

## **IDAPA Rules added to I.C. § 72-1368**

### **IDAPA 09.01.01.027**

#### **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, and must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. The date of mailing or service indicated on the determination shall be deemed the date of service of the determination. 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. (3-23-22)

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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. (3-23-22)

### **IDAPA 09.01.01.035**

#### **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- 23-22)

02. Filing of Notices of Appeal. To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on the determination or other decision 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 will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, 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. (3-23-22)

**IDAPA 09.01.01.037**

**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 because of error on the part of the Department, a 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 the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. (3-23-22)

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, 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: (3-23-22)

a. For an application for rehearing that must be filed within ten (10) days of notice of service of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and (3-23-22)

b. For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of service 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. (3-23-22)

**IDAPA 09.01.01.038**

**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. (3-23-22)