -- 999. (RESERVED).

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