

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1368. CLAIMS FOR BENEFITS -- APPELLATE PROCEDURE -- LIMITATION OF ACTIONS. (1) Claims for benefits shall be made in accordance with this chapter and such rules as the director may prescribe.

(2) Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights under this chapter which shall be provided by the department without cost to the employer.

(3) (a) Following the filing of a claim pursuant to subsection (1) of this section the department shall:

(i) Verify the claimant's monetary eligibility pursuant to the requirements of section 72-1367, Idaho Code, and issue a determination. If monetarily eligible, the department shall establish the date the claimant's benefit year begins, the weekly benefit amount, the total benefit amount, the base period wages, and the base period covered employers.

(ii) If a claimant is monetarily eligible, the department shall verify, based on information provided by the claimant, whether the week claimed is a compensable week as defined in section 72-1312, Idaho Code. To receive benefits, a claimant must certify that each week claimed is a compensable week. In the event the week claimed is not a compensable week, the department shall issue a determination denying benefits and shall include the reasons for the ineligibility.

(b) If the department has reason to believe at any time within five (5) years from the week ending date for any week in which benefits were paid that a claimant was not eligible for benefits, the department may investigate the claim and on the basis of facts found issue a determination denying or allowing benefits for the week(s) in question. If the department determines a claimant was not entitled to benefits received, the department shall issue a determination requiring repayment of the overpaid benefits, and assess any applicable penalties and interest. The determination shall contain provisions advising of the right to appeal the decision to the department within fourteen (14) days of the date of service.

(c) Before a determination provided for in subsection (3) of this section becomes final or an appeal is filed, the department, on its own motion, may issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by an interested party with the department. The appeal notice must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the department. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal will be deemed filed on the date received by the department (Mountain time) or, if received on a weekend or holiday, the next business day. If mailed, the appeal will be deemed filed on the date of

mailing as determined by the postmark on the envelope containing the appeal. Where it appears any appeal to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds.

(d) If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the department, a determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the department, within fourteen (14) days of the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice.

(4) (a) Upon appeal of a determination or revised determination, the director shall transfer the appeal directly to an appeals examiner pursuant to subsection (6) of this section, unless the director finds, in his sole discretion, that a redetermination should be issued affirming, reversing or modifying the determination or revised determination. The redetermination shall become final unless, within fourteen (14) days after notice as provided in subsection (5) of this section, an appeal is filed by an interested party with the department in accordance with the department's rules.

(b) The director may, in his sole discretion, make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, revised determination or redetermination that has become final, or that additional wages of the claimant or other facts pertinent to such final determination, revised determination or redetermination have become available or have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentation of fact. The special redetermination must be made within one (1) year from the date the determination, revised determination or redetermination became final, except that a special redetermination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosures or misrepresentations of fact may be made within two (2) years from the date the determination, revised determination or redetermination became final.

(5) All interested parties shall be entitled to prompt service of notice of written or digital communications from the department providing notice of an administrative or other deadline including, but not limited to, determinations, revised determinations, redeterminations, special redeterminations, decisions and letters from the department requiring a response within a specified time. Notice shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

(6) To hear and decide appeals from determinations, revised determinations, redeterminations, and special redeterminations, the director shall appoint appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination, revised determination, redetermination, or special redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the department for further action. The appeals examiner shall notify the interested parties of his decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law, and contain provisions advising of the right to appeal the decision within fourteen (14) days of the date of service. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence

previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing shall be recorded. If a claim for review of the appeals examiner's decision is filed with the commission, the testimony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

(7) The commission shall decide all claims for review filed by any interested party in accordance with its own rules of procedure not in conflict herewith. The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing or may remand the matter back to the appeals examiner for an additional hearing and decision. On the basis of the record of proceedings before the appeals examiner as well as additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings. The commission shall file its decision and shall promptly serve notice of its decision to all interested parties. A decision of the commission shall be final and conclusive as to all matters adjudicated by the commission upon filing the decision in the office of the commission; provided, within twenty (20) days from the date of filing the decision, any party may move for reconsideration of the decision or the commission may rehear or reconsider its decision on its own initiative. The decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on reconsideration.

(8) No person acting on behalf of the director or any member of the commission shall participate in any case in which he has a direct or indirect personal interest.

(9) An appeal may be made to the Supreme Court from decisions and orders of the commission within the times and in the manner prescribed by rule of the Supreme Court.

(10) (a) Benefits shall be paid promptly in accordance with any decision allowing benefits, regardless of:

(i) The pendency of a time period for filing an appeal or petitioning for commission review; or

(ii) The pendency of an appeal or petition for review.

(b) Such payments shall not be withheld until a subsequent appeals examiner decision or commission decision modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

(11) (a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination, redetermination, decision of the appeals examiner or decision of the commission which has become final, shall be conclusive for all the purposes of this chapter as between the interested parties who had notice of such determination, redetermination or decision. Subject to appeal proceedings and judicial review by the Supreme Court as set forth in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive for all purposes of this chapter and shall not be subject to collateral attack

irrespective of notice.

(b) No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this chapter by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought (i) pursuant to this chapter, (ii) to collect unemployment insurance contributions, (iii) to recover overpayments of unemployment insurance benefits, or (iv) to challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

(12) The provisions of the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving claimants under the provisions of this chapter.

IDAPA Rules added to I.C. § 72-1368

IDAPA 09.01.01.027

027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.

01. Determinations and Time for Filing Appeals. Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code, and must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. The date of mailing or service indicated on the determination shall be deemed the date of service of the determination. A determination is final unless, within fourteen (14) days after notice, as provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. (3-23-22)

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03. Computation of Time. In computing any time period prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. (3-23-22)

IDAPA 09.01.01.035

035. APPEALS TO APPEALS EXAMINER -- FORM AND MANNER OF FILING OF NOTICES OF APPEAL.

01. Form of Notices of Appeal. Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. (3- 23-22)

02. Filing of Notices of Appeal. To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on the determination or other decision being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section

45-617, Idaho Code. (3-23-22)

IDAPA 09.01.01.037

037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.

01. Department Determinations. If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. (3-23-22)

02. Decisions of the Appeals Examiner. If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: (3-23-22)

a. For an application for rehearing that must be filed within ten (10) days of notice of service of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and (3-23-22)

b. For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of service of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (3-23-22)

IDAPA 09.01.01.038

038. DISMISSAL IF FILING IS LATE.

Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72- 1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. (3-23-22)