

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1352A.CORPORATE OFFICERS -- EXEMPTION FROM COVERAGE -- NOTIFICATION -- REINSTATEMENT. (1) A corporation that is a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer who is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, is a shareholder of the corporation, exercises substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor.

(2) A corporation that is not a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer, without regard to the corporate officer's performance of manual labor, if the corporate officer is a shareholder of the corporation, voluntarily agrees to be exempted from coverage and exercises substantial control in the daily management of the corporation.

(3) For purposes of this section, a "public company" is a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities and exchange act of 1934 or section 8 of the investment company act of 1940, or any successor statute.

(4) To make the election, a corporation with qualifying corporate officers pursuant to subsection (1) or (2) of this section must register with the department each qualifying corporate officer it elects to exempt from coverage. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department by March 31 of the first year of the election shall be effective January 1 of that year and shall remain in effect for at least two (2) consecutive calendar years.

(5) A newly formed corporation with qualifying corporate officers pursuant to subsections (1) and (2) of this section shall register with the department each corporate officer it elects to exempt within forty-five (45) calendar days after submitting its Idaho business registration form to the department as required by section 72-1337, Idaho Code. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department shall become effective as of the date the Idaho business registration form was submitted to the department and shall remain in effect for at least two (2) consecutive calendar years.

(6) A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted pursuant to this section. Reinstatement requires written notice from the corporation to the department in a format prescribed by the department. Reinstatement requests received by the department on or before ~~December 15~~ March 31 shall become effective January 1 of the current calendar year, provided at least the first day of the calendar year following the end of the exemption's two (2) consecutive calendar years have passed since the effective date of the

exemption. Coverage shall not be reinstated retroactively.

(7) A corporate officer's exemption is in effect until revoked or terminated upon the corporate officer's failure to satisfy the election criteria. It is the responsibility of the corporation to notify the department in writing in a format required by the department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated.

(8) For purposes of this chapter:

(a) "Bona fide corporate officer" means an individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer.

(b) A person exercises substantial control in the daily management of the corporation when they make managerial decisions for the corporation including, without limitation, the authority to hire and fire, to direct other's activities in the corporation, and the responsibility to account for and pay taxes or debts incurred by the corporation.

IDAPA 09.01.35

108.ELECTION TO EXEMPT CORPORATE OFFICERS.

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt pursuant to Section 72-1352A, Idaho Code. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule.

01. Public Company Election. A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who:

- a. Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation;
- b. Is a shareholder of the corporation;
- c. Exercises control in the daily management of the corporation; and
- d. Does not perform manual labor as a primary work responsibility.

02. Election for Corporations That Are Not Public Companies. A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who:

- a. Is a shareholder of the corporation;
- b. Voluntarily agrees to be exempted from coverage; and

c. Exercises substantial control in the daily management of the corporation.

03. Election to Exempt Not Applicable. The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code.

04. Termination of Exemption. A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria of Section 72-1352A, Idaho Code. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated.

05. Reinstatement of Coverage. A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively.

06. Definitions. For purposes of this chapter:

a. "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer.

b. "Exercise substantial control in the daily management of the corporation" is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other's activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation.