

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1351A.MANDATORY TRANSFERS OF EXPERIENCE RATING ACCOUNTS AND FEDERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES. Notwithstanding any other provision of this chapter, the following shall apply regarding transfers of experience and assignment of rates:

(1) (a) If a covered employer transfers its trade or business, or a portion thereof, to another employer, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the experience rating account attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated using the methods provided in section 72-1351(5)(b) and either (c)(i) or (c)(ii), Idaho Code. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply the required payroll information, the transfer may be based on estimates of the allocable payrolls.

(i) For partial transfers of an experience rating record, the pro rata share of the experience rate to be transferred shall be computed based upon the four (4) most recently completed quarters reported by the predecessor employer prior to the date of acquisition or change in entity.

(ii) When a total transfer of experience rating record has been completed and the predecessor employer continues to have employment in connection with the liquidation of his business, the predecessor employer shall continue to pay contributions at the assigned rate for the period of liquidation but not beyond the balance of the rate year.

(iii) In determining whether the ownership or management or control of a successor employer is substantially the same as the ownership or management or control of the predecessor employer, factors to be considered include, without limitation, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies.

(iv) A successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer.

(b) If, following a transfer of experience under paragraph (a) of this subsection, the director determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(2) Whenever a person who is not a covered employer under this chapter at the time such person acquires the trade or business of a covered employer, the experience rating account of the

acquired business shall not be transferred to such person if the director finds that such person acquired the business primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the standard rate for new employers under section 72-1350, Idaho Code. In determining whether the trade or business was acquired primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include, but are not limited to, the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(3) (a) It shall be a violation of this section if a person:

(i) Makes any false statement to the department when the maker knows the statement to be false or acts with deliberate ignorance of or reckless disregard for the truth of the matter or willfully fails to disclose a material fact to the department in connection with the transfer of a trade or business;

(ii) Prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true;

(iii) Knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate; or

(iv) Knowingly advises another person in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate.

(b) If a person commits any of the acts described in paragraph (a) of this subsection, the person shall be subject to the following penalties:

(i) If the person is a covered employer, a civil money penalty of ten percent (10%) of such person's taxable wages for the four (4) completed consecutive quarters preceding the violation shall be imposed for such year and said penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(ii) If the person is not a covered employer, such person shall be subject to a civil money penalty of not more than five thousand dollars (\$5,000) for each violation. Any such penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(4) Every person who knowingly makes any false statement to the department or knowingly fails to disclose a material fact to the department in connection with the transfer of a trade or business, or knowingly prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true, or knowingly violates or attempts to violate ~~subsection (1) or (2) of~~ this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, or knowingly advises another person to act in a way that results in a violation or an attempted violation ~~of subsection (1) or (2) of~~ this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, shall be guilty of a felony punishable

as provided in section 18-112, Idaho Code.

(5) For purposes of this section:

(a) ~~An employer's~~ "Experience rating account" ~~shall consist of~~ means the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

(b) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(c) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a)(1)).

(d) A "transfer of a trade or business" occurs whenever a person in any manner acquires or succeeds to all or a portion of a trade or business. Factors the department may consider when determining whether a transfer of a trade or business has occurred include, but are not limited to, the following:

- (i) Whether the successor continued the business enterprise of the acquired business;
- (ii) Whether the successor purchased, leased or assumed machinery and manufacturing equipment, office equipment, business premises, the business or corporate name, inventories, a covenant not to compete or a list of customers;
- (iii) Continuity of business relationships with third parties such as vendors, suppliers and subcontractors;
- (iv) A transfer of good will;
- (v) A transfer of accounts receivable;
- (vi) Possession and use of the predecessor's sales correspondence; and
- (vii) Whether the employees remained the same.

(e) "Trade or business" includes, but is not limited to, the employer's workforce. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of a trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(f) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(6) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

(8) Administrative determinations issued pursuant to this section shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of section 72-1361, Idaho Code.

IDAPA 09.01.35

221.TRANSFER OF EXPERIENCE RATING.

Upon request, employers shall be informed of the requirements for transferring an experience rating record. Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sections 72-1351 and 72-1351A, Idaho Code.

01.Mandatory Transfer of Rate. An experience rating record transfer shall be mandatory if there is a transfer of trade or business and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. The determination shall be in the form required by IDAPA 09.01.01.027.01, and become final if no appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor.

02.Partial Experience Rate Transfers. The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity.

03.Continued Predecessor Employment for Liquidation. When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Section 72-1351, Idaho Code.

04.Management or Ownership or Control Substantially the Same. For the purposes of Subsection 72-1351A, Idaho Code, in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies.

05.Wage Paid by Predecessor. The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sections 72-1349(1), 72-1351(5), and 72- 1350(8), Idaho Code.