

## TITLE 72

### WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

#### CHAPTER 13

#### EMPLOYMENT SECURITY LAW

72-1337.RECORDS AND REPORTS. (1) Each employer that is a "covered employer," as defined in section [72-1315](#), Idaho Code, shall complete and submit to the director an Idaho business registration form within six (6) months of becoming a covered employer.

(2) Each employer, including those who are not covered employers, shall keep accurate records, containing such information as the director may prescribe for a period of five (5) years, including, without limitation:

(a) Full name and home address of worker,

(b) Social Security account number,

(c) The place of work within the State,

(d) Date on which worker was hired, rehired, or returned to work after temporary or partial layoff,

(e) Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for the discharge,

(f) Wages paid for employment in each pay period and total wages for all pay periods ending each quarter for the year, showing separately: money wages, the cash value of other remuneration, and the amount of all bonuses or commissions, and

(g) Amounts paid to workers as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them.

(3) Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly contribution reports in the form or medium designated by the department.

(4) (a) Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information.

(b) Each employer shall report all wages paid for services in covered employment each calendar quarter. In the event a covered employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid.

(c) The total wages and taxable wages shown on the contribution report which are to be used in computing contributions due shall be reduced to the next lower dollar amount.

(d) An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar

year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report for the quarter prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter.

(5) (a) Wages paid shall be assigned to the calendar quarter in which the wages were:

i. Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or

ii. Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or

iii. Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered.

(b) Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a regular advance against wages, which creates another customary payday.

(c) Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different.

(d) Amounts awarded to the claimant as penalties or damages against the employer, other than for lost wages, do not constitute wages.

(6) When wages paid cover services performed both in covered employment and excluded employment, all employee wages will be deemed to have been earned in covered employment and shall be reported unless the employer's records show the hours and wages for covered employment and excluded employment separately.

(7)(a) When remuneration paid includes payment, in addition to wages for services performed in covered employment, the employer's records must account for wages and other remuneration separately. When this distribution is not shown on the records, the employee's entire remuneration will be deemed to be wages and shall be reported.

(b) When the amount paid to an employee includes remuneration for other than personal services such as equipment usage and travel costs, the department shall determine the fair market value of the remuneration for the employee's personal services. In making such determination, the department shall consider the wages specified in the contract of hire, the prevailing wages for similar work under comparable conditions, and other pertinent factors. The wages so determined by the department shall be reported by the employer.

(8) Each covered employer, and any other employer requested by the department, shall submit status reports on such form or any online system as may be prescribed and furnished by the director, such information as may be necessary to make an initial or subsequent determination of status under this chapter, which shall be signed by the employer, or by a duly authorized representative of employer for such purpose.

(9) (a) To determine the taxable status of an employer, information regarding the business activities of any person engaged in business in Idaho shall be submitted to the department upon request, including without limitation articles of incorporation, articles of organization, minutes of

boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status.

(b) An employer shall be notified in writing of any determination as to its liability for contributions, or its status as a covered employer if a formal determination was made after the employer questioned its status. The determination shall become final if no appeal is taken to an appeals examiner within fourteen (14) days of the determination pursuant to the procedures set forth in section 72-1368, Idaho Code.

(c) The provisions of this section do not apply to any employer for whom the services performed do not, by virtue of the provisions of section 72-1316, Idaho Code, constitute covered employment, except that the department may require any such employer to submit reports as provided in this section.

(10) All persons, whether covered or not, shall make available to the department all requested business records, including, without limitation, journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the department.

(11) Records shall be open to inspection and be subject to being copied by the director at any reasonable time. The director, a member of the commission or an appeals examiner may require from any employer any sworn or unsworn reports which are deemed necessary in the exercise of their duties.

(12) The department may commence an administrative proceeding for purposes of establishing a tax liability, or otherwise to enforce the provisions of this chapter, by issuing a determination at any time within five (5) years from the due date of a quarterly report or the date a quarterly report is filed, whichever is later, subject to tolling pursuant to section 72-1349, Idaho Code.

(13) Covered employers shall furnish the department with all pertinent data regarding their status when new or additional information is available.

(14) All employers, including those who are not covered employers, shall respond to department requests for the reasons for the separation whenever the claimant:

(a) left his employment voluntarily;

(b) was discharged from his employment due to workplace misconduct;

(c) is unemployed due to a strike, lockout, or other labor dispute;

(d) is not working due to a suspension; or

(e) was separated for any other reason except lack of available work.

The employer's response and any supporting documentation must be given by the employer, or by a duly authorized representative of employer having personal knowledge of the facts concerning the separation. The employer should provide to the department, by electronic media or mail, copies of any documentation supporting its position.

**IDAPA 09.01.35**

**011.GENERAL PROVISIONS.**

01.Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code.

10.Contribution Reports. Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code.

**051.ROUNDING WAGES REPORTED ON CONTRIBUTION REPORT TO NEXT LOWER DOLLAR AMOUNT.**

The total wages and taxable wages shown on the contribution report which are to be used in computing contributions due shall be reduced to the next lower dollar amount. Ref. Section 72-1349, Idaho Code.

**081.EMPLOYER RECORDS.**

Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall maintain records for five (5) years to show the information hereinafter indicated. Ref. Section 72- 1337, Idaho Code.

01.Required Information. Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment:

- a.Full name and home address of worker;
- b.Social Security account number;
- c.The place of work within this State;
- d.Date on which employee was hired, rehired, or returned to work after temporary or partial layoff;
- e.Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge;

f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: money wages; the cash value of other remuneration; and the amount of all bonuses or commissions.

02. Travel or Employee Business Expenses. Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them.

03. Records to Be Made Available. The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the Department.

#### **096. EMPLOYER STATUS REPORT.**

01. Status Report. Each employer shall report on such form or any online system as may be prescribed and furnished, such information as may be necessary to make an initial or subsequent determination of status under the Idaho Code. Said reports shall be signed by the employer, or on behalf of the employer by a duly authorized representative for such purpose. Ref. Section 72-1337, Idaho Code.

02. Exceptions. The provisions of this Rule do not apply to any employer for whom the services performed do not, by virtue of the provisions of Section 72-1316, Idaho Code, constitute covered employment, except that the director reserves the right, in his discretion, to require any such employer at any time to make the reports mentioned in Section 096 of this rule. Ref. Section 72-1337, Idaho Code.

#### **107. REMUNERATION PAID CONSTITUTES BOTH TAXABLE WAGES AND EXCLUDED AMOUNTS.**

When remuneration paid includes payment for other than wages for services performed in covered employment, the employer's records must account for wages and other remuneration separately. When this distribution is not shown on the records, the employee's entire remuneration will be deemed to be wages. Ref. Section 72-1337, Idaho Code.

#### **111. SERVICES PERFORMED PART IN COVERED EMPLOYMENT AND PART IN EXCLUDED EMPLOYMENT.**

When wages paid cover services performed both in covered employment and excluded employment, the employer's records must show the hours and wages for covered employment and also hours and wages for excluded employment. When this distribution is not shown on the records, the employee's entire wage will be deemed to have been earned in covered employment. Ref. Section 72-1337, Idaho Code.

#### **132. STATUS.**

01. Status Information Required. To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Section 72-1337, Idaho Code.

02. Notification to Liable Employers. An employer shall be notified in writing of any determination as to its liability for contributions, or its status as a covered employer if a formal determination was made after the employer questioned its status. The determination shall be in the form required by IDAPA 09.01.01.27.01, and shall become final if no timely appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor.

03. Employer Quarterly Report Forms. Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Section 72-1349, Idaho Code.

04. Update Requirements. Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Section 72-1337, Idaho Code.

## **166. FIELD OPERATIONS CONTROL.**

01. Limitation for Commencing Administrative Procedures. The director may commence an administrative proceeding for purposes of establishing a tax liability, or otherwise to enforce the provisions of Section 72-1349, Idaho Code, by issuing a determination at any time within five (5) years from the due date of a quarterly report or the date a quarterly report is filed, whichever is later, subject to tolling pursuant to Section 72-1349, Idaho Code.

a. Notification of Audits. Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code.

b. Frequency of Audits. The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria:

i. On the basis of random selection and other selection criteria in accordance with federal requirements;

ii. As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or

iii. As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Section 72-1337, Idaho Code.

**256.DETERMINATION OF FAIR VALUE OF REMUNERATION FOR PERSONAL SERVICES.**

When the amount paid to an employee by an employer includes remuneration for other than personal services such as equipment use, travel costs, etc., the Director shall determine the fair value of the remuneration for the employee’s personal services. In making such determination, the Director shall consider the wages specified in the contract of hire, the prevailing wages for similar work under comparable conditions, and other pertinent factors. The wages so determined by the Director shall be reported by the employer. Ref. Section 72-1328, Idaho Code.

**262.DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.**

01.Wage Assignment to Proper Calendar Quarter. Wages paid shall be assigned to the calendar quarter in which the wages were:

- a.Actually paid to the employee in accordance with the employer’s usual and customary payday as established by law or past practice; or
- b.Due the employee in accordance with the employer’s usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or
- c.Not paid on the usual or customary payday as established by law or past practice but set apart on the employer’s books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Section 72-1367, Idaho Code.

02.Draws and Advances on Wages. Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a “draw” by which such action, another “regular” payday appears to have been created.

03.Judgments of Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Section 72-1328, Idaho Code.

04.Awarded Damages Against Employers. Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Section 72-1328, Idaho Code.

**263.DETERMINATION OF REPORTABLE QUARTERS.**

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year.

Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sections 72- 1315 and 72-1337, Idaho Code.

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## **IDAPA 09.01.30**

### **425.NEW CLAIMS/ADDITIONAL CLAIMS**

#### 06. Separation Notice.

a. Notice to Employer of Separation. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, must respond to the Department with the reasons for the separation whenever the claimant:

- i. Left his employment voluntarily;
- ii. Was discharged from his employment due to misconduct;
- iii. Is unemployed due to a strike, lockout, or other labor dispute;
- iv. Is not working due to a suspension; or
- v. Was separated for any other reason except lack of available work.

b. Employer Response. The employer's response must be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position.