IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.01 – Rules of Administrative Procedure of the Department of Labor

Who does this rule apply to?
This rule applies to all interested parties to unemployment insurance appeals, wage and hour appeals parties who make payments to the Idaho Department of Labor, any person petitioning the Idaho Department of Labor for a declaratory ruling, and appeals bureau staff.

What is the purpose of this rule?
These rules govern all procedures for, and clarification of, the Department's assigned responsibility regarding the provision for payments to the Department and petitions for declaratory rulings. And further, to carry out its duties regarding the appellate process for administrative appeals.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Worker's Compensation and Related Laws — Industrial Commission -
- Title 72, Chapter 13, et seq., Idaho Code – Employment Security Law

Liens, Mortgages and Pledges -
- Title 45 Chapter 6, et seq., Idaho Code - Claims for Wages Act

Who do I contact for more information on this rule?

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317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 x 2102
Fax: (208) 334-3536
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IDAPA 09 – DEPARTMENT OF LABOR

09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

000. LEGAL AUTHORITY.
These rules are promulgated under Sections 45-616 and 72-1333(2), Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor." (3-20-20)

02. Scope. These rules govern all procedures for rulemaking, petitions for declaratory rulings, and determinations and appeals pursuant to the Employment Security Law, Title 72, Chapter 13, Idaho Code, and the Claims for Wages Act, Title 45, Chapter 6, Idaho Code, and for other programs administered by the Department unless otherwise specified by law. (3-20-20)

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.
Administrative appeals from determinations under the Employment Security Law and the Claims for Wages Act may be taken as provided in these rules and applicable provisions of the Employment Security Law and the Claims for Wages Act. (3-20-20)

004. PAYMENTS TO THE DEPARTMENT.
Any payment tendered to the Department will be for collection only and will not constitute payment of any amount due until the payment clears the appropriate financial institution. Should the Department incur any additional expense in the payment collection, the expense will be paid by the person who tenders said payment to the Department. (3-20-20)

005. – 009. (RESERVED)

010. DEFINITIONS.

01. Appeals Examiner. A Department hearing officer designated to hear administrative appeals pursuant to the Employment Security Law and the Claims for Wages Act. (3-20-20)

02. Claims for Wages Act. The Claims for Wages Act codified at Title 45, Chapter 6, Idaho Code. (3-20-20)

03. Department. The Idaho Department of Labor. (3-20-20)

04. Determination. Unless the context clearly suggests otherwise, reference to a determination in these rules includes a determination, redetermination, or a revised determination. (3-20-20)

05. Employment Security Law. The Employment Security Law codified at Title 72, Chapter 13, Idaho Code. (3-20-20)

011. – 014. (RESERVED)

015. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.
Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases," of the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.100 through 04.11.01.799, 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 programs administered by the Department. (3-20-20)

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

01. Unemployment Insurance Benefits and Tax Contribution Proceedings. Sections 72-1361 and 72-1368, Idaho Code, provide that 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. 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. Procedures for administrative proceedings and appeals are provided for in the Employment Security Law and these rules. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of the 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. (3-20-20)

02. Claims for Wages Proceedings. 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. Procedures for administrative proceedings and appeals are provided for in the Claims for Wages Act and these rules. (3-20-20)

017. (RESERVED)

018. DECLARATORY RULING PROCEDURES.
Form and Contents of Petitions for Declaratory Rulings on Applicability of Statutes or Rules. Any person petitioning for a declaratory ruling on the applicability of a statute or Department rule must comply with this rule. (3-20-20)

01. Form of Petition. The petition must: identify the petitioner and state the petitioner's interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, or rule, and the factual allegations upon which the petitioner relies to support the petition. (3-20-20)

02. Legal Assertions. Citations of cases and/or statutory provisions may accompany the legal assertions in a petition for a declaratory ruling. (3-20-20)

03. Filing Petition. A petition for a declaratory ruling on applicability of statutes or rules must be filed with the Director of the Department at 317 Main Street, Boise, Idaho 83735. (3-20-20)

04. Disposition of Petitions for Declaratory Rulings. When a petition is received in the form and content required by these rules, the Director or the Director's designee will review the petition contents and request additional information from the petitioner, if necessary, and thereafter rule on the petition and notify the petitioner and any other interested parties in writing of the ruling. (3-20-20)

019. – 024. (RESERVED)

025. WAGE CLAIMS PROCEDURES.
Administrative procedures for wage claims filed with the Department pursuant to the Claims for Wages Act are governed by these rules and Section 45-617, Idaho Code. (3-20-20)

026. DISMISSAL OF WAGE CLAIMS FOR LACK OF PROSECUTION.
Wage claimants have a responsibility to seek prompt adjudication of their claims. The Department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the Department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the Department subject to limitations of Sections 45-614 and 45-617(1), Idaho Code. (3-20-20)

027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.

01. Determinations and Time for Filing Appeals. Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic

transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code. Every such determination must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. A determination is final unless, within fourteen (14) days after notice, as provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. (3-20-20)

02. Appeals Heard By Appeals Examiners. Appeals from wage claim and Employment Security Law determinations will be heard by an appeals examiner in accordance with the Claims for Wages Act, the Employment Security Law, and these rules. (3-20-20)

03. Computation of Time. In computing any time period 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 will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. (3-20-20)

028. – 034. (RESERVED)

035. APPEALS TO APPEALS EXAMINER – FORM AND MANNER OF FILING OF NOTICES OF APPEAL.

01. Form of Notices of Appeal. Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. (3-20-20)

02. Filing of Notices of Appeal. To appeal a determination or other decision of the Department, interested parties must follow the instructions on these rules and the document being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal received after 5 p.m., mountain time zone, on a business day will be deemed filed on the next business day. A faxed or electronically transmitted appeal received on a weekend or holiday will be deemed filed the next business day. If mailed, the appeal will be deemed 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 will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. (3-20-20)

036. DATE OF MAILING OF DETERMINATIONS.

The date indicated on Department determinations, revised determinations, redeterminations and decisions as the "Date of Mailing" or "Date Mailed" will 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. (3-20-20)

037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.

01. Department Determinations. If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service or error on the part of the Department, notice of a Department determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of mailing, as provided by the Employment Security Law and by the Claims for Wages Act, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. (3-20-20)

02. Decisions of the Appeals Examiner. If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, notice of a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the

Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: (3-20-20)

a. For an application for rehearing that must be filed within ten (10) days of notice of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and (3-20-20)

b. For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (3-20-20)

038. DISMISSAL IF FILING IS LATE.
Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will 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. (3-20-20)

039. – 044. (RESERVED)

045. CONDUCT OF APPEALS HEARING.
Upon request for appeal, a hearing before an appeals examiner will be set. Written notice of the time and place of the hearing will be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date. (3-20-20)

01. Telephone Hearings. Hearings will be held by telephone unless, at 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 will 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. (3-20-20)

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 dismiss an appeal for good cause, such as abandonment of the appeal. (3-20-20)

03. Rehearing. An application for rehearing will be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-20-20)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision may 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 are provided to the parties with the notice of hearing. (3-20-20)

05. Exhibits and Recordings. Hearing exhibits and recordings may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (3-20-20)

06. Subpoenas. After determining a subpoena of a witness or records is necessary and reasonable, the appeals examiner will issue the subpoena, which may be served by mail or in person. (3-20-20)

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 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. (3-20-20)

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed

witnesses, not parties, are entitled to receive a fee of seven dollars and fifty cents ($7.50) for each day or portion thereof for attendance. In no case will a witness be paid more than seven dollars and fifty cents ($7.50) for any one (1) day. Subpoenaed witnesses are 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 will be paid from the Employment Security Administration fund. Under no circumstances will interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (3-20-20)

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue that must be decided under the Act, the appeals examiner may hear and decide the issue. (3-20-20)

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. (3-20-20)

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. (3-20-20)

12. Order of Witnesses. The appeals examiner, in the exercise of reasonable discretion, will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-20-20)

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. (3-20-20)

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, they 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. (3-20-20)

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 at the time of the hearing, or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-20-20)

16. Closing Arguments. Closing arguments will be limited to 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. (3-20-20)

046. COMMUNICATION WITH APPEALS STAFF.

No party involved in an appeal may 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 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, may attempt to influence the disposition of an appeal through such communications. No appeals examiner may knowingly cause a communication prohibited by this section to be made. (3-20-20)

01. Prohibition of Ex Parte Contacts. The prohibition on ex parte contacts contained in this rule applies from the time an appeal is filed pursuant to IDAPA 09.01.01.025 or IDAPA 09.01.01.027 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. (3-20-20)

02. Issues of Fact. As used in this rule, 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 may 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. (3-20-20)

03. Reporting Prohibited Contacts. An appeals examiner or other Appeals Bureau employee who receives a communication prohibited by this rule must 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 must send a full copy of the communication to other interested parties to the appeal and allow an appropriate time for the parties to respond. (3-20-20)

047. – 059. (RESERVED)

060. INDUSTRIAL COMMISSION REVIEW OF APPEALS EXAMINER DECISIONS.

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, must 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 the Commission. Ref. Sec. 72-1368(7) Idaho Code. (3-20-20)

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 must be prepared if ordered by the Commission. Copies of transcripts or recording of the proceedings, together with exhibits received in the case, must be transmitted by the Department to the Commission and provided to all interested parties without charge. (3-20-20)

061. – 064. (RESERVED)

065. JUDICIAL REVIEW OF WAGE CLAIM DECISIONS.
A claimant or employer aggrieved by a final decision of the appeals examiner in a wage claim proceeding may seek judicial review of the decision pursuant to Title 67, Chapter 52, Idaho Code, and Section 45-619, Idaho Code, by timely filing a petition for judicial review in a court of competent jurisdiction. The Department is not an aggrieved party for purposes of any judicial review proceeding and will 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. (3-20-20)

066. – 999. (RESERVED)

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