

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.35 – Unemployment Insurance Tax Administration Rules

Who does this rule apply to?

These rules apply to Idaho employers and the Idaho Department of Labor for the administration of the Unemployment Insurance Program in Idaho.

What is the purpose of this rule?

These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program.

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

Who do I contact for more information on this rule?

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09.01.35 – UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

000. LEGAL AUTHORITY.

These rules are promulgated under Section 72-1333, Idaho Code. (3-23-22)

001. SCOPE.

These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program. (3-23-22)

002. ADMINISTRATIVE APPEALS.

Administrative appeals from determinations under this chapter may be taken as provided in [IDAPA 09.01.01](#), and Sections 72-1361 and 72-1368, Idaho Code. (3-23-22)

003. -- 010. (RESERVED)

011. GENERAL PROVISIONS.

01. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-23-22)

02. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien. Ref. Section 72-1360, Idaho Code. (3-23-22)

03. Determinations and Appeals. The rules governing the form, filing, and other procedures relating to determinations under this chapter, and any appeal from those determinations, are provided in [IDAPA 09.01.01](#). (3-23-22)

04. When Reports Replace Determinations. In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if: (3-23-22)

a. The employer files reports for the periods covered by the determination before the determination becomes final; and (3-23-22)

b. The Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-23-22)

05. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-23-22)

012. -- 039. (RESERVED)

040. COMPROMISE OF PENALTY AND CIVIL PENALTY.

Pursuant to Section 72-1354, Idaho Code, the Director or his authorized representative may, for good cause shown, compromise the amount of penalties owed on an employer account. An employer shall submit a request in writing for compromise of penalties, setting forth the reason(s) for the delinquency, and attaching any available evidence supporting the request. (3-23-22)

01. Good Cause. An employer has established good cause if the employer can show that one (1) of the following criteria has been met: (3-23-22)

a. The reason for the delinquency was beyond the reasonable control of the employer. Examples of circumstances that are beyond the reasonable control of the employer include, but are not limited to, the following: (3-23-22)

i. Departmental error, including but not limited to providing incorrect information to the employer or not furnishing proper forms in sufficient time to permit timely payment of contributions; (3-23-22)

- ii. Death or serious illness or injury of the employer or the employer's accountant or members of their immediate families; (3-23-22)
- iii. Destruction by fire or other casualty of the employer's place of business or business records; or (3-23-22)
- iv. Postal service delays. (3-23-22)
- b.** The delinquency was due to circumstances for which the imposition of penalties would be inequitable. (3-23-22)
- c.** Good cause is also established in the case of an employer who has never received a status determination, who has never paid any contributions to the director, who voluntarily approaches the Department to inquire as to whether workers are engaged in covered employment, and the failure to pay contributions was due to the employer's good faith belief that the employer was not a covered employer pursuant to the provisions of Idaho Employment Security Law. Ref. Section 72-1354, Idaho Code. (3-23-22)

041. -- 061. (RESERVED)

062. SUBSTANCE VS. FORM.

In recognizing covered employers, covered employment and in classifying wages, the Department shall examine both the substance and the form of the arrangement, contract, transaction or event, but more consideration shall be given to the substance of the arrangement, contract, transaction or event than to the form. If it is determined that true economic substance is lacking or the operations, accounting practices and records do not reflect the purported form or legal status, the Department shall, regardless of the form, determine proper coverage or classification. (3-23-22)

063. -- 111. (RESERVED)

112. DETERMINING STATUS OF WORKER.

01. Determining if Worker Is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-23-22)

- a.** The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-23-22)
- b.** Statements made to the Department; (3-23-22)
- c.** Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-23-22)
- d.** Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-23-22)

02. Determining if Worker Is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-23-22)

03. Proving Worker Is Free from Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-23-22)

a. Whether the alleged employer has control over the details of the work, the manner, method or mode of doing the work, and the means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-23-22)

b. The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (3-23-22)

c. The employer must demonstrate that it lacked a right to control the worker. (3-23-22)

04. Proving Worker Is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors are significant and shall be considered in making this determination, although no single factor is regarded as controlling: (3-23-22)

a. The level of skill required to perform the work; (3-23-22)

i. A worker who performs routine tasks requiring little or no training is indicative of the worker's status as an employee. (3-23-22)

ii. A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. (3-23-22)

iv. A worker who receives all or substantially all of the worker's job training from the alleged employer is indicative of the worker's status as an employee. (3-23-22)

b. The extent to which the worker's services are an integral part of the alleged employer's business; (3-23-22)

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. (3-23-22)

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. (3-23-22)

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. (3-23-22)

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. (3-23-22)

c. The permanency of the relationship; (3-23-22)

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. (3-23-22)

- ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. (3-23-22)
- iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. (3-23-22)
- iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. (3-23-22)
- v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. (3-23-22)
- d.** A worker's investment in facilities and equipment; (3-23-22)
 - i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee. (3-23-22)
 - ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. (3-23-22)
 - iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. (3-23-22)
 - iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools is indicative of the worker's status as an independent contractor. (3-23-22)
 - v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. (3-23-22)
 - vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. (3-23-22)
- e.** Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; (3-23-22)
 - i. A worker who provides one (1) type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. (3-23-22)
 - ii. A worker who provides one (1) type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. (3-23-22)
 - iii. A worker who advertises independently via yellow pages, business cards, web pages, or other types of media is indicative of the worker's status as an independent contractor. (3-23-22)
- f.** A worker's opportunities for profit and loss; (3-23-22)
 - i. A worker required to carry business related expenses such as insurance, bonding, or workers compensation coverage is indicative of the worker's status as an independent contractor. (3-23-22)
 - ii. A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. (3-23-22)

g. Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession, or business. These factors may include control of the premises, right to determine hours, or who sets the rate of pay. (3-23-22)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-23-22)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-23-22)

113. -- 165. (RESERVED)

166. FIELD OPERATIONS CONTROL.

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. (3-23-22)

01. Execution Against Assets. The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. (3-23-22)

02. Relief of Indebtedness. Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. (3-23-22)

167. -- 999. (RESERVED)