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**IDAPA 09
TITLE 01
CHAPTER 06**

09.01.06 - RULES OF THE APPEALS BUREAU

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 72-1333(2), Idaho Code. (3-19-99)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.06, "Rules of the Appeals Bureau." (3-19-99)

02. Scope. These rules govern the appellate procedures for programs administered by the Department of Labor unless otherwise specified by law. (3-19-99)

002. WRITTEN INTERPRETATIONS.

Explanations for rule changes are available for public inspection at the Idaho Department of Labor, 317 Main Street, Boise, Idaho, 83735. Brochures explaining various programs administered by the Department are also available at the above address. (3-19-99)

003. ADMINISTRATIVE APPEALS.

Appeals pursuant to the Employment Security Law shall be governed by the provisions of Section 72-1368, Idaho Code, and these rules. Appeals pursuant to the Claims for Wages Act shall be governed by the provisions of Section 45-617, Idaho Code, and these rules. (4-5-00)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (7-1-10)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principle place of business of the Department of Labor is in Boise, Idaho. (7-1-10)

01. Street Address and Hours. The office is located at 317 W. Main St., Boise, Idaho 83735 and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. (7-1-10)

02. Mailing Address. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 83735. (7-1-10)

03. Telephone. The telephone number of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. (7-1-10)

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (7-1-10)

007. GENERAL PROVISIONS.

Department hearing officers shall be called appeals examiners. Ref. Section 72-1368(6) and Section 45-617(7), Idaho Code. (4-5-00)

008. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to the provisions of Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases," of the rules of administrative procedure promulgated by the Attorney General as IDAPA 04.11.01.100 through 799 do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing the Job Service Complaint System, the Job Training Partnership Act (JTPA) program, or other programs administered by the Department. (4-5-00)

009. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

01. Proceedings to Determine the Rights to Unemployment Insurance Benefits and Tax Contribution. All proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act, pursuant Sections 72-1361 and 72-1368, Idaho Code. Appeals of complaint determinations and other decisions arising within the complaint system or other programs administered by the Department must be determined by the requirements of applicable federal law. The Department has promulgated its own rules of procedure for its appeals proceedings contained in IDAPA 09.01.06.001 et seq. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. (4-5-00)

02. Claims for Wages Are Exempt. All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. (4-5-00)

010. -- 011. (RESERVED)

012. FILING OF AN APPEAL.

01. Filing of an Appeal Pursuant to the Employment Security Law. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Appeals Bureau of the Department, 317 W. Main Street, Boise, Idaho 83735-0720. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Job Service office or the Appeals Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Job Service office or the Appeals Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735-0720. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal shall be deemed to be timely filed. Ref. Section 72-1368(6), Idaho Code. (5-3-03)

02. Filing of an Appeal Pursuant to the Claims for Wages Act. An appeal shall be in writing, signed by the appellant or the appellant's representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or revised determination of the Department. The appeal may be filed by personal delivery, by mail, or by fax to the Wage and Hour Section of the Department at the address indicated on the Wage Claim Determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the Wage and Hour Section by 5 p.m. on a business day shall be deemed filed on that date. A faxed appeal that is received by the Wage and Hour Section on a weekend, holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. Ref. Section 45-617(6), Idaho Code. (4-5-00)

03. Date of Mailing. The date indicated on Department determinations, revised determinations, redeterminations and decisions as the "Date of Mailing" or "Date Mailed" shall be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. (7-1-10)

013. -- 016. (RESERVED)

017. EFFECT OF POSTAL SERVICE DELAY OR ERROR.

01. Department Determinations. (7-1-10)

a. If a party establishes by a preponderance of the evidence that notice of a Department determination was not delivered to the party's last known address within fourteen (14) days of mailing, as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, and by the Claims for Wages Act in Sections 45-617(4) and (5), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (4-5-00)

b. If a party establishes by a preponderance of the evidence that notice of a Department determination was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(3) and (5), Idaho Code, because of error on the part of the Department, the period for filing a timely appeal shall be deemed to have been fourteen (14) days from the date of actual notice. (7-1-10)

02. Decisions of the Appeals Examiner. (7-1-10)

a. If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not delivered to the party's last known address within ten (10) days of mailing, as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, and by the Claims for Wages Act in Sections 45-617(5) and (7), Idaho Code, because of delay or error by the U.S. Postal Service, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision was not delivered to the party's last known address within fourteen (14) days of mailing because of delay or error by the U.S. Postal Service, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (4-5-00)

b. If a party establishes by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department as provided by the Employment Security Law in Sections 72-1368(5) and (6), Idaho Code, because of error on the part of the Department, the period for filing a timely application for rehearing shall be deemed to have been ten (10) days from the date of actual notice. If it is established by a preponderance of the evidence that notice of a decision by an appeals examiner was not transmitted electronically to an electronic-mail address approved by the Department because of error on the part of the Department, the period for filing a timely claim for review with the Industrial Commission under the Employment Security Law shall be deemed to have been fourteen (14) days from the date of actual notice. (7-1-10)

018. -- 019. (RESERVED)

020. COMMUNICATION WITH APPEALS STAFF.

No party involved in an appeal shall communicate, either directly or indirectly, with appeals examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved in an appeal have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Idaho Department of Labor, shall attempt to influence the disposition of an appeal through such communications. No Appeals Examiner shall knowingly cause a communication prohibited by this section to be made. (3-19-99)

01. Prohibition of Ex Parte Contacts. The prohibition on ex parte contacts contained in IDAPA 09.01.06.020 applies from the time an appeal is filed pursuant to IDAPA 09.01.06.012 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. (4-5-00)

02. Issues of Fact. As used in IDAPA 09.01.06.020, the term "issue of fact or law relevant to an appeal" includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties shall not direct questions of appeals procedure or case status inquiries to the appeals examiner assigned to their case but rather to other appeals examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the appeals examiner in the case), or to clerical staff of the Appeals Bureau. (3-19-99)

03. Reporting Prohibited Contacts. An appeals examiner or other employee of the Appeals Bureau who receives a communication prohibited by IDAPA 09.01.06.020 shall place in the record of the case all such written communications or a memorandum stating the substance of all such oral communications. The Appeals Bureau shall send a full copy of the communication to the other interested parties to the appeal and allow an appropriate time for the parties to respond to the communication. (3-19-99)

021. -- 025. (RESERVED)

026. CONDUCT OF HEARING.

Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing shall be mailed to each interested party not less than seven (7) days prior to the hearing date. (4-2-08)

01. Telephone Hearings. Hearings will be held by telephone unless, in the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-19-99)

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (3-19-99)

03. Rehearing. An application for rehearing shall be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-19-99)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision may then be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which have been provided to the parties with the notice of hearing. (4-11-06)

05. Exhibits and Recordings. The exhibits and recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (4-2-08)

06. Subpoenas. After determining that a subpoena of a witness or records is necessary and reasonable, the appeals examiner shall issue the subpoena, which may be served by mail or in person. (3-19-99)

07. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-19-99)

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses shall also be entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (4-5-00)

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the appeals examiner may hear and decide the issue. (3-19-99)

10. Type of Hearing. The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

11. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

12. Order of Witnesses. The appeals examiner will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

13. Evidence. The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-11-06)

14. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-2-08)

15. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

16. Closing Arguments. Closing arguments including response in an appeals hearing will be limited to a total of five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

027. -- 065. (RESERVED)

066. CLAIMS FOR REVIEW.

01. Claim for Review Under the Employment Security Law. A claim for review of the appeals examiner's decision, as provided in Section 72- 1368, Idaho Code, shall be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by them. Ref. Sec. 72-1368(7) Idaho Code. (4-5-00)

02. Transcripts. Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings shall be prepared if ordered by the Commission. Copies of the transcript or the recording of the proceeding, together with the exhibits received in the case, shall be transmitted by the Department to the Commission and provided to all interested parties without charge. (4-2-08)

067. JUDICIAL REVIEW OF WAGE CLAIM DECISIONS.

The Department is not an aggrieved party for purposes of judicial review and shall not be made a party in any petition for judicial review. The proper parties in a petition for judicial review are the claimant and the employer. A claimant or employer aggrieved by a final wage claim decision of an appeals examiner may obtain judicial review of the decision pursuant to the provisions of Section 45-619, Idaho Code and the Judicial Review Provisions of the Administrative Procedure Act, Sections 67-5270 through 67-5279, Idaho Code. (4-5-00)

068. -- 089. (RESERVED)

090. DISMISSAL IF FILING IS LATE.

Where it appears that any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, may not have been filed within the period of time prescribed for filing, the appellant, claimant, petitioner,

or applicant (as the case may be) shall be notified and be given an opportunity to show that such appeal, claim for review, petition, or other request was timely. In computing any period of time prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays shall be counted during the period unless the last day of the period is a Saturday, Sunday, or legal holiday in which event the period shall not expire until the next business day following the Saturday, Sunday, or legal holiday. If it is found that such appeal, claim for review, petition or other request or application was not filed within the applicable time limit, it shall be dismissed on such grounds. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter shall be decided on the merits. Copies of a decision under this section shall either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. (7-1-10)

091. – 999. (RESERVED)

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