

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.01 – Rules of Administrative Procedure of the Department of Labor

Who does this rule apply to?

This rule applies to all interested parties to unemployment insurance appeals, wage and hour appeals parties who make payments to the Idaho Department of Labor; any person petitioning the Idaho Department of Labor for a declaratory ruling, and appeals bureau staff.

What is the purpose of this rule?

These rules govern all procedures for, and clarification of, the Department's assigned responsibility regarding the provision for payments to the Department and petitions for declaratory rulings. And further, to carry out its duties regarding the appellate process for administrative appeals.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Worker's Compensation and Related Laws — Industrial Commission -

- [Title 72, Chapter 13, et seq., Idaho Code](#) – Employment Security Law
- [Title 45 Chapter 6, et seq., Idaho Code](#) - Claims for Wages Act

Who do I contact for more information on this rule?

Idaho Department of Labor
317 W. Main Street
Boise, ID 83735
Phone: (208) 696-2380
Fax: (208) 334-6430
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09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

000. LEGAL AUTHORITY.

These rules are promulgated under Sections 45-616 and 72-1333(2), Idaho Code. (3-23-22)

001. SCOPE.

These rules govern all procedures for rulemaking, petitions for declaratory rulings, and determinations and appeals pursuant to the Employment Security Law, Title 72, Chapter 13, Idaho Code, and the Claims for Wages Act, Title 45, Chapter 6, Idaho Code, and for other programs administered by the Department unless otherwise specified by law. (3-23-22)

002. – 003. (RESERVED)

004. PAYMENTS TO THE DEPARTMENT.

Any payment tendered to the Department will be for collection only and will not constitute payment of any amount due until the payment clears the appropriate financial institution. Should the Department incur any additional expense in the payment collection, the expense will be paid by the person who tenders said payment to the Department. (3-23-22)

005. – 009. (RESERVED)

010. DEFINITIONS.

01. Appeals Examiner. A Department hearing officer designated to hear administrative appeals pursuant to the Employment Security Law and the Claims for Wages Act. (3-23-22)

02. Claims for Wages Act. The Claims for Wages Act codified at Title 45, Chapter 6, Idaho Code. (3-23-22)

03. Department. The Idaho Department of Labor. (3-23-22)

04. Determination. Unless the context clearly suggests otherwise, reference to a determination in these rules includes a determination, redetermination, or a revised determination. (3-23-22)

05. Employment Security Law. The Employment Security Law codified at Title 72, Chapter 13, Idaho Code. (3-23-22)

011. – 017. (RESERVED)

018. DECLARATORY RULING PROCEDURES.

Form and Contents of Petitions for Declaratory Rulings on Applicability of Statutes or Rules. Any person petitioning for a declaratory ruling on the applicability of a statute or Department rule must comply with this rule. (3-23-22)

01. Form of Petition. The petition must: identify the petitioner and state the petitioner's interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, or rule, and the factual allegations upon which the petitioner relies to support the petition. (3-23-22)

02. Legal Assertions. Citations of cases and/or statutory provisions may accompany the legal assertions in a petition for a declaratory ruling. (3-23-22)

03. Filing Petition. A petition for a declaratory ruling on applicability of statutes or rules must be filed with the Director of the Department at 317 Main Street, Boise, Idaho 83735. (3-23-22)

019. – 044. (RESERVED)

045. CONDUCT OF APPEALS HEARING.

Upon request for appeal, a hearing before an appeals examiner will be set. Written notice of the time and place of the hearing will be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date. (3-23-22)

01. Telephone Hearings. Hearings will be held by telephone unless, at the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner will consider factors, including but not limited to the desires of the parties, possible delay and

expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-23-22)

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may dismiss an appeal for good cause, such as abandonment of the appeal. (3-23-22)

03. Rehearing. An application for rehearing will be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-23-22)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision may be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which are provided to the parties with the notice of hearing. (3-23-22)

05. Exhibits and Recordings. Hearing exhibits and recordings may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (3-23-22)

06. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-23-22)

07. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, are entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case will a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses are entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses will be paid from the Employment Security Administration fund. Under no circumstances will interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (3-23-22)

08. Undecided Issues. When it is apparent that there is no prior ruling on an issue that must be decided under the Act, the appeals examiner may hear and decide the issue. (3-23-22)

09. Type of Hearing. The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)

10. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. (7-1-25)

11. Order of Witnesses. The appeals examiner, in the exercise of reasonable discretion, will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. (7-1-25)

12. Evidence. The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. (7-1-25)

13. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, they will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. (7-1-25)

14. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific

facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them at the time of the hearing, or at the time of the issuance of the decision. (7-1-25)

15. Closing Arguments. Closing arguments will be limited to five (5) minutes for each party unless the appeals examiner grants an exception. (7-1-25)

046. COMMUNICATION WITH APPEALS STAFF.

No party involved in an appeal may communicate, either directly or indirectly, with appeals examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Idaho Department of Labor, may attempt to influence the disposition of an appeal through such communications. No appeals examiner may knowingly cause a communication prohibited by this section to be made. (3-23-22)

01. Prohibition of Ex Parte Contacts. The prohibition on ex parte contacts contained in this rule applies from the time an appeal is filed pursuant to IDAPA 09.01.01.025 or IDAPA 09.01.01.027 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. (3-23-22)

02. Issues of Fact. As used in this rule, the term "issue of fact or law relevant to an appeal" includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties may not direct questions of appeals procedure or case status inquiries to the appeals examiner assigned to their case but rather to other appeals examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the appeals examiner in the case), or to clerical staff of the Appeals Bureau. (3-23-22)

03. Reporting Prohibited Contacts. An appeals examiner or other Appeals Bureau employee who receives a communication prohibited by this rule must place in the record of the case all such written communications or a memorandum stating the substance of all such oral communications. The Appeals Bureau must send a full copy of the communication to other interested parties to the appeal and allow an appropriate time for the parties to respond. (3-23-22)

047. – 059. (RESERVED)

060. INDUSTRIAL COMMISSION REVIEW OF APPEALS EXAMINER DECISIONS.

01. Claim for Review Under the Employment Security Law. A claim for review of the appeals examiner's decision, as provided in Section 72-1368, Idaho Code, must be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by the Commission. Ref. Sec. 72-1368(7) Idaho Code. (3-23-22)

02. Transcripts. Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings must be prepared if ordered by the Commission. Copies of transcripts or recording of the proceedings, together with exhibits received in the case, must be transmitted by the Department to the Commission and provided to all interested parties without charge. (3-23-22)

061. – 999. (RESERVED)