

## TITLE 72

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

#### CHAPTER 13

#### EMPLOYMENT SECURITY LAW

72-1367A.EXTENDED BENEFITS. The extended benefits program shall be administered pursuant to the provisions of this section.

(1) Definitions. As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which:

(i) Begins with the third week after a week for which there is a state "on" indicator; and

(ii) Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is a state "off" indicator; or

2. The thirteenth consecutive week of such period;

provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(b) (i) There is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and equaled or exceeded five percent (5%); or

2. Equaled or exceeded six percent (6%).

(ii) With respect to weeks of unemployment beginning on or after February 1, 2009, and ending four (4) weeks prior to the last week for which federal sharing is authorized by section 2005(a) ("full federal funding of extended unemployment compensation for a limited period") 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 amended, there is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor that:

1. The average rate of seasonally adjusted total unemployment, as determined by the United States secretary of labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of such week equals or exceeds six and five-tenths percent (6.5%); and

2. The average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three

(3) month periods ending in the two (2) preceding calendar years.

3. With respect to weeks of unemployment beginning on or after January 1, 2011, and ending on December 31, 2011, or the expiration date in section 502 of the tax relief, unemployment insurance reauthorization and job creation act of 2010, P.L. 111-312, as amended, whichever is later, the average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for any and all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(c) There is a state "off" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks:

(i) The rate of insured unemployment (not seasonally adjusted) was less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(ii) The rate of insured unemployment (not seasonally adjusted) was less than five percent (5%); or

(iii) The option specified in subsection (1)(b)(ii) does not result in an "on" indicator.

(d) "Rate of insured unemployment," for purposes of paragraphs (b) and (c) of this subsection, means the percentage derived by dividing:

(i) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment for the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(ii) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(f) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Eligibility period of an individual also means the period consisting of weeks which begin in his extended benefit period, without regard to his benefit year end date, if the individual qualifies for one hundred percent (100%) federally financed federal-state extended benefits and the one hundred percent (100%) federally financed federal-state extended benefit payment period began on or before the individual exhausted his rights to benefits under the federal emergency unemployment compensation program of 2008.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such week, all of the regular benefits that were available to

him under this chapter or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(iii) Has no right to unemployment benefits or allowances under the railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada; but if he is seeking such benefits and the appropriate agency determines that he is not entitled to benefits under such law he is considered an exhaustee.

(i) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(j) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with applicable state law. Satisfactory evidence includes, but is not limited to: (1) a letter signed by a prospective employer giving assurances of work within the next four (4) weeks; and (2) a verifiable, written statement by the claimant that he will have work within the next four (4) weeks.

(2) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(a) The claimant is an "exhaustee" as defined in subsection (1)(h) of this section;

(b) The claimant has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) The claimant has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(d) (i) Notwithstanding the provisions of this section, payment of extended benefits under this chapter shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (1)(j) of this section, or fails to apply for any suitable work to which he was referred; or
  2. During which he fails to actively engage in seeking work.
- (ii) If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection (3)(d)(i)1. or (3)(d)(i)2. of this section, the individual shall be ineligible to receive extended benefits for any week which begins during a period which:
1. Begins with the week following the week in which such failure occurs; and
  2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount. Remuneration earned must be in employment where an employee-employer relationship exists to satisfy requalification requirements for extended benefits.
- (iii) Extended benefits shall not be denied under subsection (3)(d)(i)1. of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:
1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:
    - (A) The individual's average weekly benefit amount, as determined for purposes of subsection (b)(1)(C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus
    - (B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.
  2. If the position was not offered to such individual in writing or was not listed with the department;
  3. If such failure would not result in a denial of benefits under the provisions of this chapter to the extent that such provisions are not inconsistent with the provisions of subsections (1)(j) and (3)(d)(iv) of this section; or
  4. If the position pays wages less than the higher of:
    - (A) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or
    - (B) Any applicable state or local minimum wage.
- (iv) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:
1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and
  2. The individual provides tangible evidence to the department that he has engaged in such an effort during such week.
- (v) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1., 2., 3. and 4. of subsection (3)(d)(iii) of this section would not apply.
- (4) (a) Except as provided in paragraph (b) of this subsection, payment of extended benefits

shall not be made to any individual for any week if:

(i) Extended benefits would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(ii) An extended benefit period is not in effect for such week in such state.

(b) Paragraph (a) of this subsection shall not apply with respect to the first two (2) weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefits account established for the benefit year.

(c) Section 3304 (a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of benefits required under this subsection.

(5) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(6) (a) Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(i) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(ii) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year;

(iii) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(iv) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero (0), by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(b) (i) Effective with respect to weeks beginning in a high unemployment period, subsection (6)(a) of this section shall be applied by substituting:

1. "Eighty percent (80%)" for "fifty percent (50%)" in subsection (6)(a)(i) of this section; and

2. "Twenty (20)" for "thirteen (13)" in subsection (6)(a)(ii) of this section.

(ii) For purposes of subsection (6)(b)(i) of this section, the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (1)(b)(ii) were applied by substituting "eight percent (8%)" in subsection (1)(b)(ii)1. for "six and five-tenths percent (6.5%)."

(7) (a) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make a public announcement.

(b) Computations required by the provisions of subsection (1)(d) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(8) Notwithstanding any other provisions of this chapter, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(9) Whenever a program of unemployment benefits becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (1)(a) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (1)(b) of this section are otherwise met.

(10) Until conformity with the federal-state extended unemployment compensation act of 1970 requires otherwise, the eligibility requirements in subsections (1)(j) and (3)(d) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section [72-1366](#), Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

#### 09.01.30.350. EXTENDED BENEFITS.

01. Evidence of Employment for Extended Benefits. Satisfactory evidence that an individual's prospects for obtaining work in his customary occupation within a reasonably short period includes:

- a. A letter signed by a prospective employer giving assurances of work within the next four (4) weeks; or
- b. A verifiable, written statement by the claimant that he will have work within the next four (4) weeks.

02. Remuneration Earned. Remuneration earned must be in employment where an employee-employer relationship exists to satisfy requalification requirements for Extended Benefits.