

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1366. PERSONAL ELIGIBILITY CONDITIONS. The personal eligibility conditions of a benefit claimant are that:

(1) The claimant shall have made a claim for benefits, and provided all necessary information pertinent to eligibility, and demonstrated that he is eligible for benefits and not disqualified, except that in the case of discharges from employment, the employer shall have the burden of demonstrating the discharge was for workplace misconduct.

(2) The claimant shall have registered for work and thereafter reported to a job service office or other agency in a manner prescribed by the director.

(3) The claimant shall have met the minimum wage requirements in his base period as provided in section 72-1367, Idaho Code.

(4)(a) During the whole of any week with respect to which he claims benefits or credit to his waiting period, the claimant was:

(i) Able to work,;

(ii) Available for suitable work,; and

(iii) Actively seeking work, which shall include not less than by conducting five (5) work search actions per week; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection (4)(a) if:

1. Such failure is due to a claimant's illness or disability of no more than four (4) weeks that arises after filing a claim, provided that during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or

2. Such failure is due to compelling personal circumstances, provided that such failure does not exceed a minor portion of the claimant's workweek and during which time the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; and

(iii) Living in a state, territory, or country that is included in the interstate benefit payment plan or that is a party to an agreement with the United States or the director with respect to unemployment insurance.

(b) An action shall be considered an acceptable work search action pursuant to paragraph (a) of this subsection if it consists of one (1) or more of the following actions in any week:

(i) Completing an online or in-person job search workshop;

(ii) Completing a job search assessment, including but not limited to a personality, skills, or interests assessment;

(iii) Completing career direction research or work such as a job search plan or job search counseling;

(iv) Completing job search branding and marketing activities such as completing a resume, cover letter, master application, elevator pitch, LinkedIn profile, or uploading a completed resume to a job board allowing visibility to employers;

- (v) Completing an online or in-person mock interview;
 - (vi) Taking a civil service exam;
 - (vii) Submitting a resume to an employer;
 - (viii) Completing and submitting a job application to an employer;
 - (ix) Attending and completing an interview or skills test with an employer; or
 - (x) Attending a job fair.
- (c) If a claimant who is enrolled in an approved job training course pursuant to subsection (8) of this section fails to attend or otherwise participate in the job training course during any week with respect to which he claims benefits or credit to his waiting period, the claimant shall be ineligible for that week if he was not able to work nor available for suitable work, to be determined as follows: The claimant shall be ineligible unless he is making satisfactory progress in the training and his failure to attend or otherwise participate was due to:
- (i) The claimant's illness or disability that occurred after he had filed a claim and the claimant missed fewer than one-half (1/2) of the classes available to him that week; or
 - (ii) Compelling personal circumstances, provided that the claimant missed fewer than one-half (1/2) of the classes available to him that week.
- (d) A claimant shall not be denied regular unemployment benefits under any provision of this chapter relating to availability for work, active search for work or refusal to accept work solely because the claimant is seeking only part-time work if the department determines that a majority of the weeks of work in the claimant's base period were for less than full-time work. For the purpose of this subsection, "seeking only part-time work" is defined as seeking work that has comparable hours to the claimant's part-time work experience in the base period, except that a claimant must be available for at least twenty (20) hours of work per week.
- (e) A claimant must seek work as directed by the department. A claimant must meet the requirements of the code to which the claimant is assigned. Failure to comply with work-seeking requirements will result in a denial of benefits. For the purpose of administering the work search requirements of section 72-1366(4) and (6), Idaho Code, a claimant will be coded according to his attachment to an employer or industry, as follows:
- (i) Attached. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed sixteen (16) weeks, provided the claimant maintains reasonable contact with his employer. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by this chapter;
 - (ii) Workseeking. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations, wages, hours, and other conditions of employment are realistic in relation to the normal labor market supply and demand in his area of availability; and
 - (iii) Approved Training. A claimant who is assigned to a training course under the provisions of section 72- 1366(8), Idaho Code.
- (f) A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work.
- (g) A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality.
- (h) A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits.
- (5) (a) The claimant's unemployment is not due to the claimant voluntarily leaving employment

without good cause connected with the claimant's employment or because of the claimant's discharge for workplace misconduct in connection with the claimant's employment.

(b) The requirement that good cause for a voluntary leaving of employment be in connection with employment does not apply and good cause is shown where a claimant demonstrates that:

~~(a)~~(i) The leaving was necessary to protect the claimant or any minor child of the claimant from domestic violence or the leaving was due to domestic violence that caused the claimant to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or any minor child of the claimant; and ~~(ii)~~ (ii) ~~The~~ the claimant made all reasonable efforts to preserve the employment; or

~~(b)~~ ii The claimant is a military spouse who voluntarily left the claimant's most recent employment to relocate with the claimant's spouse who, because of a permanent change of station orders, was required to move to a location from which the commute to the claimant's most recent employment was impractical, but only if, before leaving, the claimant took reasonable actions to maintain the employment relationship through accommodation discussions with the claimant's employer; or

(iii) The claimant quit a temporary job for a permanent job or quit part-time employment for employment with an increase in the number of hours worked.

(c) The following definitions apply to this subsection:

(i) "Domestic violence" is as defined in section 39-6303, Idaho Code, and also includes the crime of stalking in the second degree pursuant to section 18-7906, Idaho Code;

(ii) "Military spouse" means the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in this state in accordance with military orders or stationed in this state before a reassignment to duties outside this state; and

(iii) "Permanent change of station orders" means the assignment, reassignment, or transfer of a member of the armed forces of the United States or a reserve component of the armed forces of the United States from the member's present duty station or location without return to the previous duty station or location.

(d) Good cause connected with employment exists when a claimant's reasons for leaving the employment arise from the working conditions, job tasks, or employment agreement. If the claimant's reasons for leaving the employment arise from personal or other matters unrelated to employment, the reasons are not connected with the claimant's employment.

(i) The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling.

(ii) A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits.

(iii) A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment.

(iv) An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons.

(v) The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge.

(vii) If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both separations must be considered. The following three (3)

elements should be present for both actions to affect the claimant's eligibility:

1. The employee gave notice to the employer of a specific separation date;
2. The employer's decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and
3. The discharge occurred a short time prior to the effective date of the resignation.

(viii) Good cause for quitting employment may be established by showing the claimant was subjected harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code.

(e) If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility:

- (i) The employee was given notice by the employer of a specific separation date;
- (ii) The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and
- (iii) The voluntary quit occurred a short time prior to the effective date of the termination.

(f) Indefinite Suspension. A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged.

(6)(a) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work within seven (7) days of when it is offered to him, unless a condition specified in subsection (8) of this section applies or the job offered does not constitute suitable employment pursuant to the provisions of subsection (9) of this section. A claimant has the responsibility to apply for and accept suitable work. The longer a claimant has been unemployed, the more willing he must be to seek other types of work and accept work at a lower rate of pay. Failure to appear for a previously scheduled job interview without notifying the employer of the need to cancel or reschedule shall constitute a failure to apply for suitable work for that week.

(b) The department shall establish an email address and web portal that allows employers to report suspected violations of this subsection. As part of its regular communication with employers, the department shall at least annually inform employers of the email address and web portal described in this subsection and the mechanism to report suspected violations.

(c) For the purposes of paragraph (a) of this subsection, a good cause reason for not applying for available and suitable work or responding to an offer of suitable employment shall be found only if the claimant is ill, injured, or delayed by reason of an accident or medical emergency involving the claimant or a member of the claimant's immediate family.

(d) To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances. For purposes of paragraph (a) of this subsection, good cause includes, but is not limited to, circumstances where:

- (i) the work would require the claimant to work on days contrary to his religious convictions;
- (ii) the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds;
- (iii) the claimant has excellent prospects for more suitable work with his former employer or in his regular occupation;
- (iv) the claimant is unable to meet an employer's restrictions on citizenship or residency;
- (v) the travel distance to available work is excessive or unreasonable; provided, a claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other

workers in his area and occupation; and

(vi) the claimant cannot meet government requirements within a reasonable period of time.

(e) A claimant will be ineligible for benefits where:

(i) the claimant causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it;

(ii) the claimant fails without good cause to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded;

(iii) the claimant, after being laid off, fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff; and

(iv) the claimant fails to report to the department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause.

(f) A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work.

(7) In determining whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

(a) If the vacancy of the position offered is due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are below those prevailing for similar work in the locality of the work offered;

(c) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) No claimant who is otherwise eligible shall be denied benefits for any week due to an inability to comply with the requirements contained in subsections (4)(a)(i) and (6) of this section if:

(a) The claimant is a participant in a program sponsored by title I of the workforce innovation and opportunity act (29 U.S.C. 3101 et seq., as amended) and attends a job training course under that program; or

(b) The claimant attends a job training course authorized pursuant to the provisions of section 236(a)(1) of the trade act of 1974 or the North American free trade agreement implementation act.

(c) The claimant lacks skills to compete in the labor market and attends a job training course with the approval of the director. The director may approve job training courses that meet the following criteria:

(i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(ii) The job training can be completed within two (2) years, except that this requirement may be waived pursuant to rules that the director may prescribe.

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment and wages for such work are no less than eighty percent (80%) of the average weekly wage in the individual's past employment.

(10) (a) A claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that:

(a i) The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

(b ii) The claimant does not belong to a grade or class of workers with members who are employed at the premises at which the labor dispute occurs and who are participating in or directly interested in the dispute.

(b) "Labor dispute" means a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties.

(c) A claimant may not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed.

(d) A claimant's unemployment will be deemed to be due to lack of work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business.

(e) A claimant laid off because of lack of work from an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute.

(f) The period of ineligibility under this section applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute.

(g) The act of picketing the work site of a labor dispute constitutes participation in the labor dispute, whether or not payment is made for such services.

(h) Voluntary refusal to cross a peaceable picket line to work constitutes participation in a labor dispute.

(i) Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment.

(j) The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits.

(k) The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute.

(11) A claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking benefits under an unemployment insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment insurance law of the United States.

(12) A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall

repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

(13) A claimant shall not be entitled to benefits if his principal occupation is self-employment. A claimant who performs incidental work in self-employment must show that self-employment does not interfere with his availability for suitable work and that he continues to seek suitable work.

(14) A claimant who has been found ineligible for benefits under the provisions of subsection (5), (6), (7) or (9) of this section shall reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least fourteen (14) times his weekly benefit amount.

(15) Benefits based on service in employment defined in sections 72-1349A and 72-1352(3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act.

(a) If the services performed during one-half (1/2) or more of any contract period by an individual for an educational institution as defined in section 72-1322B, Idaho Code, are in an instructional, research, or principal administrative capacity, all the services shall be deemed to be in such capacity.

(b) If the services performed during less than one-half (1/2) of any contract period by an individual for an educational institution are in an instructional, research, or principal administrative capacity, none of the services shall be deemed to be in such capacity.

(c) As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed service and earned an amount equal to no less than six (6) times the weekly benefit amount established during the first benefit year.

(17)(a) Benefits based on wages earned for services performed in an instructional, research, or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) terms whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual who performs such services in the first academic year (or term) and has a contract to perform services in any such capacity for any educational institution in the second academic year or term or has been given reasonable assurance that such a contract will be offered.

(b) Benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week that commences during a period between two (2) successive school years or terms if the individual performs such services in the first school year or term and there is a contract or reasonable assurance that the individual will perform such services in the second school year or term. If benefits are denied to any individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

(c) With respect to any services described in paragraphs (a) and (b) of this subsection, benefits shall not be paid nor waiting week credit given to an individual for wages earned for services for any week that commences during an established and customary vacation period or holiday recess if

the individual performed the services in the period immediately before the vacation period or holiday recess and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection, benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph, the term "educational service agency" means a governmental entity that is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(e) "Reasonable assurance" of continuing employment exists when an educational institution or service agency provides an oral or written statement to the department confirming that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such "reasonable assurance" to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period. An offer of employment is not "bona fide" if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when:

(i) The circumstances under which the claimant would be employed are not within the control of the educational institution; and

(ii) The educational institution does not provide evidence that such an individual normally would perform services the following academic year.

(f) A claimant who initially was determined not to have a reasonable assurance of continuing employment will subsequently become disqualified for benefits under this section when an educational institution or service agency gives the claimant such reasonable assurance.

(g) A claimant seeking retroactive payments pursuant to subsection (17)(b) of this section must make a request for the retroactive payment with the department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made.

(h) Employees of educational institutions hired under contract for the school term are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments.

(18) (a) Benefits shall not be payable on the basis of services that substantially consist of participating in sports or athletic events or training or preparing to participate for any week that commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such season (or similar period).

(b) No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods).

(c) For purposes of this subsection, "reasonable assurance" does not exist unless:

(i) the claimant has a contract, either written or oral;

(ii) the claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or

(iii) the claimant expresses a readiness and willingness or intent to participate in the sport the following season.

(d) Reasonable assurance exists if the claimant intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment.

(e) An individual is deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services.

(19)(a) Benefits shall not be payable on the basis of services performed by an alien unless the alien falls within one (1) of the following three (3) categories at the time the work on which the claim is based was performed, and at the time benefits are claimed, the alien has a current, valid authorization to work from the U.S. Department of Homeland Security in order to meet the continuing eligibility requirement of being able and available to work (unless the alien claimant is a Canadian resident who is claiming benefits under the Interstate Benefit Payment Plan, in which case the claimant must satisfy only Canadian availability requirements):

(i) Aliens who have been lawfully admitted to the United States as “immigrants” and those whose status has been adjusted from that of “non-immigrant” under the Immigration and Nationality Act as demonstrated by an Alien Registration Receipt Card, or “green card,” issued to each lawful permanent resident by the U.S. Department of Homeland Security or other documents acceptable to the department;

(ii) Lawfully present for purposes of performing services, but only for aliens who are: (1) Canadian and Mexican residents and commute daily or seasonally and are authorized to work in the United States; (2) legally-admitted non-immigrants who are granted a status by the U.S. Department of Homeland Security that authorizes them to work in the United States during their stay; or (3) other aliens with U.S. Department of Homeland Security authorization to work in the United States regardless of their status; or

(iii) Permanently residing in the United States under color of law, but only for aliens who are: (1) refugees, asylees, and parolees, as identified in the Immigration and Nationality Act; (2) presumed by the U.S. Department of Homeland Security to be lawfully admitted for permanent residence; or (3) after review of their particular circumstances under U.S. Department of Homeland Security statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. For informal U.S. Department of Homeland Security action to authorize an alien’s residence under “color of law,” the U.S. Department of Homeland Security must know of the alien’s presence, and must provide the alien with official, documented assurance that enforcement of deportation is not planned. ~~was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the immigration and nationality act).~~

(b) Any data or information required of individuals applying for benefits to determine eligibility under this subsection shall be uniformly required from all applicants for benefits.

~~(c) A decision to deny benefits under this subsection must be based on a preponderance of the evidence.~~

(20) An individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director must participate in those reemployment services, unless:

(a) The individual has completed such services; or

(b) There is justifiable cause, as determined by the director, for the claimant's failure to participate

in such services.

(21)(a) A claimant:

- (i) Who has been assigned to work for one (1) or more customers of a staffing service; and
- (ii) Who, at the time of hire by the staffing service, signed a written notice informing him that completion or termination of an assignment for a customer would not, of itself, terminate the employment relationship with the staffing service;

will not be considered unemployed upon completion or termination of an assignment until such time as he contacts the staffing service to determine if further suitable work is available. If the claimant:

1. Contacts the staffing service and refuses a suitable work assignment that is offered to him at that time, he will be considered to have voluntarily quit that employment; or
2. Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or
3. Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

(b) For the purposes of this subsection, the term "staffing service" means any person who assigns individuals to work for its customers and includes but is not limited to professional employers as defined in chapter 24, title 44, Idaho Code, and the employers of temporary employees as defined in section 44-2403(7), Idaho Code.

(22)(a) A claimant who is otherwise eligible for regular benefits as defined in section 72-1367A(1)(e), Idaho Code, shall be eligible for training extension benefits if the department determines that all of the following criteria are met:

(i) The claimant is unemployed;

(ii) The claimant has exhausted all rights to regular unemployment benefits as defined in section 72-1367A(1)(e), Idaho Code, and all rights to extended benefits as defined in section 72-1367A(1)(f), Idaho Code, and all rights to benefits under section 2002 (increase in unemployment compensation benefits) of division B, title II, the assistance for unemployed workers and struggling families act, of the American recovery and reinvestment act of 2009, P.L. 111-5, as enacted on February 17, 2009;

(iii) The claimant is enrolled in a training program approved by the department or in a job training program authorized under the workforce innovation and opportunity act; except that the training program must prepare the claimant for entry into a high-demand occupation if the department determines that the claimant separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant's place of employment. For the purposes of this subsection, a "declining occupation" is one where there is a lack of sufficient current demand in the claimant's labor market area for the occupational skills for which the claimant is qualified by training and experience or current physical or mental capacity and the lack of employment opportunities is expected to continue for an extended period of time, or the claimant's occupation is one for which there is a seasonal variation in demand in the labor market and the claimant has no other skills for which there is current demand. For the purposes of this subsection, a "high-demand occupation" is an occupation in a labor market area where work opportunities are available and qualified applicants are lacking as determined by the use of available labor market information;

(iv) The claimant is making satisfactory progress to complete the training as determined by the department; and

(v) The claimant is not receiving similar stipends or other training allowances for nontraining costs. For the purposes of this subsection, "similar stipend" means an amount provided under a

program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(b) The weekly training extension benefit amount shall equal the claimant's weekly benefit amount for the most recent benefit year less any deductible income as determined by the provisions of this chapter. The total amount of training extension benefits payable to a claimant shall be equal to twenty-six (26) times the claimant's average weekly benefit amount for the most recent benefit year. A claimant who is receiving training extension benefits shall not be denied training extension benefits due to the application of subsections (4)(a)(i) and (6) of this section, and an employer's account shall not be charged for training extension benefits paid to the claimant.

Burden of Proof

09.01.30.150.02. Burden of Proof. Claimant has the burden of proving eligibility under this provision with competent evidence.

09.01.275.01. Burden of Proof. The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer.

09.01.30.375.04. Corporate Officer. a. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation.

09.01.30.400.01. Burden of Proving Nonparticipation. The burden of proving non-participation, lack of financing and similar factors is upon the claimant.

09.01.30.450.01. Burden of Proof. The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits.

09.01.30.525.08 a. Pension Contributions. The burden is on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan.

09.01.30.575. SEEKING WORK.

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search.

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work.

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility.

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows:

a. Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code.

b. Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability.

c. Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code.

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors.

06. License or Permits. A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work.

07. No Employment Prospects. A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality.

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits.

09. Work-Seeking Requirement Categories. A claimant must seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Failure to comply with work-seeking requirements will result in a denial of benefits.

a. Code O claimant must maintain regular contact with his employer(s) or union.

b. Code 1 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:

i. Make at least one (1) employer contact each week in the manner prescribed by the Central Claims Office;

- ii. Attend a Job Search Workshop;
 - iii. Expand work search efforts to surrounding areas or states;
 - iv. Send resumes to firms/businesses that hire people with his skills;
 - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
 - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.
- c. Code 2 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:
- i. Make at least two (2) employer contacts per week in the manner prescribed by the Central Claims Office;
 - ii. Attend a Job Search Workshop;
 - iii. Expand work search efforts to surrounding areas or states;
 - iv. Send resumes to firms/businesses that hire people with their skills;
 - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
 - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.
- d. Code 3 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:
- i. Make at least three (3) employer contacts per week in the manner prescribed by the Central Claim Office;
 - ii. Attend a Job Search Workshop;
 - iii. Expand work search efforts to surrounding areas or states;
 - iv. Send resumes to firms/businesses that hire people with their skills;
 - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
 - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.

275. DISCHARGE.

01. Burden of Proof. The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer.

02. Disqualifying Misconduct. To disqualify a claimant for benefits, misconduct must be connected with the claimant's employment and involve one of the following:

a. Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest.

b. Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules.

c. Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows:

i. Whether the claimant's conduct fell below the standard of behavior expected by the employer; and

ii. Whether the employer's expectation was objectively reasonable in the particular case.

03. Inability to Perform or Ordinary Negligence. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment.

04. Non-Job Related Conduct. If the claimant was discharged for conduct involving personal, nonjob related behavior, the discharge is not for misconduct connected with employment.

05. When Notice of Discharge Prompts a Resignation. If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility:

a. The employee was given notice by the employer of a specific separation date;

b. The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and

c. The voluntary quit occurred a short time prior to the effective date of the termination.

06. Indefinite Suspension. A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged.

450. QUIT.

01. Burden of Proof. The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits.

02. Cause Connected with Employment. To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment.

03. Good Cause. The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling.

04. Moral or Ethical Quit. A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits.

05. Quit Due to Health or Physical Condition. A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment.

06. Quit for Permanent Work or Quit Part-Time Work for Increase in Work Hours. A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work will be deemed to have quit work with good cause connected with employment.

07. Quit or Retirement During Employer Downsizing. An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons.

08. Unrelated Discharge Prior to Pending Resignation. The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge.

09. When Notice of Resignation Prompts a Discharge. If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility:

- a. The employee gave notice to the employer of a specific separation date;
- b. The employer's decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and
- c. The discharge occurred a short time prior to the effective date of the resignation.

10. Quit Due to Harassment. Good cause for quitting employment may be established by showing the party was subjected to any form of harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code.

475. REFUSAL OF WORK/FAILURE TO APPLY.

01. Citizenship or Residency Requirements. An employer's restrictions on citizenship or residency is deemed good cause for a claimant's failure to apply for available work if he does not meet the requirements.

02. Claimant Conduct. A claimant who, by his conduct, causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it is ineligible.

03. Claimant Responsibility. A claimant has the responsibility to apply for and accept suitable work.

04. Conscientious Objection. A claimant may refuse employment that requires him to work on his Sabbath if his religious convictions do not permit him to work on that day.

05. Employer Requirements. Claimants are expected to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded. Unreasonable requirements by employers will not be used as a basis to deny benefits. However, a claimant must have good cause to refuse or fail to meet an employer's reasonable, lawful employment requirements to be eligible for benefits.

06. Failure to Report. A claimant who fails to report to the Department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause, is ineligible. Ref. Sec. 72-1366(2), (6), Idaho Code.

07. Failure to Return to Work After Layoff. A claimant who has been laid off, but fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff, will be considered to have refused an offer of work if the ongoing employment relationship is severed as a result. If the claimant declines work with the employer but the ongoing employment relationship is not severed as a result, the claimant's availability for work will be examined, but the claimant will not be considered to have refused an offer of work under Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code.

08. Government Requirements. A claimant who cannot meet government requirements within a reasonable period of time has good cause for refusing that opportunity to work.

09. Moral Objections. A claimant is not ineligible for failing to apply for or accept employment if the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds.

10. Offer of Work. A claimant whose unemployment is due to his failure without good cause to accept available, suitable work is ineligible. The job offer must have been genuine and known to

the claimant.

11. Part-Time Work. A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work.

12. Personal Circumstances. To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances.

13. Prospect of More Suitable Work. A claimant is not ineligible for failing to accept employment if he has excellent prospects for more suitable work with his former employer or in his regular occupation.

14. Suitable Work. Every claimant has the right to restrict his availability to suitable work.

15. Travel Distance. A claimant is not ineligible if the travel distance to available work is excessive or unreasonable. A claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other workers in his area and occupation.

400. LABOR DISPUTE/UNION RULES.

A "labor dispute" is a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties. Ref. Sec. 72-1366(7), (10), Idaho Code.

01. Burden of Proving Nonparticipation. The burden of proving non-participation, lack of financing and similar factors is upon the claimant.

02. Involvement of Work Site in Labor Dispute. A claimant will not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed.

03. Lack of Work. A claimant's unemployment will be deemed due to lack work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business.

04. Laid Off Before Labor Dispute. A claimant laid off because of lack of work from an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute.

05. Period of Ineligibility. The period of ineligibility applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute.

06. Picketing Work Site. The act of picketing the work site of a labor dispute constitutes

participation in the labor dispute, whether or not payment is made for such services.

07. Refusal to Cross Picket Line. Voluntary refusal to cross a peaceable picket line to work constitutes participation in the labor dispute.

08. Subsequent Employment. Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment.

09. Termination of Labor Dispute. The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits.

10. Union Member. The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute.

600. SELF-EMPLOYMENT.

A claimant is ineligible when his self-employment is of such size and nature that the operation of it is his principal duty and working for an employer is merely incidental. Ref. Sec. 72-1366(13), Idaho Code.

01. Occupational Conflicts. Agricultural activities, commercial enterprises, family enterprises, and commission sales work are examples of self-employment which may render a claimant ineligible unless he can show he is seeking employment and is available for suitable work.

02. Potential Employability. A claimant is eligible if his self-employment in no way interferes with his potential employability and work schedule.

325. EMPLOYEES OF EDUCATIONAL INSTITUTIONS.

01. Possibility of Employment. An offer of employment by an educational institution or service agency is not "bona fide" if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when:

a. The circumstances under which the claimant would be employed are not within the control of the educational institution; and

b. The educational institution does not provide evidence that such an individual normally would perform services the following academic year.

02. Reasonable Assurance. “Reasonable assurance” of continuing employment exists when an educational institution or service agency provides an oral or written statement to the Department indicating that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such “reasonable assurance” to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period.

03. Reasonable Assurance Later Given. A claimant who initially was determined not to have a reasonable assurance of continuing employment, will subsequently become disqualified for benefits under Sections 72-1366(17)(a), (b), or (c), Idaho Code, when an educational institution or service agency gives the claimant such reasonable assurance.

04. Retroactive Payments. A claimant seeking retroactive payments pursuant to 72-1366(17)(b), Idaho Code, must make a request for the retroactive payment with the Department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made. In addition, the claimant must provide written evidence from the employer who previously provided reasonable assurance of continuing work, that the claimant was not offered an opportunity to return to work in the second of two (2) successive school years or terms.

05. Under Contract, but Between School Terms. Employees of educational institutions who are hired under contract for the school term, are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments.

460. PROFESSIONAL ATHLETES BETWEEN SEASONS.

01. Base Period Wages. No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods).

02. Reasonable Assurance. Reasonable assurance requires the following:

a. The claimant has a contract, either written or oral;

b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or

c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment.

03. Substantially All Services. An individual is deemed to have performed “substantially all

services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services.

125. ALIEN ELIGIBILITY.

01. Benefit Eligibility. To be eligible for benefits, an alien must fall within one (1) of the following three (3) categories at the time the work on which the claim is based was performed and at the time benefits are claimed, the alien must have current, valid authorization to work from the U.S. Department of Homeland Security in order to meet the continuing eligibility requirement of being able and available to work (unless the alien claimant is a Canadian resident who is claiming benefits under the Interstate Benefit Payment Plan, in which case the claimant must satisfy only Canadian availability requirements). Ref. Sec. 72-1366(4), (19), Idaho Code.

a. Permanent Residence. Aliens who have been lawfully admitted to the United States as “immigrants” and those whose status has been adjusted from that of “non-immigrant” under the Immigration and Nationality Act. Evidence of this status is the Alien Registration Receipt Card, or “green card,” issued to each lawful permanent resident by the U.S. Department of Homeland Security.

b. Performing Services. “Lawfully present for purposes of performing services” includes three (3) groups of aliens:

i. Canadian and Mexican residents who commute daily or seasonally and are authorized to work in the United States;

ii. Legally-admitted non-immigrants who are granted a status by the U.S. Department of Homeland Security which authorizes them to work in the United States during their stay; and

iii. Other aliens with U.S. Department of Homeland Security authorization to work in the United States regardless of their status.

c. Permanently Residing Under Color of Law. The category of individuals who are “permanently residing in the United States under color of law” includes the following groups of aliens:

i. Refugees, asylees, and parolees, as identified in the Immigration and Nationality Act;

ii. Aliens presumed by the U.S. Department of Homeland Security to be lawfully admitted for permanent residence; and

iii. Aliens who, after review of their particular circumstances under U.S. Department of Homeland Security statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. For informal U.S. Department of Homeland Security action to authorize an alien’s residence under “color of law,” the U.S. Department of Homeland Security must know of the alien’s presence, and must provide the alien with official, documented assurance that enforcement of deportation is not planned.