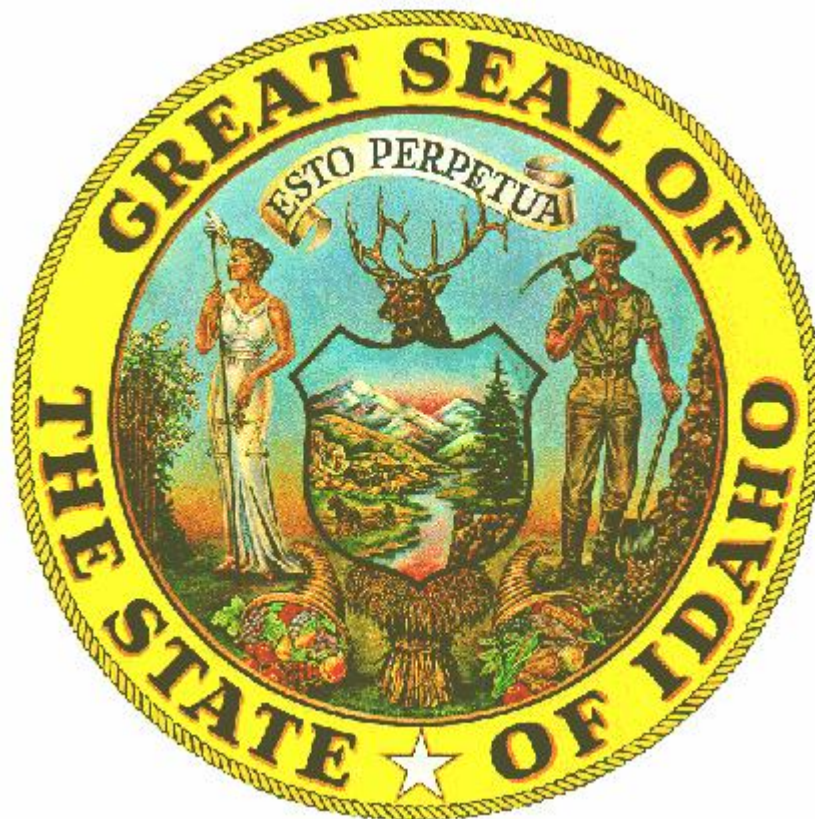


Title 72  
Workers Compensation and Relate Laws—Industrial  
Commission

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Chapter 1 .....	16
Short Title—Definitions .....	16
72-101. SHORT TITLE.....	16
72-102. DEFINITIONS.....	16
72-103. Temporary and professional employers. ....	20
Chapter 2.....	20
Scope—Coverage—Liability.....	20
72-201. DECLARATION OF POLICE POWER.....	20
72-202. Interstate commerce.....	21
72-203. EMPLOYMENTS COVERED .....	21
72-204. PRIVATE EMPLOYMENT—Coverage.....	21
72-205. PUBLIC EMPLOYMENT GENERALLY—COVERAGE. ....	21
72-206. IDAHO YOUTH CONSERVATION PROJECT—COVERAGE.	
.....	22
72-207. PUBLIC EMPLOYMENT—REELIEF WORK.....	22
72-208. INJURIES NOT COVERED—WILFUL INTENTION—	
INTOXICATION.....	22
72-209. EXCLUSIVENESS OF LIABILITY OF EMPLOYER.....	23
72-210. EMPLOYER'S FAILURE TO INSURE LIABILITY.....	23
72-211. EXCLUSIVENESS OF EMPLOYEE'S REMEDY.....	23
72-212. EXEMPTIONS FROM COVERAGE.....	23
72-213. ELECTION OF EXEMPT COVERAGE.....	24
72-214. REVOCATION OF ELECTION.....	24
72-216. CONTRACTORS.....	25
72-217. EXTRATERRITORIAL COVERAGE.....	25
72-218. AWARD SUBJECT TO CREDIT FOR BENEFITS	
FURNISHED OR PAID UNDER LAWS OF OTHER JURISDICTIONS	
.....	25
72-219. INJURIES IN TRANSITORY EMPLOYMENT IN IDAHO. ....	26
72-220. LOCALE OF EMPLOYMENT.....	27
72-221. COVERAGE FOR INJURIES OR OCCUPATIONAL	
DISEASES OUTSIDE STATE PRESUMED.....	27
72-222. RECIPROCAL RECOGNITION OF EXTRATERRITORIAL	
COVERAGE WITH OTHER JURISDICTIONS.....	27
THIRD PARTY LIABILITY.....	27
72-225. MINOR EMPLOYEE.....	28
72-226. INSANE PERSON'S COMPENSATION PAYABLE TO	
GUARDIAN.....	29
72-227. DOUBTFUL RIGHTS SUBJECT TO COMMISSION'S	
DETERMINATION.....	29
72-228. PRESUMPTION FAVORING CERTAIN CLAIMS.....	29
72-229. SURETY ESTOPPED TO DENY COVERAGE.....	29
72-230. PUBLIC ASSISTANCE—Coverage .....	29
Chapter 3.....	30
Security for Compensation .....	30
72-334. SECURITY FOR PAYMENT OF COMPENSATION.....	30

72-302. REGULATION OF DEPOSIT WITH STATE TREASURER..	31
72-303. QUALIFICATION SUBJECT TO REGULATION .....	31
72-304. PROMPT COMPENSATION PAYMENTS REQUIRED—Rules AND REGULATIONS.....	31
72-305. CLAIMS SERVICES AND MEDICAL SUPERVISION. ....	31
72-306. RECITALS IN INSURANCE CONTRACTS. ....	31
72-306A. DEDUCTIBLE CONTRACT.....	32
72-307. KNOWLEDGE OF EMPLOYER TO AFFECT SURETY. ....	32
72-308. INSOLVENCY OF EMPLOYER NOT TO RELEASE SURETY. .....	33
72-309. INSURANCE CONTRACT DEEMED REFORMED. ....	33
72-310. MISREPRESENTATION NOT TO AFFECT EMPLOYEE'S RIGHTS.....	33
72-311. NOTICE OF SECURITY—Cancellation OF SURETY CONTRACT.....	33
72-312. POSTING OF NOTICE REGARDING INSURANCE— PENALTY. ....	34
72-313. PAYMENT PENDING DETERMINATION OF POLICY COVERAGE.....	34
72-314. PAYMENT OF LIABILITY OF PUBLIC EMPLOYER. ....	34
72-315. ERRONEOUS PAYMENT IN GOOD FAITH. ....	34
72-316. VOLUNTARY PAYMENTS OF INCOME BENEFITS. ....	34
72-317. PERIODICAL PAYMENTS.....	35
72-318. INVALID AGREEMENTs—PENALTY. ....	35
72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. ....	35
72-320. COMPENSATION PREFERRED AS WAGES.....	36
72-321. STATUTORY AGENT OF EMPLOYER WHO HAS NO BUSINESS LOCALE.....	36
72-322. ASSIGNED RISK. ....	37
72-323. CREATION OF INDUSTRIAL SPECIAL INDEMNITY FUND. .....	37
72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND.....	37
72-325. STATE TREASURER CUSTODIAN OF FUND—Duties.....	38
72-326. DEPOSIT AND INVESTMENT OF FUND—interest.....	38
72-327. ASSESSMENT—METHOD OF CALCULATION AND PRORATION—TIME FOR PAYMENT.....	38
72-328. COLLECTION OF DELINQUENT ASSESSMENTS—DUTY OF ATTORNEY GENERAL—PENALTIES. ....	39
72-329. DISBURSEMENTS. ....	40
72-330. LEGAL REPRESENTATION OF FUND. ....	40
72-331. PAYMENT OF ADMINISTRATIVE EXPENSES.....	40
72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY ACCOUNT. ....	40
72-333. PERPETUAL APPROPRIATION.....	41

	FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY FUND—TIME FOR FILING—RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM—JURISDICTIONAL EFFECT.	41
Chapter 4	Benefits	41
	72-401. DEPENDENCY—WHEN DETERMINED	41
	WAITING PERIOD	41
	72-403. PENALTY FOR MALINGERING—DENIAL OF COMPENSATION.	42
	72-404. LUMP SUM PAYMENTS.	42
	72-405. TRUSTEE IN CASE OF LUMP SUM PAYMENT.	42
	72-406. DEDUCTIONS FOR PREEXISTING INJURIES AND INFIRMITIES.	42
	72-407. CERTAIN INJURIES DEEMED TOTAL AND PERMANENT.	42
	72-408. INCOME BENEFITS FOR TOTAL AND PARTIAL DISABILITY.	43
	72-409. MAXIMUM AND MINIMUM INCOME BENEFITS FOR TOTAL DISABILITY.	43
	72-411. TIME OF DEPENDENCY	44
	PERIODS OF INCOME BENEFITS FOR DEATH.	44
	72-413. INCOME BENEFITS FOR DEATH.	44
	72-413A. LUMP SUM PAYMENT UPON REMARRIAGE.	46
	72-414. APPORTIONMENT BENEFITS BETWEEN CLASSES.	46
	72-415. CHANGE IN DEPENDENTS.	46
	72-416. MAXIMUM AND MINIMUM INCOME BENEFITS FOR DEATH.	46
	72-417. MAXIMUM TOTAL PAYMENT.	46
	72-418. COMPUTATION OF WEEKS AND DAYS.	47
	72-419. DETERMINATION OF AVERAGE WEEKLY WAGE.	47
	72-420. COMPENSATION TO STATE WHEN DEPENDENCY NOT CLAIMED OR PROVED.	48
	72-421. REFUND OF PAYMENT TO STATE AFTER DELAYED PROOF OF CLAIM BY MINOR OR INCOMPETENT DEPENDENT.	48
	72-422. PERMANENT IMPAIRMENT.	48
	72-423. PERMANENT DISABILITY.	48
	72-424. PERMANENT IMPAIRMENT EVALUATION.	49
	72-425. PERMANENT DISABILITY EVALUATION.	49
	72-426. THE WHOLE MAN—A PERIOD OF FIVE HUNDRED WEEKS.	49
	72-427. PERMANENT IMPAIRMENT EVALUATION NOT EXCLUSIVE.	49
	72-428. SCHEDULED INCOME BENEFITS FOR LOSS OR LOSSES OF USE OF BODILY MEMBERS.	49
	72-429. UNSCHEDULED PERMANENT DISABILITIES.	51

72-430. PERMANENT DISABILITY—DETERMINATION OF— PERCENTAGES—SCHEDULE. ....	51
72-431. INHERITABILITY OF SCHEDULED OR UNSCHEDULED INCOME BENEFITS. ....	52
72-431. MEDICAL SERVICES, APPLIANCES AND SUPPLIES— REPORTS. ....	52
72-433. SUBMISSION OF INJURED EMPLOYEE TO MEDICAL EXAMINATION OR PHYSICAL REHABILITATION. ....	54
72-434. EFFECT OF REFUSING MEDICAL EXAMINATION— DISCONTINUANCE OF COMPENSATION. ....	55
72-435. INJURIOUS PRACTICES—SUSPENSION OR REDUCTION OF COMPENSATION. ....	55
72-436. BURIAL EXPENSES. ....	55
72-437. OCCUPATIONAL DISEASES—RIGHT TO COMPENSATION. ....	55
72-438. OCCUPATIONAL DISEASES. ....	56
72-439. ACTUALLY INCURRED/NONACUTE OCCUPATIONAL DISEASE. ....	57
72-440. TIME OF DEPENDENCY—DEATH BENEFITS. ....	57
72-441. NO COMPENSATION IN CASE OF MISREPRESENTATION. .....	57
72-444. NO COMPENSATION FOR PARTIAL DISABILITY FROM SILICOSIS. ....	57
72-445. COMPENSATION FOR TOTAL DISABILITY OR DEATH FROM COMPLICATED SILICOSIS. ....	58
72-446. NONDISABLING SILICOSIS—COMPENSATION UPON SEVERANCE FROM EMPLOYMENT. ....	58
72-447. RECURRING DERMATITIS. ....	58
NOTICE AND LIMITATIONS. ....	58
72-449. POST MORTEM EXAMINATION. ....	59
72-450. RETRAINING. ....	59
72-451. PSYCHOLOGICAL ACCIDENTS AND INJURIES. ....	59
Chapter 5. ....	60
Industrial Commission. ....	60
72-501. CREATION OF COMMISSION—APPOINTMENT, TERM OF OFFICE—QUALIFICATIONS—AFFILIATIONS—EFFECT OF ACCEPTING APPOINTMENT—VACANCIES—REMOVAL OF MEMBER FOR CAUSE. ....	60
72-501A. REHABILITATION DIVISION—BUDGET AND EXPENSE—COMPOSITION AND IMPLEMENTATION. ....	61
72-502. REFERENCES TO INDUSTRIAL COMMISSION TO INCLUDE INDUSTRIAL ACCIDENT BOARD. ....	61
72-503. SALARY. ....	61
72-504. ORGANIZATION—CHAIRMAN—SECRETARY. ....	62
72-505. QUORUM—MAJORITY TO ACT—EFFECT OF VACANCY. .....	62

72-506. ACTS OF COMMISSION OR REFERENCE-HEARING OFFICERS.....	62
72-507. SEAL.....	62
72-508. AUTHORITY TO ADOPT RULES AND REGULATIONS.....	62
72-509. OFFICES AND SUPPLIES.....	63
72-510. PAYMENT OF EXPENSES.....	63
72-511. RECORDS AND FORMS.....	63
72-512. REPORTS.....	63
72-513. SPECIFIED EMPLOYEES—EXEMPT FROM PERSONNEL SYSTEM.....	63
72-514. ASSISTANTS.....	63
72-515. FEES.....	63
72-516. REPORTS.....	64
72-517. COOPERATION WITH OTHER AGENCIES.....	64
72-518. DUTIES OF ATTORNEY GENERAL—REPRESENTATION IN COURT.....	64
72-519. CREATION OF INDUSTRIAL ADMINISTRATION FUND—PURPOSE.....	64
72-520. INDUSTRIAL COMMISSION ADMINISTRATOR OF FUND.....	65
72-521. STATE TREASURER CUSTODIAN OF FUND—DUTIES... ..	65
72-522. DEPOSIT AND INVESTMENT OF FUND—INTEREST.....	65
72-523. SOURCE OF FUND—PREMIUM TAX.....	65
72-524. SURETIES' REPORTS OF TAX BASIS.....	66
72-525. CIVIL ACTION FOR COLLECTION OF PREMIUM TAX—DUTIES OF ATTORNEY GENERAL.....	66
72-526. PENALTY FOR DEFAULT—COLLECTION BY CIVIL ACTION—DUTY OF ATTORNEY GENERAL.....	66
72-527. CIVIL PENALTY FOR SURETY'S MISREPRESENTATION—DUTY OF ATTORNEY GENERAL.....	66
72-528. STATISTICAL INFORMATION REQUIRED.....	67
Chapter 6.....	67
Employer Reports.....	67
72-601. RECORD OF INJURIES—NECESSITY—AVAILABILITY—FAILURE TO KEEP.....	67
72-602. EMPLOYERS' NOTICE OF INJURY AND REPORTS.....	68
72-603. EMPLOYERS' REPORT OF EMPLOYEES.....	68
72-604. FAILURE TO REPORT TOLLS EMPLOYEE LIMITATIONS.....	69
Chapter 7.....	69
Procedures.....	69
72-701. NOTICE OF INJURY AND CLAIM FOR COMPENSATION FOR INJURY—LIMITATIONS.....	69
72-702. FORM OF NOTICE AND CLAIM.....	69
72-703. GIVING OF NOTICE AND MAKING OF CLAIM.....	69

72-704. SUFFICIENCY OF NOTICE—KNOWLEDGE OF EMPLOYER.....	69
72-705. LIMITATION OF TIME—MINORS AND INCOMPETENTS.....	70
72-706. LIMITATION ON TIME ON APPLICATION FOR HEARING.....	70
72-707. COMMISSION HAS JURISDICTION OF DISPUTES.....	70
72-708. PROCESS AND PROCEDURE.....	70
72-709. ATTENDANCE OF WITNESSES—PRODUCTION OF DOCUMENTS—DEPOSITION—WITNESS FEES.....	71
72-710. TRANSCRIPTS OF PROCEEDINGS.....	71
72-711. COMPENSATION AGREEMENTS.....	71
72-712. HEARINGS.....	71
72-713. NOTICE OF HEARINGS—SERVICE.....	71
72-714. HEARINGS, WHERE AND HOW CONDUCTED.....	71
72-715. DISOBEDIENCE TO COMMISSION'S DIRECTIVE PROCESS.....	72
72-716. RECORD OF PROCEEDINGS—SERVICE OF ORDER OR AWARD.....	72
72-717. EFFECT OF DECISION BY ONE MEMBER OR ASSIGNED OFFICER—CLAIM FOR REVIEW.....	72
72-718. FINALITY OF COMMISSION'S DECISION.....	72
72-719. MODIFICATION OF AWARDS AND AGREEMENTS—GROUNDS—TIME WITHIN WHICH MADE.....	73
72-718. POWERS OF COMMISSION—SAFETY.....	73
72-721. RULES FOR SAFETY—PROTECTIVE APPLIANCES.....	74
72-722. UNSAFE CONDITIONS—PROCEDURE—WARNING ORDER—SAFETY INSPECTION—HEARING—DECISION.....	74
72-723. VIOLATION OF SAFETY ORDER A MISDEMEANOR.....	75
72-724. APPEAL TO SUPREME COURT.....	75
72-725. RECORD ON APPEAL.....	75
72-731. STAY ON APPEAL.....	75
72-732. DISPOSITION OF APPEAL—JURISDICTION OF SUPREME COURT.....	75
72-733. LIMITED JURISDICTION OF COURTS.....	76
72-734. INTEREST ON COMPENSATION AWARDS.....	76
72-735. ENFORCEMENT OF AWARD—FILING IN DISTRICT COURT—DUTY OF COURT TO ENTER JUDGMENT.....	76
72-736. DISTRICT COURT JUDGMENT NONAPPEALABLE—ALIEN UPON EXECUTION.....	76
72-737. REVISION OF DISTRICT COURT'S JUDGMENT UPON MODIFICATION OF AWARD BY COMMISSION.....	77
Chapter 8.....	77
Miscellaneous Provisions.....	77
72-801. FALSE REPRESENTATION A MISDEMEANOR—FORFEITURE OF COMPENSATION.....	77

72-802. COMPENSATION NOT ASSIGNABLE—EXEMPT FROM EXECUTION.....	77
72-803. CLAIMS OF ATTORNEYS AND PHYSICIANS AND FOR MEDICAL AND RELATED SERVICES—APPROVAL. ....	77
72-804. ATTORNEY'S FEES—PUNITIVE COSTS IN CERTAIN CASES.....	77
72-805. LAW NOT RETROACTIVE.....	78
72-806. NOTICE OF CHANGE OF STATUS.....	78
Chapter 9.....	78
State Insurance Fund.....	78
72-902. STATE INSURANCE MANAGER—POWERS AND DUTIES OF STATE INSURANCE MANAGER.....	79
72-904. POWER TO SUE AND BE SUED.....	80
72-905. CONTRACTS.....	80
72-906. EMPLOYMENT OF ASSISTANTS.....	80
72-907. PERSONAL LIABILITY.....	80
72-908. SALARIES, EXPENSES AND PAYMENT OF SAME.....	80
72-909. DELEGATION OF POWERS.....	80
72-910. STATE TREASURER CUSTODIAN OF FUND.....	81
72-912. INVESTMENT OF SURPLUS OR RESERVE.....	81
72-912A. APPOINTMENT OF INVESTMENT MANAGERS.....	82
72-913. CLASSIFICATION OF RISKS AND ADJUSTMENT OF PREMIUMS.....	82
72-914. ACCOUNTS.....	83
72-915. DIVIDENDS.....	83
72-917. READJUSTMENT OF PAYROLLS.....	83
72-918. POLICIES AND PAYMENT OF PREMIUMS.....	84
72-919. ACTIONS FOR COLLECTION IN CASE OF DEFAULT—PENALTY—CANCELATION OF POLICY.....	84
72-920. WITHDRAWAL FROM FUND.....	84
72-921. REINSURANCE.....	85
72-922. AUDIT OF PAYROLLS.....	85
72-923. FALSIFICATION OF PAYROLL.....	85
72-924. WILFUL MISREPRESENTATION.....	85
72-925. INSPECTIONS.....	85
72-926. DISCLOSURES PROHIBITED.....	85
72-927. PAYMENT OF COMPENSATION AND REFUNDS.....	85
72-929. MARITIME RISK COVERAGE.....	86
Chapter 10.....	87
Crime Victims Compensation.....	87
72-1001. SHORT TITLE.....	87
72-1002. LEGISLATIVE PURPOSE AND INTENT.....	87
72-1003. DEFINITIONS.....	87
72-1004. POWERS AND DUTIES OF COMMISSION.....	88
72-1005. REHABILITATION OF VICTIMS.....	89
72-1005. REHABILITATION OF VICTIMS.....	89



72-1006. ATTORNEYS' FEES. ....	90
72-1007. PUBLIC INSPECTION AND DISCLOSURE OF COMMISSION'S RECORDS.....	90
72-1008. LIMITATION OF BENEFIT ENTITLEMENTS TO PROPORTIONATE SHARE OF AVAILABLE FUNDS. ....	90
72-1009. CRIME VICTIMS COMPENSATION ACCOUNT. ....	90
72-1010. RECEIPT OF FUNDS.....	91
72-1011. PENALTY FOR FRAUDULENTLY OBTAINING BENEFITS. .....	91
72-1012. APPLICATION FOR COMPENSATION.....	91
72-1014. EVIDENCE OF CONDITION.....	91
72-1015. ENFORCEMENT OF COMMISSION'S ORDERS— IMPROPER ASSERTION OF PRIVILEGE.....	92
72-1016. LIMITATIONS ON AWARDS. ....	92
72-1017. TENTATIVE AWARD OF COMPENSATION. ....	92
72-1018. AWARD OF COMPENSATION.....	93
72-1019. COMPENSATION BENEFITS. ....	93
72-1020. AWARD NOT SUBJECT TO EXECUTION, ATTACHMENT, GARNISHMENT, OR ASSIGNMENT—EXCEPTION.....	95
72-1021. RECONSIDERATION AND REVIEW OF COMMISSION'S DECISIONS.....	95
72-1022. NO APPEAL. ....	95
72-1023. SUBROGATION.....	95
72-1025. FINES—REIMBURSEMENTS—PRIORITY—DISPOSITION. .....	96
Chapter 11.....	97
Peace Officer And Detention Officer Temporary Disability Act.....	97
72-1101. LEGISLATIVE INTENT.....	97
72-1102. SHORT TITLE.....	97
72-1103. DEFINITIONS. ....	97
72-1104. COMPENSATION AND COSTS.....	97
72-1105. FUND ESTABLISHED—FINES—PRIORITY— DISPOSITION.....	98
Chapter 12.....	99
[Reserved].....	99
Chapter 13.....	99
Employment Security Law .....	99
72-1301. SHORT TITLE.....	99
72-1302. DECLARATION OF STATE PUBLIC POLICY.....	99
72-1303. DEFINITIONS. ....	99
72-1304. AGRICULTURAL LABOR.....	99
72-1305. ANNUAL PAYROLL.....	100
72-1306. BASE PERIOD.....	100
72-1307. BENEFITS.....	100
72-1308. BENEFIT YEAR.....	100
72-1309. COMMISSION.....	100

72-1310. BONUS PAYMENT. ....	100
72-1311. CALENDAR QUARTER.....	100
72-1312. COMPENSABLE WEEK. ....	101
72-1313. COMPUTATION DATE. ....	101
72-1314. CONTRIBUTIONS.....	101
72-1315. COVERED EMPLOYER.....	101
72-1315A. COST REIMBURSEMENT EMPLOYER. ....	102
72-1316. COVERED EMPLOYMENT.....	102
72-1316A. EXEMPT EMPLOYMENT.....	104
72-1317. CUT-OFF DATE.....	106
72-1318. DIRECTOR—DEPARTMENT. ....	106
72-1319. ELIGIBLE EMPLOYER.....	106
72-1319A. DEFICIT EMPLOYER. ....	106
72-1319B. TAXABLE WAGE RATE. ....	106
72-1320. CREW LEADER.....	106
72-1322. EXPERIENCE RATING.....	107
72-1322A. HOSPITAL.....	107
72-1322B. EDUCATIONAL INSTITUTION.....	107
72-1322C. GOVERNMENTAL ENTITY.....	107
72-1322D. NONPROFIT ORGANIZATION. ....	107
72-1323. INTERESTED PARTIES.....	107
72-1324. PAYROLL.....	107
72-1325. PERSON.....	107
72-1327. STATE.....	108
72-1327A. VALID CLAIM.....	108
72-1328. WAGES.....	108
72-1329. WAITING WEEK.....	109
72-1330. WEEK.....	109
72-1331. ADMINISTRATION.....	109
72-1332. AUTHORITY AND DUTIES OF THE COMMISSION.....	109
72-1333. DEPARTMENT OF LABOR—AUTHORITY AND DUTIES OF THE DIRECTOR.....	109
72-1334. PUBLICATIONS. ....	110
72-1335. PERSONNEL.....	110
72-1336. ADVISORY BODY AND SPECIAL COMMITTEES. ....	112
72-1337. RECORDS AND REPORTS.....	112
72-1338. OATHS AND WITNESSES.....	112
72-1339. ENFORCEMENT OF SUBPOENAS.....	112
72-1340. PROTECTION AGAINST SELF-INCRIMINATION.....	113
72-1341. FEDERAL-STATE COOPERATION.....	113
72-1343. PRESERVATION AND DESTRUCTION OF RECORDS. .	113
72-1344. RECIPROCAL ARRANGEMENTS AND COOPERATION. .....	114
72-1345. STATE EMPLOYMENT SERVICE.....	115
72-1345A. IDAHO CAREER INFORMATION SYSTEM.....	115
72-1346. EMPLOYMENT SECURITY FUND.....	115

72-1346A. ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT TO EMPLOYMENT SECURITY FUND—FEDERAL ADVANCE INTEREST REPAYMENT FUND.....	117
72-1347. EMPLOYMENT SECURITY ADMINISTRATION FUND.	119
72-1347A. EMPLOYMENT SECURITY RESERVE FUND—SPECIAL ADMINISTRATION FUND.....	120
72-1347B. WORKFORCE DEVELOPMENT TRAINING FUND.....	121
72-1348. STATE EMPLOYMENT SECURITY ADMINISTRATIVE AND REIMBURSEMENT FUND.....	123
72-1349. PAYMENT OF CONTRIBUTIONS.....	124
72-1349A. FINANCING OF BENEFIT PAYMENTS BY NONPROFIT ORGANIZATIONS AND GOVERNMENTAL ENTITIES. ....	125
72-1349B. FINANCING OF BENEFITS PAYMENTS BY PROFESSIONAL EMPLOYERS AND THEIR CLIENTS.....	127
72-1349C. TREATMENT OF INDIAN TRIBES. ....	128
72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. ....	130
72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RATING ACCOUNTS. ....	133
72-1351A. MANDATORY TRANSFERS OF EXPERIENCE RATING ACCOUNTS AND FEDERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES.....	136
72-1352. PERIOD, TERMINATION, AND ELECTION OF EMPLOYER COVERAGE. ....	139
72-1353. ADMINISTRATIVE DETERMINATIONS OF COVERAGE. ....	139
72-1354. PENALTY ON UNPAID AMOUNTS. ....	140
72-1355. COLLECTION BY SUIT.....	140
72-1355A. CONTRACTORS' AND PRINCIPALS' LIABILITY FOR CONTRIBUTIONS. ....	141
72-1356. PRIORITIES.....	141
72-1357. ADJUSTMENTS AND REFUNDS.....	141
72-1358. DETERMINATION OF AMOUNTS DUE UPON FAILURE TO REPORT.....	142
72-1359. JEOPARDY ASSESSMENTS.....	142
72-1360. LIENS.....	142
72-1360A. COLLECTION OF LIEN AMOUNTS. ....	143
72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION.....	143
72-1362. LIABILITY OF SUCCESSOR. ....	144
72-1364. UNCOLLECTIBLE ACCOUNTS.....	144
72-1365. PAYMENT OF BENEFITS.....	144
72-1366. PERSONAL ELIGIBILITY CONDITIONS.....	146
72-1367. BENEFIT FORMULA. ....	151
72-1367A. EXTENDED BENEFITS.....	153

72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE.	158
72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST – COLLECTION AND WAIVER.	161
72-1370. DISTRIBUTION OF BENEFIT PAYMENTS UPON DEATH.	162
72-1373. MISREPRESENTATION TO OBTAIN BENEFITS OR TO PREVENT PAYMENTS OR TO EVADE CONTRIBUTION LIABILITY—CRIMINAL PENALTY.	162
72-1372. CIVIL PENALTIES.	162
72-1373. VIOLATION OF THIS LAW OR RULES THEREUNDER.	164
72-1374. UNAUTHORIZED DISCLOSURE OF INFORMATION....	164
72-1375. PROTECTION OF RIGHTS AND BENEFITS.	164
72-1376. REPRESENTATION IN COURT.	165
72-1377. SAVING CLAUSE.	165
72-1378. SEPARABILITY OF PROVISIONS.	165
72-1379. REFERENCES IN CHAPTER.	165
72-1381. DIRECTOR TO COOPERATE WITH GOVERNOR IN MEDIATION OF DISPUTES.	166
72-1382. DUTIES OF DIRECTOR—DETERMINATION OF REPRESENTATIVES.	166
72-1385. PROVISIONS NOT TO APPLY TO AGRICULTURAL OR DOMESTIC LABOR.	166
Chapter 14.....	166
Firemen’s Retirement Fund .....	166
72-1401. PURPOSE OF CHAPTER.	166
72-1402. CONSTRUCTION.	167
72-1403. DEFINITIONS.	167
72-1404. AVERAGE FINAL COMPENSATION.	168
72-1405. POWERS AND DUTIES OF PUBLIC EMPLOYEE RETIREMENT BOARD.	168
72-1406. ADMINISTRATION OF PROVISIONS OF CHAPTER.....	168
72-1407. POWER OF BOARD TO SUE AND BE SUED.	168
72-1408. POWER OF BOARD TO ENGAGE EMPLOYEES.	168
72-1409. EMPLOYMENT OF ATTORNEYS AND AGENTS.	169
72-1410. RISKS AUTHORIZED TO BE INSURED—PAYMENT OF PREMIUMS.	169
72-1411. LIABILITY OF BOARD.	169
72-1421. FUNDS—HOW USED.	169
72-1422. BENEFITS EXEMPT FROM EXECUTION—NOT ASSIGNABLE.	169
72-1423. FILING OF CLAIMS—PROCEDURE—JURISDICTION OF INDUSTRIAL COMMISSION.	169
72-1424. PRESENTATION OF FALSE CLAIM PENALIZED.	169
72-1425. WORKERS' COMPENSATION LAW NOT REPEALED..	170
72-1426. RECORDS TO BE PUBLIC RECORDS.	170

72-1429E. SURVIVING CHILD.....	170
72-1431. CONTRIBUTION FROM FIREFIGHTERS—MANNER OF COLLECTION. ....	170
72-1432. PENSION FUND CONTRIBUTIONS BY CITIES AND FIRE DISTRICTS—REMITTANCES. ....	171
72-1433. FAILURE OF CITY OR FIRE DISTRICT TO MAKE PAYMENT—EFFECT.....	171
72-1434. OPTIONAL PENSION AMOUNTS—OPTION I AND OPTION II. ....	171
72-1435. VOLUNTARY RETIREMENT—YEARS OF SERVICE DETERMINE PENSION BENEFIT. ....	172
72-1441. DATE OF PAYMENT. ....	173
72-1442. PENSION PAYMENT—MAXIMUM. ....	173
72-1443. ACCRUED PENSION PAYMENT—FIREFIGHTERS DISCONTINUING SERVICE PRIOR TO VOLUNTARY RETIREMENT. ....	173
72-1444. REFUND TO FIREFIGHTER TERMINATING EMPLOYMENT—REPAYMENT ON REEMPLOYMENT—CONVERSION OF CONTRIBUTIONS—PURCHASE OF SERVICE CREDITS.....	173
72-1445. PENSION PAYMENT—RETIREMENT OF FIREFIGHTER INCAPACITATED IN THE PERFORMANCE OF DUTY.....	174
72-1446. PENSION PAYMENT—RETIREMENT OF INCAPACITATED FIREFIGHTERS FOR NONSERVICE.....	175
72-1447. PAYMENT OF PENSIONS –AMOUNT TO BE PAID—PARTIES ENTITLED THERETO.....	176
72-1452. REVIEW OF DISABILITY.....	178
72-1461. DEATH BENEFITS—SPOUSE AND THE SURVIVING CHILD OR CHILDREN OF FIREFIGHTER KILLED IN PERFORMANCE OF DUTY.....	178
72-1462. DEATH BENEFITS—SPOUSE OF RETIRED FIREFIGHTER. ....	179
72-1463. DEATH BENEFITS—SURVIVING SPOUSE AND SURVIVING CHILD OR CHILDREN OF RETIRED FIREFIGHTER. ....	179
72-1464. DEATH BENEFITS—SURVIVING SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER FIVE YEARS.....	179
72-1465. DEATH BENEFITS—SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER TWENTY-FIVE YEARS. ....	181
72-1471. COST OF LIVING ADJUSTMENT.....	181
72-1472. SEPARABILITY.....	181

Comission for Reapportionment.....	182
72-1501. COMMISSION FOR REAPPORTIONMENT.....	182
72-1502. MEMBERS.....	182
72-1503. POLITICAL ACTIVITIES PROHIBITED.....	182
72-1504. COMPENSATION.....	182
72-1505. ORGANIZATION AND PROCEDURE.....	183
72-1506. CRITERIA GOVERNING PLANS.....	183
72-1507. STAFF.....	184
72-1508. FINAL REPORT.....	184
Chapter 16.....	184
State Directory of New Hires.....	184
72-1601. SHORT TITLE.....	184
72-1601. SHORT TITLE.....	184
72-1603. DEFINITIONS.....	184
72-1604. EMPLOYER REPORTING REQUIREMENTS.....	185
72-1605. USE OF NEW HIRE INFORMATION.....	185
72-1606. COSTS.....	186
72-1607. RULES.....	186
Chapter 17.....	186
Idaho Employer Alcohol and Drug-Free Workplace Act.....	186
72-1701. PURPOSE AND INTENT OF ACT.....	186
72-1702. TESTING FOR DRUGS AND/OR ALCOHOL.....	186
72-1703. COST OF TESTING OF CURRENT EMPLOYEES.....	187
72-1704. REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING.....	187
72-1705. EMPLOYER'S WRITTEN TESTING POLICY—PURPOSES AND REQUIREMENTS FOR COLLECTION AND TESTING.....	188
72-1706. RIGHT OF EMPLOYEE OR PROSPECTIVE EMPLOYEE TO EXPLAIN POSITIVE TEST RESULT AND REQUEST FOR RETEST.....	188
72-1707. DISCHARGE FOR WORK-RELATED MISCONDUCT—FAILURE OR REFUSAL OF TESTING.....	189
72-1708. EMPLOYER'S DISCIPLINARY OR REHABILITATIVE ACTIONS BASED ON TESTING –CLAIMANT INELIGIBLE FOR BENEFITS.....	189
72-1709. FAILURE OF CLAIMANT TO ACCEPT SUITABLE WORK.....	189
72-1710. LIMITATIONS OF EMPLOYER LIABILITY.....	189
72-1711. FALSE TEST RESULT—PRESUMPTION AND LIMITATION OF DAMAGES IN CLAIM AGAINST EMPLOYER..	190
72-1712. CONFIDENTIALITY OF INFORMATION.....	190
72-1713. EMPLOYEE NOT "DISABLED.".....	190
72-1714. NO PHYSICIAN-PATIENT RELATIONSHIP CREATED.	191
72-1715. PUBLIC ENTITIES MAY CONDUCT PROGRAMS.....	191

72-1716. IMPLEMENTATION OF ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM—QUALIFICATION OF EMPLOYER PREMIUM REDUCTION.....	191
72-1717. STATE CONSTRUCTION CONTRACTS.....	191

# CHAPTER 1

## Short Title—Definitions

### 72-101. SHORT TITLE.

- 1) This law may be cited as the worker's compensation law.
- 2) Wherever in title 72, Idaho Code, references appear to the term workmen's compensation this shall be deemed to mean worker's compensation.

**72-102. DEFINITIONS.** Words and terms used in the worker's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

- 1) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.
- 2) "Balance billing" means charging, billing, or otherwise attempting to collect directly from an injured employee payment for medical services in excess of amounts allowable in compensable claims as provided by rules promulgated by the commission pursuant to section 72-508, Idaho Code.
- 3) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.
- 4) "Burial expenses" means a sum, not to exceed six thousand dollars (\$6,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.
- 5) "Commission" means the industrial commission.
- 6) "Community service worker" means:  
Any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person; or Parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction who are performing public service or community service work for any of the entities specified in paragraph (6)(a) of this section other than the department of correction.
- 7) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.
- 8) "Custom farmer" means a person who contracts to supply operated equipment to a proprietor of a farm for the purpose of performing part or all of the activities related to raising or harvesting agricultural or horticultural commodities.
- 9) "Death" means death resulting from an injury or occupational disease.



10) Dependency limitations.

“Adopted” and “adoption” include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

“Brother” and “sister” include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

“Child” includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

“Grandchild” includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

“Parent” includes stepparents and parents by adoption.

“Grandparent” includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

11) “Disability,” for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

12) “Employee” is synonymous with “workman” and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

13) “Employer” means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his surety so far as applicable.

“Professional employer” means a professional employer as defined in chapter 24, title 44, Idaho Code.

“Temporary employer” means the employer of temporary employees as defined in section 44-2403(7), Idaho Code.

“Work site employer” means the client of the temporary or professional employer with whom a worker has been placed.

14) “Farm labor contractor” means any person or his agent or subcontractor who, for a fee, recruits and employs farm workers and performs any farm labor contracting activity.

15) “Gender and number.” The masculine gender includes the feminine and neuter; “husband” or “wife” includes “spouse”; the singular number includes plural and the plural the singular.

16) “Income benefits” means payments provided for or made under the provisions of this law to the injured employee disabled by an injury or occupational disease, or his dependents in case of death, excluding medical and related benefits.

- 17) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished. For the purposes of worker's compensation law, a custom farmer is considered to be an independent contractor.
- 18) "Injury" and "accident."  
"Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.  
"Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.  
"Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.
- 19) "Manifestation" means the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.
- 20) "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.
- 21) "Medical services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.
- 22) "Occupational diseases."  
"Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.  
"Contracted" and "incurred," when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.  
"Disablement," except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.  
"Disablement," in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.  
"Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide dust.
- 23) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.
- 24) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative thereof.

- 25) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.
- 26) "Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical services related to the treatment of an injured employee which are compensable under Idaho's worker's compensation law.
- 27) "Secretary" means the secretary of the commission.
- 28) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.
- 29) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.
- 30) "Surety" means any insurer authorized to insure or guarantee payment of worker's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.
- 31) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.
- 32) "Volunteer emergency responder" means a firefighter or peace officer, or publicly employed certified personnel as that term is defined in section 56-1012, Idaho Code, who is a bona fide member of a legally organized law enforcement agency, a legally organized fire department or a licensed emergency medical service provider organization who contributes services.
- 33) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease mean the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.
- 34) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.
- 35) "Work experience student" means any person enrolled in the public school districts of this state and who, as part of his instruction, is enrolled in a class or program for academic credit and for which the student is employed by, or works for, a private or governmental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

36) “Worker's compensation law” or “workmen's compensation law” means and includes the worker's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

### **72-103. TEMPORARY AND PROFESSIONAL EMPLOYERS.**

1) So long as the temporary or professional employer, or work site employer, has worker's compensation insurance covering an injured worker, or is a qualified self-insurer covering an injured worker under this title:

The work site employer shall have all of the protections and immunities granted any other employer by this title and shall not be regarded as a third party under section 72-223, Idaho Code.

The temporary or professional employer shall have all of the protections and immunities granted any other employer by this title and shall not be regarded as a third party under section 72-223, Idaho Code, if it exercised the right of control sufficient to be an employer as defined in section 72-102, Idaho Code, and insures its worker's compensation liability accordingly.

2) Whenever the parties to a temporary or professional employer arrangement contemplated by subsection (1) of this section comply with that subsection, no penalties under the worker's compensation law for being uninsured shall apply to the temporary or professional employer, or the work site employer, and no violation of any provision of title 41, Idaho Code, shall occur.

3) Whenever there is a temporary or professional employer arrangement as contemplated by subsection (1) of this section, the parties to such arrangement shall have the option to determine for themselves, in writing, whether the temporary or professional employer or the work site employer will be the party to secure liability as required by section 72-301, Idaho Code, and the party so obligated to secure such liability may do so in any manner permitted by this title. In the event that the parties to such an arrangement do not exercise the option provided in this subsection, the obligation to secure such liability shall be with the temporary or professional employer.

## **CHAPTER 2**

### **Scope—Coverage—Liability**

**72-201. DECLARATION OF POLICE POWER.** The common law system governing the remedy of workmen against employers for injuries received and occupational diseases contracted in industrial and public work is inconsistent with modern industrial conditions. The welfare of the state depends upon its industries and even more upon the welfare of its wageworkers. The state of Idaho, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for injured workmen and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as is otherwise provided in this act, and to that end all civil actions and civil causes of action for such personal injuries and all

jurisdiction of the courts of the state over such causes are hereby abolished, except as is in this law provided.

**72-202. INTERSTATE COMMERCE.** This law shall affect the liability of employers engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

**72-203. EMPLOYMENTS COVERED.** This law shall apply to all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code.

**72-204. PRIVATE EMPLOYMENT—COVERAGE.** The following shall constitute employees in private employment and their employers subject to the provisions of this law:

- 1) A person performing service in the course of the trade, business, profession or occupation of an employer.
- 2) A person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.
- 3) An officer of a corporation.
- 4) “Employment,” in the case of private employers, includes employment only in that trade, business, profession or occupation which is carried on by the employer and also includes any of the pursuits specified in section 72-212, Idaho Code, when the employer shall have elected to come under the law as provided in section 72-213, Idaho Code.

**72-205. PUBLIC EMPLOYMENT GENERALLY—COVERAGE.** The following shall constitute employees in public employment and their employers subject to the provisions of this law:

- 1) Every person in the service of the state or of any political subdivision thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, except officials of athletic contests involving secondary schools, as defined by section 33-119, Idaho Code.
- 2) Every person in the service of a county, city, or any political subdivision thereof, or of any municipal corporation.
- 3) Participants in the Idaho youth conservation project under the supervision of the Idaho state forester.
- 4) Every person who is a volunteer emergency responder shall be deemed, for the purposes of this law, to be in the employment of the political subdivision or municipality where the department, agency or organization is organized.
- 5) Every person who is a regularly enrolled volunteer member or trainee of the department of disaster and civil defense, or of a civil defense corps, shall be deemed, for the purposes of this law, to be in the employment of the state.
- 6) Members of the Idaho National Guard while on duty and employees of or persons providing voluntary service to an approved Idaho National Guard morale, welfare,

and recreational activity. No Idaho compensation benefits shall inure to any such member, employee or volunteer or their beneficiaries for any injury or death compensable under federal law.

- 7) A community service worker, as that term is defined in section 72-102, Idaho Code, is considered to be an employee in public employment for purposes of receiving worker's compensation benefits, which shall be the community service worker's exclusive remedy for all injuries and occupational diseases as provided under chapters 1 through 8, title 72, Idaho Code.
- 8) Every person who participates in a youth employment program funded in whole or in part by state or federal money and administered by a state or federal agency or a nonprofit corporation or entity.
- 9) A work experience student, as that term is defined in section 72-102, Idaho Code, who does not receive wages while participating in the school's work experience program shall be covered by the school district's policy with the state insurance fund.

**72-206. IDAHO YOUTH CONSERVATION PROJECT—COVERAGE.** The benefits secured by section 72-205[, Idaho Code,] of this act to members of the Idaho youth conservation project under the supervision of the Idaho state forester, while on duty, shall be in accordance with the provisions of section 56-609, Idaho Code.

**72-207. PUBLIC EMPLOYMENT—RELIEF WORK.** Whenever any public or municipal corporation mentioned in section 72-205[, Idaho Code,] of this act shall accept, sponsor, take charge of or manage any work or project for the purpose of relief or assisting unemployment, wherein any part or all of the funds used on such project are granted by the United States of America or by the state of Idaho, the persons so working upon such project shall be deemed employees of the public or municipal corporation so sponsoring, accepting, taking charge of or managing such work or project.

**72-208. INJURIES NOT COVERED—WILFUL INTENTION—INTOXICATION.**

- 1) No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or to injure another.
- 2) If intoxication is a reasonable and substantial cause of an injury, no income benefits shall be paid, except where the intoxicants causing the employee's intoxication were furnished by the employer or where the employer permits the employee to remain at work with knowledge by the employer or his supervising agent that the employee is intoxicated.
- 3) "Intoxication" as used in this section means being under the influence of alcohol or of controlled substances, as defined in section 37-2701(d), Idaho Code. Provided, however, that this definition shall not include an employee's use of a controlled substance for which a prescription has been issued authorizing such substance to be dispensed to the employee, or when such substance is dispensed directly by a physician to the employee, and where the employee's use of the controlled substance is in accordance with the instructions for use of the controlled substance.

**72-209. EXCLUSIVENESS OF LIABILITY OF EMPLOYER.**

- 1) Subject to the provisions of section 72-223, [Idaho Code] the liability of the employer under this law shall be exclusive and in place of all other liability of the employer to the employee, his spouse, dependents, heirs, legal representatives or assigns.
- 2) The liability of an employer to another person who may be liable for or who has paid damages on account of an injury or occupational disease or death arising out of and in the course of employment of an employee of the employer and caused by the breach of any duty or obligation owed by the employer to such other person, shall be limited to the amount of compensation for which the employer is liable under this law on account of such injury, disease, or death, unless such other person and the employer agree to share liability in a different manner.
- 3) The exemption from liability given an employer by this section shall also extend to the employer's surety and to all officers, agents, servants and employees of the employer or surety, provided that such exemptions from liability shall not apply in any case where the injury or death is proximately caused by the willful or unprovoked physical aggression of the employer, its officers, agents, servants or employees, the loss of such exemption applying only to the aggressor and shall not be imputable to the employer unless provoked or authorized by the employer, or the employer was a party thereto.

**72-210. EMPLOYER'S FAILURE TO INSURE LIABILITY.** If an employer fails to secure payment of compensation as required by this act, an injured employee, or one contracting an occupational disease, or his dependents or legal representative in case death results from the injury or disease, may claim compensation under this law and shall be awarded, in addition to compensation, an amount equal to ten per cent (10%) of the total amount of his compensation together with costs, if any, and reasonable attorney's fees if he has retained counsel.

**72-211. EXCLUSIVENESS OF EMPLOYEE'S REMEDY.** Subject to the provisions of section 72-223, [Idaho Code,] the rights and remedies herein granted to an employee on account of an injury or occupational disease for which he is entitled to compensation under this law shall exclude all other rights and remedies of the employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or disease.

**72-212. EXEMPTIONS FROM COVERAGE.** None of the provisions of this law shall apply to the following employments unless coverage thereof is elected as provided in section 72-213, Idaho Code.

- 1) Household domestic service.
- 2) Casual employment.
- 3) Employment of outworkers.
- 4) Employment of members of an employer's family dwelling in his household.
- 5) Employment of members of an employer's family not dwelling in his household if the employer is the owner of a sole proprietorship, provided the family member has filed with the commission a written declaration of his election for exemption from coverage. For the purposes of this subsection, "member of an employer's family"

means a natural person or the spouse of a natural person who is related to the employer by blood, adoption or marriage within the first degree of consanguinity or a grandchild or the spouse of a grandchild.

- 6) Employment as the owner of a sole proprietorship; employment of a working member of a partnership or a limited liability company; employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof.
- 7) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.
- 8) Employment as a pilot of an aircraft, while actually operating an aircraft for the purpose of applying fertilizers or pesticides to agricultural crops, shall be exempt from the provisions of the worker's compensation law, provided that:  
The industrial commission has issued to the agent submitting the policy, written approval of a policy of insurance that will provide benefits in an amount of not less than: twenty-five thousand dollars (\$25,000) accidental death and dismemberment, ten thousand dollar (\$10,000) medical expense payments, and five hundred dollars (\$500) per month disability income for a minimum of forty-eight (48) months; and Once the policy has been approved by the industrial commission, proof of coverage for the specified pilot has been filed with the commission prior to the pilot actually operating an aircraft. Provided however, the agent issuing the policy shall obtain approval of the policy of insurance, and proof of coverage for each pilot insured under the policy shall be filed with the commission, each calendar year. The exemption shall be effective on the date the commission receives proof of coverage for the specified pilot, but no earlier than the date written approval of the policy was issued by the commission.
- 9) Associate real estate brokers and real estate salesmen. Service performed by an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
- 10) Volunteer ski patrollers.
- 11) Officials of athletic contests involving secondary schools, as defined in section 33-119, Idaho Code.

**72-213. ELECTION OF EXEMPT COVERAGE.** An employer engaged in any of the exempt occupations listed in section 72-212[, Idaho Code,] may elect coverage thereof by a declaration in writing of himself and his surety filed with the commission that the provisions of the law shall apply thereto. Unless the effective date of such coverage is otherwise fixed in such declaration, coverage shall be deemed effective as of the date of filing such election, if the employer also files simultaneously or has on file approved security under section 72-301[, Idaho Code]; otherwise, such coverage shall be deemed effective upon the filing of approved security.

**72-214. REVOCATION OF ELECTION.** An election of coverage may be revoked by a declaration in writing of the employer and his surety filed with the commission. The effective date of such revocation shall be ten (10) days from the date of its filing, unless such declaration fixes a more remote date.



The cancellation of coverage by a surety shall revoke an election of coverage theretofore made, unless before the effective date of such cancellation the employer files substitute security, supplemented by the new surety's consent to such election.

#### **72-216. CONTRACTORS.**

- 1) Liability of employer to employees of contractors and subcontractors. An employer subject to the provisions of this law shall be liable for compensation to an employee of a contractor or subcontractor under him who has not complied with the provisions of section 72-301[,Idaho Code,] in any case where such employer would have been liable for compensation if such employee had been working directly for such employer.
- 2) Liability of contractors and subcontractors. The contractor or subcontractor shall also be liable for such compensation, but the employee shall not recover compensation for the same injury from more than one party.
- 3) Subrogation.

The employer who shall become liable for and pay such compensation may recover the same from the contractor or subcontractor for whom the employee was working at the time of the accident causing the injury or manifestation of the occupational disease.

The contractor who shall become liable for and pay such compensation may recover the same from the subcontractor for whom the employee was working at the time of the accident causing the injury or manifestation of the occupational disease.

**72-217. EXTRATERRITORIAL COVERAGE.** If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:

- 1) His employment is principally localized in this state; or
- 2) He is working under a contract of hire made in this state in employment not principally localized in any state; or
- 3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or
- 4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

**72-218. AWARD SUBJECT TO CREDIT FOR BENEFITS FURNISHED OR PAID UNDER LAWS OF OTHER JURISDICTIONS.** The payment or award of benefits under the workmen's compensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury, occupational disease or death to the benefits of this law shall not be a bar to a claim for benefits under this law, provided that claim under this law is filed within two (2) years

after the accident causing such injury, or manifestation of such disease, or death. If compensation is paid or awarded under this law:

- 1) The medical and related benefits furnished or paid by the employer under such other workmen's compensation law on account of such injury, occupational disease, or death shall be credited against the medical and related benefits to which the employee would have been entitled under this law, had claim been made solely under this law;
- 2) The total amount of all income benefits paid or awarded the employee under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employee had claim been made solely under this law;
- 3) The total amount of death benefits paid or awarded under such other workmen's compensation law shall be credited against the total amount of death benefits payable under this law.

#### **72-219. INJURIES IN TRANSITORY EMPLOYMENT IN IDAHO.**

- 1) If an employee is entitled to the benefits of this law by reason of an injury sustained or occupational disease contracted in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this law, the employer or his surety may file with the commission a certificate, issued by the board, commission, officer or agency of such other state having jurisdiction over workmen's compensation claims, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury or disease such employee is entitled to the benefits provided under such law; and shall also file with the commission an irrevocable power of attorney, in form approved by the commission, designating a person or corporation domiciled in this state as his or its attorney-in-fact for acceptance of process in any proceeding brought by such employee or his dependents to enforce his or their rights under this law;
- 2) If such employer is a qualified self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence satisfactory to the commission of his ability to meet his liability to such employee under this law, be deemed to be a qualified self-insurer under this law;
- 3) If such employer's liability under the workmen's compensation law of such other state is insured, such employer's surety, as to such employee or his dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this law, provided, however, that unless the contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this law, its liability for income benefits or for medical and related benefits shall not exceed the amounts of such benefits for which such insurer would have been liable under the workmen's compensation law of such other state;
- 4) If the total amount for which such employer's insurer is liable under the subdivisions (2) and (3) is less than the total of the compensation benefits to which such employee is entitled under this law, the commission, if it deems necessary, may require the employer to file security, satisfactory to the commission, to secure the payment of benefits due such employee or his dependents under this law; and

- 5) Upon compliance with the preceding requirements of this section such employer, as to such employee and his dependents only, shall be deemed to have secured the payment of compensation under this law.

**72-220. LOCALE OF EMPLOYMENT.**

- 1) A person's employment is principally localized in this or another state when:  
His employer has a place of business in this or such other state and he regularly works at or from such place of business; or  
He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.
- 2) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

**72-221. COVERAGE FOR INJURIES OR OCCUPATIONAL DISEASES**

**OUTSIDE STATE PRESUMED.** An employer who hires workmen within this state to work outside the state may agree with such workmen that the remedies under this act shall be exclusive as to injuries received and occupational diseases contracted outside this state arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement.

**72-222. RECIPROCAL RECOGNITION OF EXTRATERRITORIAL**

**COVERAGE WITH OTHER JURISDICTIONS.** For the purpose of effecting mutually satisfactory reciprocal arrangements with other states respecting extraterritorial jurisdictions, the commission is empowered to promulgate special or general regulations not inconsistent with the provisions of this law and, with the approval of the governor, to enter into reciprocal agreements with appropriate boards, commissions, officers or agencies of other states having jurisdiction of workmen's compensation claims.

**THIRD PARTY LIABILITY.**

- 1) The right to compensation under this law shall not be affected by the fact that the injury, occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefore, such person so liable being referred to as the third party. Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed.
- 2) Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly,

in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

- 3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefore, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.
- 4) Unless otherwise agreed, upon any recovery by the employee against the third party, the employer shall pay or have deducted from its subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the employee in obtaining such recovery unless one (1) or more of the following circumstances exist:  
If prior to the date of a written retention agreement between the employee and an attorney, the employer has reached an agreement with the third party, in writing, agreeing to pay in full the employer's subrogated interest;  
If the employee alleges or asserts a position in the third party claim adverse to the employer, then the commission shall have jurisdiction to determine a reasonable fee, if any, for services rendered to the employer;  
If there is a joint effort between the employee and employer to pursue a recovery from the third party, then the commission shall have jurisdiction to determine a reasonable fee, if any, and apportion the costs and attorney's fees between the employee and employer.
- 5) If the amount recovered from the third party exceeds the amount of the subrogated portion payable to the employer for past compensation benefits paid, then to the extent the employer has a future subrogated interest in that portion of the third party recovery paid to the employee, the employer shall receive a credit against its future liability for compensation benefits. Such credit shall apply as future compensation benefits become payable, and the employer shall reimburse the employee for the proportionate share of attorney's fees and costs paid by the employee in obtaining that portion of the third party recovery corresponding to the credit claimed. The employer shall not be required to pay such attorney's fees and costs related to the future credit prior to the time the credit is claimed. However, the employer and employee may agree to different terms if approved by the industrial commission.
- 6) If death results from the injury or occupational disease and if the employee leaves no dependents entitled to benefits under this law, the surety shall have a right of action against the third party for recovery of income benefits, reasonable expenses of medical and related services and burial expense actually paid by the surety and for recovery of amounts paid into the industrial special indemnity account pursuant to section 72-420, Idaho Code, and such right of action shall be in addition to any cause of action of the heirs or personal representatives of the deceased.
- 7) All rights and restrictions herein granted to the employer have previously been intended to be, and are hereby expressly granted to the industrial special indemnity account.

**72-225. MINOR EMPLOYEE.** A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this law, and no other person shall have any cause of action or right to compensation for an injury or occupational disease to such minor employee except as expressly provided in this law; but, in the event of a lump sum payment becoming due under this law to such minor

employee, the management of the sum shall be within the jurisdiction of the courts, the same as other property of minors.

**72-226. INSANE PERSON'S COMPENSATION PAYABLE TO GUARDIAN.** The compensation of a person who is insane shall be paid to his or her guardian.

**72-227. DOUBTFUL RIGHTS SUBJECT TO COMMISSION'S DETERMINATION.** In case the employer is in doubt as to the respective rights of rival claimants he may apply to the commission to decide between them.

**72-228. PRESUMPTION FAVORING CERTAIN CLAIMS.**

- 1) In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and where there is un rebutted prima facie evidence that indicates that the injury arose in the course of employment, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury arose out of the employment and that sufficient notice of the accident causing the injury has been given.
- 2) This section shall not apply to any defense under section 72-208, Idaho Code.

**72-229. SURETY ESTOPPED TO DENY COVERAGE.**

- 1) Notwithstanding the provisions of sections 72-204 and 72-205, Idaho Code, a surety which issues to an employer a policy of workers' compensation insurance and collects a premium based upon moneys paid or to be paid a worker, or a self-insured employer which receives consideration from a worker to cover the cost of workers' compensation coverage, shall not be permitted to plead and raise the defense that the worker, at the time of the occurrence of the industrial accident or manifestation of the occupational disease, was an independent contractor and not an employee of the surety's insured employer or of the self-insured employer.
- 2) In the event that at the time of the industrial accident or manifestation of an occupational disease the worker has obtained security for payment of compensation as provided under this law, the provisions of subsection (1) of this section shall not apply.
- 3) Nothing in this section shall be construed to negate any prohibition contained in section 72-318, Idaho Code.

**72-230. PUBLIC ASSISTANCE—COVERAGE.**

- 1) Any employer who enters into a written agreement with the Idaho department of health and welfare to provide unpaid work experience, training, or both, to any person receiving public assistance benefits, shall be the "on-site employer" and shall be granted all the protections and immunities granted to any employer under the Idaho worker's compensation law.
- 2) Any person receiving public assistance benefits pursuant to chapter 2, title 56, Idaho Code, who participates in unpaid work experience, training, or both, shall be deemed to be an employee of the "on-site employer" defined in subsection (1) of this section and shall be entitled to all benefits under the Idaho worker's compensation law.

- 3) Any worker's compensation premiums and losses associated with unpaid work experience or training pursuant to this section shall be assessed against the Idaho department of health and welfare. All protections and immunities granted to any employer under the Idaho worker's compensation law shall be extended simultaneously to the "on-site employer" defined in subsection (1) of this section and the department of health and welfare.

## **CHAPTER 3**

### **Security for Compensation**

**72-334. SECURITY FOR PAYMENT OF COMPENSATION.** Every employer shall secure the payment of compensation under this law in one of the following ways:

- 1) By insuring and keeping insured with a policy of workmen's compensation insurance as defined by section 41-506(d), Idaho Code, the payment of compensation with any surety authorized by the director of the department of insurance to transact such insurance, provided, that every public employer shall insure its liability for payment of compensation with the state insurance fund unless such fund shall refuse to accept the risk when the application for insurance is made; or
- 2) An employer may become self-insured by obtaining the approval of the industrial commission, and by depositing and maintaining with the commission security satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law. Such security may consist of a surety bond or guaranty contract with any company authorized to transact surety insurance in Idaho. The commission shall adopt rules and regulations governing the qualifications of self-insured employers, the nature and amount of security to be deposited with the commission, and the conditions under which an employer may continue to be self-insured.

No surety shall be permitted to transact workmen's compensation insurance covering the liability of employers under this law unless it shall have been authorized to do business under the laws of this state and until it shall have received the approval of the commission. To the end that the workmen secured under this act shall be adequately protected, the commission shall require such sureties to deposit and maintain with the treasurer of the state money or bonds of the United States or of this state, or interest-paying bonds when they are at or above par, or any other state of the United States or the District of Columbia, or the bonds of any county or municipal corporation of this or any other state of the United States or the District of Columbia in an amount equal to the total amounts of all outstanding and unpaid compensation awards against such surety. In lieu of such money or bonds the commission may allow or require such surety to file or maintain with the treasurer of the state a surety bond of some company or companies authorized to do business in this state for and in the amounts equaling the total unpaid compensation awards against such surety. The approval by the commission of any surety or self-insured employer may be withdrawn if it shall appear to the commission that workmen secured thereby under this law are not fully protected.

**72-302. REGULATION OF DEPOSIT WITH STATE TREASURER.** The securities so deposited with the state treasurer shall be an exclusive trust for the benefit of the employees of the employers whose compensation liability is so secured, to remain with the treasurer in trust to answer any default of any employer, self-insured employer or surety upon any such obligation established by final judgment upon which execution may lawfully be issued against the employer or surety; the surety, however, at all times shall have the right to collect the interest, dividends and profits upon the securities, and from time to time to withdraw the securities or a portion thereof, substituting therefore others of equally good character and value, to the satisfaction of the commission, and the securities shall not be sold under any process against the surety until after thirty (30) days' notice to the surety, supplying the date, place and manner of sale, and the process under which and the purpose for which the sale is to be made, accompanied by a copy of the process. The surety shall not be permitted to withdraw from the state treasurer the deposits of money or bonds or permit the surety bonds to lapse for a period of one (1) year after discontinuing business within this state, or while any suit is pending or while any judgment against the surety in this state, or award against an employer whose compensation liability is secured by the surety, shall remain unpaid. Securities which are used to satisfy the requirements of this chapter may be held in the Federal Reserve book-entry system, as defined in section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the Federal Reserve book-entry system without physical delivery of certificates representing such securities.

**72-303. QUALIFICATION SUBJECT TO REGULATION.** To the end that payment of compensation secured by this law shall be adequately protected, the commissioner [director] of [the department of] insurance is hereby authorized and empowered to make and change from time to time such reasonable regulations as he may deem necessary with reference to required capital stock, surplus and reserves of sureties securing payment of compensation under this law.

**72-304. PROMPT COMPENSATION PAYMENTS REQUIRED—RULES AND REGULATIONS.** The commission is authorized to make and change from time to time such rules and regulations as it shall deem necessary to secure the prompt payment of compensation, and after affording the surety opportunity to be heard, may withdraw its approval of any employer or surety who unnecessarily delays payment of compensation, and the commissioner [director] of [the department of] insurance upon notification accordingly shall withdraw his authorization of a surety to insure or guarantee the payment of workmen's compensation liability of employers in this state.

**72-305. CLAIMS SERVICES AND MEDICAL SUPERVISION.** Each surety shall provide prompt claims services through its own adjusting offices or officers located within the state, or by independent, licensed, resident adjusters. The surety shall provide medical supervision of cases from its insureds through medical consultants located within the state or near enough to provide prompt and continuous service.

**72-306. RECITALS IN INSURANCE CONTRACTS.** Every policy of insurance and every guaranty contract or surety bond covering the liability of the employer for

compensation shall cover the entire compensation liability of the employer to his employees, and shall contain a provision setting forth the right of an employee to enforce in his own name, either by at any time filing a separate claim or by at any time making the surety a party to the original claim, the liability of the surety in whole or in part for the payment of such compensation, provided, that payment in whole or in part of such compensation by either the employer or the surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

**72-306A. DEDUCTIBLE CONTRACT.**

- 1) A surety issuing a worker's compensation insurance contract may offer deductibles optional to the policyholder for benefits payable thereunder so long as the director of the department of insurance approves the contract.
- 2) The director of the department of insurance shall approve a contract containing such a deductible if, but only if, he finds the following standards have been met:
  - Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible;
  - Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards;
  - Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount;
  - Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employees;
  - The policyholder is liable to the surety for the deductible amount in regard to benefits paid for compensable claims;
  - The surety pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount;
  - Failure to reimburse deductible amounts by the policyholder to the surety is treated under the policy in the same manner as nonpayment of premiums; and
  - Losses subject to the deductible shall be reported and recorded as losses for purposes of ratemaking and application of the experience rating plan on the same basis as losses under policies providing first dollar coverage; and
- i) The contract otherwise complies with the statutes of this state.
- 3) The premium tax required to be paid pursuant to section 72-523, Idaho Code, shall be calculated based on premiums which would have been charged but for the deductible. For all other taxes and assessments, including residual market assessments, based on premium, the amount of premium shall be determined after application of the deductible.

**72-307. KNOWLEDGE OF EMPLOYER TO AFFECT SURETY.** Every such policy, contract or bond shall contain a provision that, as between the employee and the surety, the notice to or knowledge of the occurrence of accident causing an injury or manifestation of an occupational disease on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the surety, that the jurisdiction of the employer shall, for the purpose of this law, be the jurisdiction of the surety, and that the surety shall in all things be bound by and subject to the orders, findings, decisions, or



awards of the commission rendered against the employer for the payment of compensation.

**72-308. INSOLVENCY OF EMPLOYER NOT TO RELEASE SURETY.** Every such policy, contract or bond shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries received or occupational diseases contracted or death sustained by an employee during the life of such policy or contract.

**72-309. INSURANCE CONTRACT DEEMED REFORMED.** Every such policy, contract or bond shall be deemed to be made subject to the provisions of this law and, if inconsistent with this law, shall be deemed to be reformed to conform to the provisions of this law.

**72-310. MISREPRESENTATION NOT TO AFFECT EMPLOYEE'S RIGHTS.**

- 1) No statement in an application for such a policy, contract or bond shall void the policy, contract or bond as between the surety and employer unless such statement shall be false and would materially have affected the acceptance of the risk if known by the surety. In no case shall the holding of the policy, contract or bond void between the surety and employer affect the surety's obligation to the employer's employees or their dependents to pay compensation and to discharge other obligations under this law. In such case, the surety shall have a right of action against the employer for any amounts for which the surety is liable under such policy, contract or bond.
- 2) As between any such employee or his dependents and the surety no question as to breach of warranty or misrepresentation by the insured shall be raised by the surety in any proceeding or any appeal therefrom.

**72-311. NOTICE OF SECURITY—CANCELLATION OF SURETY CONTRACT.**

- 1) The employer shall forthwith file with the commission in form prescribed by it, a notice of his security.
- 2) No policy of insurance or guaranty contract or surety bond issued against liability arising under this act, where the policy, contract, or bond is intended to provide coverage of greater than one hundred eighty (180) days, shall be canceled or not renewed until at least sixty (60) days after notice of cancellation has been filed with the industrial commission, and also served on the other contracting party either personally or by certified mail to the last known address of the other contracting party. If cancellation is due to failure to pay premiums, material misrepresentations by the insured, substantial and unforeseen changes in the risk assumed, substantial breaches of contractual duties, conditions or warranties, or the policy is being canceled or not renewed at the request of the policyholder, then at least ten (10) days' notice of cancellation is required and the notice shall be filed as required in this section. For purposes of this section, service by certified mail is complete either on acknowledgement of receipt or refusal of the notice by the contracting party or the fifteenth day after the date the postal authority first attempts to deliver the certified mail as evidenced by P.S. form 3849 or other similar document.

- 3) A contracting party may, by its own representations or actions, be estopped by the commission from relying on the time limitations set out herein.

**72-312. POSTING OF NOTICE REGARDING INSURANCE—PENALTY.** Every employer who has complied with section 72-301[, Idaho Code,] shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this law. Such notice shall contain the name and address of the surety, if any, with which the employer has secured payment of compensation. An employer who fails to post and keep such notice conspicuously displayed shall be guilty of a misdemeanor.

**72-313. PAYMENT PENDING DETERMINATION OF POLICY COVERAGE.** Whenever any claim is presented and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer and a surety or between two (2) or more employers or sureties, the commission shall order payment of compensation to be made immediately by one or more of such employers or sureties. The commission may order any such employer or surety to deposit the amount of the award or to give such security thereof as may be deemed satisfactory. When the issue is finally resolved, an employer or surety held not liable shall be reimbursed for any such payments by the employer or surety held liable and any deposit or security so made shall be returned.

**72-314. PAYMENT OF LIABILITY OF PUBLIC EMPLOYER.** Any sums necessary to be paid under the provisions of this law by any public or quasi-public employer, which exercises taxing power, for compensation premiums or compensation shall be considered to be ordinary and necessary expenses of such employer, and its governing body shall make appropriation of and pay such sums whenever necessary, notwithstanding that it may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expense, appropriation, ordinance, or otherwise.

**72-315. ERRONEOUS PAYMENT IN GOOD FAITH.** Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim.

**72-316. VOLUNTARY PAYMENTS OF INCOME BENEFITS.** Any payments made by the employer or his insurer to a workman injured or afflicted with an occupational disease, during the period of disability, or to his dependents, which under the provisions of this law, were not due and payable when made, may, subject to the approval of the commission, be deducted from the amount yet owing and to be paid as income benefits; provided, that in case of disability such deduction shall be made by shortening the period during which income benefits must be paid, and not by reducing the amount of the weekly payments.

**72-317. PERIODICAL PAYMENTS.** The commission, upon the application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize income benefits to be paid biweekly or monthly instead of weekly.

**72-318. INVALID AGREEMENTS—PENALTY.**

- 1) No agreement by an employee to pay any portion of the premiums paid by his employer for workmen's compensation, or to contribute to the cost or other security maintained for or carried for the purpose of securing the payment of workmen's compensation, or to contribute to a benefit fund or department maintained by the employer, or any contract, rule, regulation or device whatever designed to relieve the employer in whole or in part from any liability created by this law, shall be valid. Any employer who makes a deduction for such purpose from the remuneration of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.
- 2) No agreement by an employee to waive his rights to compensation under this act shall be valid.

**72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION.**

- 1) Any employer required to secure the payment of compensation under this law who fails to secure the payment thereof shall be guilty of a misdemeanor. In any case where the employer is a corporation or a limited liability company, any officer or employee of the corporation or manager or employee of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or Limited Liability Company and failed to do so shall individually be guilty of a misdemeanor.
- 2) Such officer, employee or manager shall be personally liable jointly and severally with such corporation or limited liability Company for any compensation which may accrue under this law in respect to any injury or occupational disease suffered by any employee of such corporation or Limited Liability Company while it shall so fail to secure the payment of compensation.
- 3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property or records belonging to such employer, after one (1) of its employees has been afflicted by an injury or occupational disease, with intent to avoid the payment of compensation to such employee or his dependents, shall be guilty of a misdemeanor. In any case where such employer is a corporation or limited liability company, any officer, employee or manager thereof, if knowingly participating or acquiescing in any such act, shall also be individually guilty of a misdemeanor.
- 4) Any employer required to secure the payment of compensation under this law, who fails to do so, may be liable for a penalty of either two dollars (\$2.00) for each employee for each day or twenty-five dollars (\$25.00) for each day during which such failure continues, whichever is greater, and in cases where the employer is a corporation or limited liability company and is unable to pay the fine, any officer or employee of the corporation or manager of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or a limited liability company and failed to do so, shall be liable for a like penalty, to be recovered

for the time during which such failure continued, but for not more than three (3) consecutive years, in an action brought by the commission in the name of the state of Idaho; any amount so collected shall be paid into the industrial administration fund; for this purpose the district court of any county in which the employer carries on any part of its trade or occupation shall have jurisdiction. In determining whether penalties should be assessed or collected for the employer's failure to secure the payment of compensation, the commission may consider the following factors:

- a) When the employer was notified that such employer's worker's compensation insurance coverage had been cancelled or that such insurance was required;
- b) The length of time that elapsed between when the employer was notified that worker's compensation insurance coverage was required or that such employer's coverage had been cancelled, and the date that such coverage was put into effect;
- c) Whether the employer is able to document attempts to secure worker's compensation insurance coverage during the period of time that such employer was without such coverage;
- d) Whether there were prior instances in which the employer failed to keep worker's compensation insurance in effect or such coverage was cancelled, and the reasons for such failure or cancellation;
- e) The reasons that the employer is unable to obtain or keep in effect worker's compensation insurance coverage;

The above factors are not exclusive and the commission may consider any other relevant factor.

- 5) If any employer required to secure the payment of compensation under this law is or has been in default under section 72-301, Idaho Code, the employer may be enjoined by the district court of any county in which such employer carries on any part of its trade or occupation from carrying on such business while any default under section 72-301, Idaho Code, exists. All proceedings in the courts under this section are to be brought by the industrial commission in the name of the state of Idaho.
- 6) An employer who fails to secure the payment of compensation and who has been assessed a penalty within the previous three (3) years pursuant to section 72-319(4), Idaho Code, shall be liable for the following penalty in addition to the penalty provided by section 72-319(4), Idaho Code:
  - a) Five hundred dollars (\$500) for the second failure to secure the payment of compensation;
  - b) One thousand dollars (\$1,000) for the third and any subsequent failure to secure the payment of compensation.

**72-320. COMPENSATION PREFERRED AS WAGES.** All rights of compensation granted by this law shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of labor.

**72-321. STATUTORY AGENT OF EMPLOYER WHO HAS NO BUSINESS LOCALE.** If an employer maintains no place of business in this state, he shall be deemed to have appointed the secretary of state as his agent for the purpose of acceptance of service of process, or of any order, directive, decision or award of the commission or of notice of any proceeding commenced by any party pursuant to this law.

**72-322. ASSIGNED RISK.** The director of the department of insurance, after consultation with sureties authorized to issue worker's compensation policies and guaranty contracts in this state, may put into effect a reasonable system for the equitable apportionment among such sureties of applicants for such policies or guaranty contracts who are in good faith entitled to but are unable to procure the same through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on worker's compensation premiums, shall, following his application to the assigned risk system and tender of required premium, be covered by worker's compensation insurance or his coverage guaranteed. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no surety shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such surety during the preceding year bears to the total compensation premiums written in the state by all such sureties during the preceding calendar year. Provided however, that domestic reciprocal insurers which insure only worker's compensation risks shall be exempt from participation in this system. Premium charges for the assigned risk plan shall not be excessive, inadequate, nor unfairly discriminatory and shall produce sufficient revenue to make the plan self-sustaining and self-supporting.

**72-323. CREATION OF INDUSTRIAL SPECIAL INDEMNITY FUND.** A fund is hereby created to be known as the industrial special indemnity fund, which shall consist of payments made to it as in sections 72-327 and 72-420, [Idaho Code,] and as may hereafter be provided.

**72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND.** There is hereby created in the department of administration the office of manager of the industrial special indemnity fund, elsewhere in this chapter referred to as manager, whose duties shall be to administer the fund without liability on the part of the state or the manager beyond the amount of such fund. Among the powers of the manager shall be the power to evaluate, investigate, adjust claims made against the fund and make agreements, subject to the approval of the industrial commission, for compensation for injuries and occupational diseases in accordance with the provisions of this act, including the power to order payment from the fund for such medical, hospital and nursing care charges as injured persons or those suffering from occupational diseases may be entitled to from the fund.

The compensation of such manager shall be as provided in section 59-508, Idaho Code. The manager shall be given notice of all applications, hearings and proceedings involving rights of the fund, and shall represent the fund in all proceedings brought to enforce a claim against it. The manager shall have the authority to employ such medical or other experts and to defray the expense thereof and of such witnesses as are reasonably necessary to administer, evaluate or defend the fund. The manager may also employ such employees as are necessary to assist in the administration of the fund. The manager may also employ legal counsel, or obtain legal counsel pursuant to section 72-330, Idaho Code, to represent and conduct on behalf of the fund all suits, actions and proceedings whatsoever involving the fund.

The manager may, in his official name, sue and be sued in all the courts of the state and before the industrial commission in all actions or proceedings arising out of anything done or offered in connection with the industrial special indemnity fund or business related thereto.

The industrial commission shall compute and collect the assessment provided by section 72-327, Idaho Code, and shall make quarterly reports to the fund of the same. The manager of the fund shall, each quarter of each year, prepare and file with the industrial commission and the state treasurer a report of all expenses of administration, legal expenses and payments from the fund, which reports will be kept on file and open to inspection by any interested person.

The director of the department of administration shall appoint the manager from a list of at least three (3) names provided by the industrial commission. The manager shall serve at the pleasure of the director of the department of administration.

**72-325. STATE TREASURER CUSTODIAN OF FUND—DUTIES.** The state treasurer shall be custodian of the industrial special indemnity fund.

**72-326. DEPOSIT AND INVESTMENT OF FUND—INTEREST.** The state treasurer shall deposit or, on order of the manager of the industrial special indemnity fund, invest any portion of the industrial special indemnity fund not needed for immediate or currently anticipated use, in the manner and subject to all the provisions of law respecting the depositing and investing of state funds by him. Interest earned by such portion of the fund so invested shall be collected by the state treasurer and placed to the credit of the fund.

**72-327. ASSESSMENT—METHOD OF CALCULATION AND PRORATION—TIME FOR PAYMENT.**

- 1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days subsequent to September 1 and April 1 of each year, pay to the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:
  - a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;
  - b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the total gross amount of indemnity benefits paid on Idaho worker's compensation claims during the applicable reporting period;

- c) The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to September 1 and April 1 of any year shall be calculated by dividing one-half (1/2) of the total annual assessment amount by the responsible party's proportionate share of the total gross amount of indemnity benefits paid during the preceding period of time from January 1 through December 31. In no case shall the amount of any such assessment be less than two hundred dollars (\$200).
- 2) In arriving at the total gross amount of indemnity benefits paid, the amount of indemnity benefits shall include those payments provided for or made under the provisions of the worker's compensation law with respect to "income benefits" as defined in section 72-102, Idaho Code.
- 3) For the purposes of this section, the responsible entities or persons shall report to the industrial commission their total gross indemnity benefits paid during the twelve (12) month period from January 1 through December 31 no later than March 3 of the next succeeding year.
- 4) A penalty for the late filing of any report required by this section will be assessed in accordance with the rules of the industrial commission.
- 5) The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder on or before April 1, 1998, and thereafter on or before September 1 and April 1 of each succeeding year.
- 6) For the purposes of this section, the cash balance of the industrial special indemnity fund in any fiscal year shall mean all money deposited or invested by the state treasurer to the credit of the industrial special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code, and all interest earned thereon.
- 7) For purposes of this section, the term "fiscal year" shall mean that period of time commencing upon July 1 in any year and ending upon June 30 of the next succeeding year.

**72-328. COLLECTION OF DELINQUENT ASSESSMENTS—DUTY OF ATTORNEY GENERAL—PENALTIES.**

- 1) If any responsible entity or person required to make payment of an assessment as provided in this act shall fail to make full payment on or before ten (10) days following the time period specified in section 72-327, Idaho Code, for payment of the assessment, it shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the assessment due. Any amount of assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.
- 2) Any responsible entity or person who is in default for ten (10) or more days in the payment of the assessment as set forth in this act shall be liable for a penalty for every ten (10) day period or any part thereof during which such failure continues. The penalty shall be in the amount of ten percent (10%) of the amount originally due. It shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the penalty herein provided in addition to

any unpaid assessment. Any amount of penalty and assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.

- 3) Any responsible surety or person who shall willfully misrepresent the amount of total gross indemnity benefits paid under the provisions of this act shall be liable to the state for a penalty in an amount ten (10) times the difference between the payments made and the amounts that should have been paid had such misrepresentation not been made. It shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount of the penalty herein provided in addition to any unpaid assessment. Any amount of penalty and assessment collected by the attorney general shall be deposited in the industrial special indemnity fund.

**72-329. DISBURSEMENTS.** All disbursements from the industrial special indemnity fund shall be paid by the treasurer upon orders of the manager. Disbursements to beneficiaries not payable in a lump sum shall be made monthly.

**72-330. LEGAL REPRESENTATION OF FUND.** The attorney general shall appoint a member of his staff, if requested by the manager, pursuant to section 72-324, Idaho Code, to represent and conduct on behalf of the industrial special indemnity fund all suits, actions and proceedings whatsoever involving the fund.

**72-331. PAYMENT OF ADMINISTRATIVE EXPENSES.** The manager shall have the authority to pay from the industrial special indemnity fund necessary expenses of administration involving the industrial special indemnity fund, including secretarial help, equipment and supplies, medical and other experts, witnesses, legal counsel, and similar aid and services.

**72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY ACCOUNT.**

- 1) If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.
- 2) "Permanent physical impairment" is as defined in section 72-422, Idaho Code, provided, however, as used in this section such impairment must be a permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the claimant should become employed. This shall be interpreted subjectively as to the particular employee involved; however, the mere fact that a claimant is employed at the time of the subsequent injury shall not create a



presumption that the pre-existing permanent physical impairment was not of such seriousness as to constitute such hindrance or obstacle to obtaining employment.

**72-333. PERPETUAL APPROPRIATION.** All moneys which may come into the industrial special indemnity fund are hereby perpetually appropriated to the department of administration to be expended by it for the purposes stated in sections 72-331 and 72-332, Idaho Code.

**FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY FUND—TIME FOR FILING—RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM—JURISDICTIONAL EFFECT.** Any claimant, employer or surety making a claim for benefits with the industrial special indemnity fund shall file a notice of claim with the manager not less than sixty (60) days prior to the date of filing of a complaint against the industrial special indemnity fund with the industrial commission seeking benefits from the industrial special indemnity fund. Such notice of claim shall include, but not be limited to, a detailed statement describing the disability claim and supporting documentation including relevant medical and vocational rehabilitation records. Failure to timely file a notice of claim with the manager shall require the involuntary dismissal of any complaint against the industrial special indemnity fund regarding the claim for benefits which the party seeking to join the industrial special indemnity fund may cause to be filed with the industrial commission. The manager shall evaluate the notice of claim and shall approve or deny the claim or make an offer of settlement within the sixty (60) day period. If, in the discretion of the manager, the notice of claim is determined to be incomplete, the manager may, upon written notice to the party seeking to join the industrial special indemnity fund, extend the time period for evaluation of the claim for a maximum of thirty (30) days in order to request the necessary documents and records. The manager shall approve or deny the claim or make an offer of settlement within the extended period.

## **CHAPTER 4**

### **Benefits**

**72-401. DEPENDENCY—WHEN DETERMINED.** Dependency shall initially be determined as of the time of the accident causing the injury or of manifestation of an occupational disease for purposes of income benefits therefore, and as of the time of death for purposes of income benefits for death.

#### **WAITING PERIOD.**

- 1) An injured employee shall not be allowed income benefits for the first five (5) days of disability for work; provided, if the injury results in disability for work exceeding two (2) weeks, income benefits shall be allowed from the date of disability and be paid no later than four (4) weeks from date of disability. Provided, further, that the waiting period shall not apply if the injured employee is hospitalized as an in-patient.

- 2) The day on which the injury occurred shall be included in computing the waiting period unless the employee has been paid wages for that day.

**72-403. PENALTY FOR MALINGERING—DENIAL OF COMPENSATION.** If an injured employee refuses or unreasonably fails to seek physically or mentally suitable work, or refuses or unreasonably fails or neglects to work after such suitable work is offered to, procured by or secured for the employee, the injured employee shall not be entitled to temporary disability benefits during the period of such refusal or failure.

**72-404. LUMP SUM PAYMENTS.** Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the commission by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined, with the approval of the commission.

**72-405. TRUSTEE IN CASE OF LUMP SUM PAYMENT.** Whenever for any reason the commission deems it expedient, any lump sum to be paid as provided in section 72-404, [Idaho Code,] shall be paid to some suitable person or corporation appointed as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the commission. The receipt of such trustee for the amount so paid shall discharge the employer or anyone else who is liable therefore.

**72-406. DEDUCTIONS FOR PREEXISTING INJURIES AND INFIRMITIES.**

- 1) In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease.
- 2) Any income benefits previously paid an injured workman for permanent disability to any member or part of his body shall be deducted from the amount of income benefits provided for the permanent disability to the same member or part of his body caused by a change in his physical condition or by a subsequent injury or occupational disease.

**72-407. CERTAIN INJURIES DEEMED TOTAL AND PERMANENT.** In case of the following injuries, if the employer disputes that the claimant is totally and permanently disabled, the burden of proof shall be on the employer to prove by clear and convincing evidence that the claimant is not permanently and totally disabled.

- 1) The total and permanent loss of sight in both eyes.
- 2) The loss of both feet at or above the ankle.
- 3) The loss of both hands at or above the wrist.
- 4) The loss of one (1) hand and one (1) foot.
- 5) An injury to the spine resulting in permanent and complete paralysis of both legs or arms or of one (1) leg and one (1) arm. An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

**72-408. INCOME BENEFITS FOR TOTAL AND PARTIAL DISABILITY.** Income benefits for total and partial disability during the period of recovery, and thereafter in cases of total and permanent disability, shall be paid to the disabled employee subject to deduction on account of waiting period and subject to the maximum and minimum limits set forth in section 72-409, Idaho Code, as follows:

- 1) For a period not to exceed a period of fifty-two (52) weeks, an amount equal to sixty-seven per cent (67%) of his average weekly wage and thereafter an amount equal to sixty-seven per cent (67%) of the currently applicable average weekly state wage.
- 2) Partial disability. For partial disability during the period of recovery an amount equal to sixty-seven per cent (67%) of his decrease in wage-earning capacity, but in no event to exceed the income benefits payable for total disability.

**72-409. MAXIMUM AND MINIMUM INCOME BENEFITS FOR TOTAL DISABILITY.**

- 1) The weekly income benefits provided for in section 72-408(1), Idaho Code, shall be subject to a maximum of ninety percent (90%) and a minimum of forty-five percent (45%) of the currently applicable average weekly state wage, provided, however, that during the first fifty-two (52) weeks of total disability income benefits shall not in any case exceed ninety percent (90%) of the employee's average weekly wage, but if during the first fifty-two (52) weeks ninety percent (90%) of the employee's average weekly wage is less than fifteen percent (15%) of the currently applicable average weekly state wage, then the employee shall receive no less than fifteen percent (15%) of the currently applicable average weekly state wage, except as benefits may be increased by reason of increases in the average weekly state wage as computed in subsection (2) hereof, nor shall income benefits paid subsequent to the first fifty-two (52) weeks of total disability exceed income benefits paid during the first fifty-two (52) weeks of total disability except as the same may be increased by reason of increases in the average weekly state wage, provided, however, that where an employee's benefit rate for the first fifty-two (52) week period was less than the minimums prescribed above, his benefit rate thereafter shall be not less than forty-five percent (45%) of the currently applicable average weekly state wage.
- 2) For the purpose of this law the average weekly wage in the state shall be determined by the commission as follows: on or before June 1 of each year, the total wages reported on contribution reports to the department of employment for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by twelve (12). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly state wage thus determined rounded to the nearest dollar. The average weekly state wage as so determined shall be applicable for the calendar year commencing January 1 following the June 1 determination.

**72-410. DEPENDENTS.** The following persons and they only, shall be deemed dependents and entitled to income benefits under the provisions of this act:

- 1) A child:
  - a) Under eighteen (18) years of age, or incapable of self-support and unmarried, whether or not actually dependent upon the deceased employee

- b) Under twenty-three (23) years of age if a full-time student and as provided for in section 72-412(3), Idaho Code.
- 2) The widow or widower only if living with the deceased or living apart from the deceased for justifiable cause, or actually dependent, wholly or partially, upon the deceased.
- 3) A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.
- 4) A grandchild, brother or sister only if under eighteen (18) years of age, or incapable of self-support, and actually dependent wholly upon the deceased.

**72-411. TIME OF DEPENDENCY.** The relation of dependency must exist at the time of the accident causing the injury or manifestation of occupational disease.

**PERIODS OF INCOME BENEFITS FOR DEATH.** The income benefits for death herein provided for shall be payable during the following periods:

- 1) To a widow or widower, until death or remarriage, but in no case to exceed five hundred (500) weeks.
- 2) Unless as otherwise provided in subsection (3) of this section, to or for a child, until eighteen (18) years of age, and if incapable of self-support after age eighteen (18) years for an additional period not to exceed five hundred (500) weeks, deducting the period benefits which were paid prior to eighteen (18) years of age. Provided, income benefits payable to or for any child shall cease when such child marries.
- 3) To or for a child after age eighteen (18) years who is enrolled as a full-time student in any accredited educational institution, or accredited vocational training program, until such child ceases to be so enrolled or reaches the age of twenty-three (23) years, whichever occurs first. Provided, in the event the child reaches the age of twenty-three (23) years during the quarter or semester in which the child is enrolled, benefits shall continue until the completion of the quarter or semester in which the child reached the age of twenty-three (23) years. This extension of benefits to the age of twenty-three (23) years shall not apply if the accident causing the injury or manifestation of the occupational disease occurred prior to December 31, 2006.
- 4) To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed five hundred (500) weeks.
- 5) To or for a grandchild, brother or sister, during dependency as hereinbefore defined, but in no case to exceed five hundred (500) weeks.
- 6) In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in this section.

**72-413. INCOME BENEFITS FOR DEATH.** If death results from the accident or occupational disease within four (4) years from the date of the accident, or manifestation of the occupational disease, the employer shall pay to or for the benefit of the following particular classes of dependents' weekly income benefits equal to the following percentages of the average weekly state wage as defined in section 72-409, Idaho Code. The benefits payable hereunder shall be subject to annual adjustment as provided in section 72-409(2), Idaho Code.

The annual adjustment provided herein shall not apply to benefits for an injury or occupational disease resulting in death if the accident causing the injury or the manifestation of the occupational disease occurred prior to July 1, 1991.

- 1) To a dependent widow or widower, if there be no dependent children, forty-five per cent (45%).
- 2) To a dependent widow or widower, if there be dependent children, an additional five per cent (5%) of the average weekly state wage for each dependent child to and including a total of three (3). Such compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children and the commission may from time to time apportion such compensation between them in such a way as it deems best.
- 3) If there be no dependent widow or widower, but a dependent child or children, thirty per cent (30%) of the average weekly state wage for one (1) child and ten per cent (10%) for each additional child to and including a total of three (3), to a maximum not to exceed sixty per cent (60%) of the average weekly state wage, to be divided equally among such children.
- 4) To the parents, if one (1) be wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per cent (25%) of the average weekly state wage; if both are wholly dependent, twenty per cent (20%) of the average weekly state wage to each; if one (1) be or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there be no dependent widow, widower or child. If there be a widow, widower or child, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower and children, will not exceed a total of sixty per cent (60%) of the average state weekly wage.

- 5) To the brothers, sisters, grandparents and grandchildren, if one (1) be wholly dependent upon the deceased employee at the time of his death, twenty per cent (20%) of the average state weekly wage to such dependents; if more than one be wholly dependent, thirty per cent (30%) of the average state weekly wage, divided among such dependents, share and share alike. If there be no one (1) of them wholly dependent, but one (1) or more partially dependent, ten per cent (10%) of the average state weekly wage divided among such dependents, share and share alike.

The above percentages shall be paid if there be no dependent widow, widower, child or parent. If there be a dependent widow, widower, child or parent, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, children and dependent parents, will not exceed a total of sixty per cent (60%) of the average weekly state wage.

Payments made for and on behalf of a dependent child or children shall be made to such child's or children's natural or adoptive surviving parent for the use and benefit of the child or children, if such child or children reside with such parent, notwithstanding the remarriage of such parent; provided, however, if the care and the custody of such child or children has been awarded by a court of competent jurisdiction of this state or any other state to a person or persons other than the child's or children's natural or adoptive parent, then such payments shall be made to that person or those persons so awarded care and custody for the use and benefit of the child or children. Whenever the commission deems

it necessary, it may direct any payments made hereunder to be made under such terms and conditions as it deems necessary.

**72-413A. LUMP SUM PAYMENT UPON REMARRIAGE.** In the event of remarriage of the widow or widower prior to the expiration of five hundred (500) weeks as provided in section [72-412] 42-412, Idaho Code, a lump sum shall be paid to the widow or widower in an amount equal to the lesser of one hundred (100) weeks or the total of income benefits for the remainder of the five-hundred (500) week period computed on the basis of a weekly rate of forty-five per cent (45%) of the average weekly state wage in effect at the time of remarriage. The provisions of this section shall not apply to benefits for an injury or occupational disease resulting in death where the accident causing the injury or the manifestation of the occupational disease occurred prior to July 1, 1991.

**72-414. APPORTIONMENT BENEFITS BETWEEN CLASSES.** In case there are two (2) or more classes of persons entitled to compensation under section 72-413, [Idaho Code,] and the apportionment of such compensation as above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case.

**72-415. CHANGE IN DEPENDENTS.** Upon the cessation of the income benefits for death to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

**72-416. MAXIMUM AND MINIMUM INCOME BENEFITS FOR DEATH.**

- 1) For purposes of income benefits for death, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in section 72-409, Idaho Code.
- 2) In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefits that were or would have been payable for total disability to the deceased. Provided, however, that where an employee's total disability benefits were or would have been less than forty-five per cent (45%) of the currently applicable average weekly state wage, death benefits shall be computed subject to the maximum of that to which a claimant would have been eligible after the first fifty-two (52) weeks of total disability

**72-417. MAXIMUM TOTAL PAYMENT.** The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed sixty per cent (60%) of the average weekly wage of the deceased as calculated under section 72-419, [Idaho Code,] subject to the maximum limits in section 72-416[, Idaho Code]. The classes of beneficiaries specified in paragraphs (1), (2) and (3) of section 72-413, [Idaho Code,] shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of said paragraphs should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided in section 72-413, [Idaho Code,] the

gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. The dependents specified in paragraph (4) of section 72-410, [Idaho Code,] shall be considered to be in one (1) class and those specified in paragraph (5) of said section, in another class.

**72-418. COMPUTATION OF WEEKS AND DAYS.** In computing periods of disability and of compensation a week shall be computed as seven (7) days and a day as one-seventh (1/7) of a week, without regard to Sundays, holidays and working days.

**72-419. DETERMINATION OF AVERAGE WEEKLY WAGE.** Except as otherwise provided in this law, the average weekly wage of the employee at the time of the accident causing the injury or of manifestation of the occupational disease shall be taken as the basis upon which to compute compensation and shall be determined as follows:

- 1) If at such time the wages are fixed by the week, the amount so fixed shall be the average weekly wage.
- 2) If at such time the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52).
- 3) If at such time the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52).
- 4)
  - a) If at such time the wages are fixed by the day, hour or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) his wages (not including overtime or premium pay) earned in the employ of the employer in the first, second, third or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the time of accident or manifestation of the disease.
  - b) If the employee has been in the employ of the employer less than twelve (12) calendar weeks immediately preceding the accident or manifestation of the disease, his average weekly wage shall be computed under the foregoing paragraph, taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding such time and had worked, when work was available to other employees in a similar occupation.
- 5) If at such time the hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.
- 6) In seasonal occupations that do not customarily operate throughout the entire year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the time of the accident or manifestation of the disease.
- 7) In the case of a volunteer emergency responder, the income benefits in the first fifty-two (52) weeks shall be based on the average weekly wage in his regular employment

or sixty-seven percent (67%) of the current average weekly state wage, as determined pursuant to section 72-409(2), Idaho Code, whichever is greater.

- 8) If the employee was a minor, apprentice or trainee at the time of the accident or manifestation of the disease, and it is established that under normal conditions his wages should be expected to increase during the period of disability that fact may be considered in computing his average weekly wage.
- 9) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of such employment prior to the injury, the employee's wages from all such employers shall be considered as if earned from the employer liable for compensation.
- 10) When circumstances are such that the actual rate of pay cannot be readily ascertained, the wage shall be deemed to be the contractual, customary or usual wage in the particular employment, industry or community for the same or similar service.
- 11) In the case of public employees covered under section 72-205(6), Idaho Code, the income benefits shall be based on the greater of the average weekly wage of the employee's civilian employment and pay computed for one (1) weekend drill in a month, or full-time active duty pay fixed by the month as provided in section 46-605, Idaho Code.

**72-420. COMPENSATION TO STATE WHEN DEPENDENCY NOT CLAIMED OR PROVED.** In case no claim for compensation is made by a dependent of a deceased employee and filed with the commission within one (1) year after the death, or in case a claim is made and filed within such year and no dependency proven, the employer shall pay into the state treasury the sum of ten thousand dollars (\$10,000) to be deposited in the industrial special indemnity account.

**72-421. REFUND OF PAYMENT TO STATE AFTER DELAYED PROOF OF CLAIM BY MINOR OR INCOMPETENT DEPENDENT.** If, after an employer has paid the sum provided for in section 72-420, Idaho Code, into the state treasury a claim is made and dependency proven by a person who during the one (1) year after the death in which a claim may be made was either a minor or mentally incompetent and who during the said year had no person or representative legally qualified under the provisions of the workmen's compensation law to make a claim in his behalf, such sum shall be repaid to the employer on the order of the industrial commission; provided, that nothing in this act shall be construed as extending or increasing the time during which a claim for compensation by a dependent may be made.

**72-422. PERMANENT IMPAIRMENT.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation. Permanent impairment is a basic consideration in the evaluation of permanent disability, and is a contributing factor to, but not necessarily an indication of, the entire extent of permanent disability.

**72-423. PERMANENT DISABILITY.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is



reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.

**72-424. PERMANENT IMPAIRMENT EVALUATION.** “Evaluation (rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members.

**72-425. PERMANENT DISABILITY EVALUATION.** “Evaluation (rating) of permanent disability” is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

**72-426. THE WHOLE MAN—A PERIOD OF FIVE HUNDRED WEEKS.** The “whole man” for purposes of computing disability evaluation of scheduled or unscheduled permanent injury (bodily loss or losses or loss of use) for conversion to scheduled income benefits, shall be a deemed period of disability of five hundred (500) weeks.

**72-427. PERMANENT IMPAIRMENT EVALUATION NOT EXCLUSIVE.** The “whole man” income benefit evaluation for purposes of computing scheduled and unscheduled permanent impairment shall not be deemed to be exclusive for the purposes of fixing the evaluation of permanent disability.

**72-428. SCHEDULED INCOME BENEFITS FOR LOSS OR LOSSES OF USE OF BODILY MEMBERS.** An employee who suffers a permanent disability less than total and permanent shall, in addition to the income benefits payable during the period of recovery, be paid income benefits for such permanent disability in an amount equal to fifty-five percent (55%) of the average weekly state wage stated against the following scheduled permanent impairments respectively:

1) Amputations of Upper Extremities	Weeks
Forequarter amputation	350
Disarticulation at shoulder joint	300
Amputation of arm above deltoid insertion	300
Amputation of arm between deltoid insertion and elbow joint	285
Disarticulation at elbow joint	285
Amputation of forearm below elbow joint proximal to insertion of biceps tendon	285
Amputation of forearm below elbow joint distal to insertion of biceps tendon	270
Disarticulation at wrist joint	270
Midcarpal or mid-metacarpal amputation of hand	270
Amputation of all fingers except thumb at metacarpophalangeal joints	160
Amputation of thumb	
At metacarpophalangeal joint or with resection of carpometacarpal bone	110
At interphalangeal joint	80

Amputation of index finger		
At metacarpophalangeal joint or with resection of metacarpal bone		70
At proximal interphalangeal joint		55
At distal interphalangeal joint		30
Amputation of middle finger		
At metacarpophalangeal joint or with resection of metacarpal bone		55
At proximal interphalangeal joint		45
At distal interphalangeal joint		25
Amputation of ring finger		
At metacarpophalangeal joint or with resection of metacarpal bone	25	
At proximal interphalangeal joint		20
At distal interphalangeal joint		12
Amputation of little finger		
At metacarpophalangeal joint or with resection of metacarpal bone		15
At proximal interphalangeal joint		10
At distal interphalangeal joint		5
2) Amputations of Lower Extremities		Weeks
Hemipelvectomy		250
Disarticulation at hip joint		200
Amputation above knee joint with short thigh stump (3" or less below tuberosity of ischium)		200
Amputation above knee joint with functional stump		180
Disarticulation at knee joint		180
Gritti[i]-Stokes amputation		180
Amputation below knee joint with short stump (3" or less below intercondylar notch)		180
Amputation below knee joint with functional stump		140
Amputation at ankle (Syme)		140
Partial amputation of foot (Chopart's)		105
Mid-metatarsal amputation		70
Amputation of all toes		
At metatarsophalangeal joints		42
Amputation of great toe		
With resection of metatarsal bone		42
At metatarsophalangeal joint		25
At interphalangeal joint		25
Amputation of lesser toe (2nd-5th)		
With resection of metatarsal bone		7
At metatarsophalangeal joint		4
At proximal interphalangeal joint		3
At distal interphalangeal joint		1
3) Loss of Vision and Hearing		
Total loss of vision of one eye		150
Loss of one eye by enucleation		175
Total loss of binaural hearing		175

- 4) Total loss of use. Income benefits payable for permanent disability attributable to permanent total loss of use of [or] comparable total loss of use of a member shall not be less than as for the loss of the member.
- 5) Partial loss or partial loss of use. Income benefits payable for permanent partial disability attributable to permanent partial loss or loss of use, of a member shall be not less than for a period as the permanent impairment attributable to the partial loss or loss of use of the member bears to total loss of the member.
- 6) Delay in rating. Following the period of recovery, a permanently disabled employee who has been afforded vocational retraining under a rehabilitation program shall be rated for permanent impairment only until completion of the vocational retraining program at which time he shall be rated for permanent disability, deducting from any monetary award therefore amounts previously awarded for permanent impairment only.

**72-429. UNSCHEDULED PERMANENT DISABILITIES.** In all other cases of permanent disabilities less than total not included in the foregoing schedule the amount of income benefits shall be not less than the evaluation in relation to the percentages of loss of the members, or of loss of the whole man, stated against the scheduled permanent impairments, as the disabilities bear to those produced by the permanent impairments named in the schedule. Weekly income benefits paid pursuant to this section shall likewise be paid at fifty-five percent (55%) of the average weekly state wage for the year of the injury as provided in section 72-428, Idaho Code.

**72-430. PERMANENT DISABILITY—DETERMINATION OF—  
PERCENTAGES—SCHEDULE.**

- 1) Matters to be considered. In determining percentages of permanent disabilities, account shall be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the afflicted employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.
- 2) Preparation of schedules--Availability for inspection--Prima facie evidence. The commission may prepare, adopt and from time to time amend a schedule for the determination of the percentages of unscheduled permanent injuries less than total, including, but not limited to, a schedule for partial loss of binaural hearing and for loss of teeth, and methods for determination thereof. Such schedule shall be available for public inspection, and without formal introduction in evidence shall be prima facie evidence of the percentages of permanent disabilities to be attributed to the injuries or diseases covered by such schedule.

### **72-431. INHERITABILITY OF SCHEDULED OR UNSCHEDULED INCOME**

**BENEFITS.** When an employee who has sustained disability compensable as a scheduled or unscheduled permanent disability less than total, and who has filed a valid claim in his lifetime, dies from causes other than the injury or occupational disease before the expiration of the compensable period specified, the income benefits specified and unpaid at the employee's death, whether or not accrued or due at the time of his death, shall be paid, under an award made before or after such death, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this subsection and in the order named:

- 1) To the dependent widow or widower, if there is no child under the age of eighteen (18) or child incapable of self-support; or (2) If there are both such a widow or widower and such a child or children, one-half (1/2) to such widow or widower and the other one-half (1/2) to such child or children; or (3) If there is no such widow or widower but such a child or children, then to such child or children; or (4) If there is no survivor in the above classes, then to the personal representative of the decedent.

### **72-431. MEDICAL SERVICES, APPLIANCES AND SUPPLIES—REPORTS.**

- 1) Subject to the provisions of section 72-706, Idaho Code, the employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.
- 2) The employer shall also furnish necessary replacements or repairs of appliances and prostheses, unless the need therefore is due to lack of proper care by the employee. If the appliance or prosthesis is damaged or destroyed in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair, but not for any subsequent replacement or repair not directly resulting from the accident.
- 3) In addition to the income benefits otherwise payable, the employee who is entitled to income benefits shall be paid an additional sum in an amount as may be determined by the commission as by it deemed necessary, as a medical service, when the constant service of an attendant is necessary by reason of total blindness of the employee or the loss of both hands or both feet or the loss of use thereof, or by reason of being paralyzed and unable to walk, or by reason of other disability resulting from the injury or disease actually rendering him so helpless as to require constant attendance. The commission shall have authority to determine the necessity, character and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital or rehabilitation facility when in its judgment such change is desirable or necessary.
- 4)
  - a) The employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer; however, the employee must give written notice to the employer or surety of the employee's request for a change of physicians to afford the employer the opportunity to fulfill its

- obligations under this section. If proper notice is not given, the employer shall not be obligated to pay for the services obtained. Nothing in this section shall limit the attending physician from arranging for consultation, referral or specialized care without permission of the employer. Upon receiving such written notice, the employer shall render its written decision on the claimant's request within fourteen (14) days. If any dispute arises over the issue of a request for change of physician, the industrial commission shall conduct an expedited hearing to determine whether or not the request for change of physician should be granted, and shall render a decision within fourteen (14) days after the filing of the response by the employer.
- b) The industrial commission shall, no later than December 31, 1997, promulgate a rule for the expeditious handling of a petition for change of physician pursuant to this section. Nothing herein shall prevent the commission from making periodic amendments, as may become necessary, to any rule for a petition for change of physician.
  - 5) Any employee who seeks medical care in a manner not provided for in this section, or as ordered by the industrial commission pursuant to this section, shall not be entitled to reimbursement for costs of such care.
  - 6) No provider shall engage in balance billing as defined in section 72-102, Idaho Code.
  - 7) An employee shall not be responsible for charges of physicians, hospitals or other providers of medical services to whom he has been referred for treatment of his injury or occupational disease by an employer designated physician or by the commission, except for charges for personal items or extended services which the employee has requested for his convenience and which are not required for treatment of his injury or occupational disease.
  - 8) The employer or surety shall not be subject to tort liability to any health care provider for complying with the provisions of this law.
  - 9) Nothing in this chapter shall be construed to require a workman who in good faith relies on Christian Science treatment by a duly accredited Christian Science practitioner to undergo any medical or surgical treatment, providing that neither he nor his dependents shall be entitled to income benefits of any kind beyond those reasonably expected to have been paid had he undergone medical or surgical treatment, and the employer or insurance carrier may pay for such spiritual treatment.
  - 10) The commission shall promulgate rules requiring physicians and other practitioners providing treatment to make regular reports to the commission containing such information as may be required by the commission. The commission shall promulgate such rules with the counsel, advice, cooperation and expertise of representatives of industry, labor, sureties and the legal and medical professions as well as institutions, hospitals and clinics having physical rehabilitation facilities.
  - 11) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the employer, surety, manager of the industrial special indemnity fund, or their attorneys or authorized representatives, the claimant, the claimant's attorneys or authorized representatives, or the commission without liability on the part of the physician, hospital or other provider of medical services and information developed in connection with treatment or examination for an injury or disease for which compensation is sought shall not be privileged

communication. When a physician or hospital willfully fails to make a report required under this section, after written notice by the commission that such report is due, the commission may order forfeiture of all or part of payments due for services rendered in connection with the particular case. An attorney representing the employer, surety, claimant or industrial special indemnity fund shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness.

- 12) Physicians or others providing services under this section shall assist in the rehabilitation program provided in section 72-501A, Idaho Code. They shall cooperate with specialists from the commission's rehabilitation staff and with employer rehabilitation personnel in furthering the physical or vocational rehabilitation of the employee. The extension of total temporary disability benefits during retraining as authorized by section 72-450, Idaho Code, shall be the responsibility of the commission, however, the physician shall inform the commission as soon as it is medically apparent that the employee may be unable to return to the job in which he sustained injury or occupational disease following treatment and maximum recovery.
- 13) An injured employee shall be reimbursed for his expenses of necessary travel in obtaining medical care under this section. Reimbursement for transportation expenses, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.
- 14) An employee who leaves the locality where employed at the time of the industrial accident, or manifestation of an occupational disease, or the locality in which the employee is currently receiving medical treatment for the injury, shall give timely notice to the employer and surety of the employee's leaving the locality. The employer or surety may require the claimant to report to the treating physician for examination prior to leaving the locality, if practical. If an examination by the treating physician is not practical prior to leaving the locality, the employer or surety may assist in arranging an examination by an appropriate physician in the new locality. After receiving notice of relocation, the employer or surety shall have the same responsibility to furnish care as set forth in subsection (1) of this section.

**72-433. SUBMISSION OF INJURED EMPLOYEE TO MEDICAL EXAMINATION OR PHYSICAL REHABILITATION.**

- 1) After an injury or contraction of an occupational disease and during the period of disability the employee, if requested by the employer or ordered by the commission, shall submit himself for examination at reasonable times and places to a duly qualified physician or surgeon. The employee shall be reimbursed for his expenses of necessary travel and subsistence in submitting himself for any such examination and for loss of wages, if any. For purposes of this section, the reimbursement for loss of wages shall be at the employee's then current rate of pay if the employee is then working; otherwise, such reimbursement shall be at the total temporary disability rate. Reimbursement for travel expenses, if the employee utilizes a private vehicle, shall be

at the mileage rate allowed by the state board of examiners for state employees; provided, however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

- 2) The employee shall have the right to have a physician or surgeon designated and paid by himself present at an examination by a physician or surgeon so designated by the employer. Such right, however, shall not be construed to deny the employer's designated physician or surgeon the right to visit the injured employee during reasonable times and under all reasonable conditions during disability. The employee and the examining physician shall have the right to have an audio recording of any examination, but may have a video recording only if the examining physician and the employee consent.
- 3) At any time after injury, if an injured employee be sent to a facility approved by the commission for physical or vocational rehabilitation, the employee shall be furnished by the employer reasonable travel accommodations to and from such facility and if the injured employee is an outpatient in a physical rehabilitation facility, he shall be paid daily subsistence as the commission may authorize to cover reasonable expenses of board, lodging and transportation. Reimbursement for transportation expense, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

**72-434. EFFECT OF REFUSING MEDICAL EXAMINATION—DISCONTINUANCE OF COMPENSATION.** If an injured employee unreasonably fails to submit to or in any way obstructs an examination by a physician or surgeon designated by the commission or the employer, the injured employee's right to take or prosecute any proceedings under this law shall be suspended until such failure or obstruction ceases, and no compensation shall be payable for the period during which such failure or obstruction continues.

**72-435. INJURIOUS PRACTICES—SUSPENSION OR REDUCTION OF COMPENSATION.** If an injured employee persists in unsanitary or unreasonable practices which tend to imperil or retard his recovery the commission may order the compensation of such employee to be suspended or reduced.

**72-436. BURIAL EXPENSES.** If death results from the injury within four (4) years, the employer shall pay to the person entitled to compensation, or if there is none then to the personal representative of the deceased employee, the actual amount of burial expenses as defined in section 72-102(4), Idaho Code.

**72-437. OCCUPATIONAL DISEASES—RIGHT TO COMPENSATION.** When an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, or dies as a result of such disease, and the disease was due to the

nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, or, in case of his death, his dependents shall be entitled to compensation.

**72-438. OCCUPATIONAL DISEASES.** Compensation shall be payable for disability or death of an employee resulting from the following occupational diseases:

- 1) Poisoning by lead, mercury, arsenic, zinc, or manganese, their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 2) Carbon monoxide poisoning or chlorine poisoning in any process or occupation involving direct exposure to carbon monoxide or chlorine in buildings, sheds, or enclosed places.
- 3) Poisoning by methanol, carbon bisulphide, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 4) Poisoning by benzol or by nitro, amido, or amino-derivatives of benzol (dinitro-benzol, anilin and others) or their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 5) Glanders in the care or handling of any equine animal or the carcass of any such animal.
- 6) Radium poisoning by or disability due to radioactive properties of substances or to Roentgenray (X-ray) in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 7) Poisoning by or ulceration from chromic acid or bichromate of ammonium, potassium, or sodium or their preparations, or phosphorus preparations or compounds, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 8) Ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of these substances, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.
- 9) Dermatitis venenata, that is, infection or inflammation of the skin, furunculosis excepted, due to oils, cutting compounds, lubricants, liquids, fumes, gases, or vapors in any occupation involving direct contact therewith, handling thereof or exposure thereto.
- 10) Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, bristles, hides, skins, or bodies of animals either alive or dead.
- 11) Silicosis in any occupation involving direct contact with, handling of, or exposure to dust of silicon dioxide. Cardiovascular or pulmonary or respiratory diseases of a paid fireman, employed by a municipality, village or fire district as a regular member of a lawfully established fire department, caused by overexertion in times of stress or danger or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes or other toxic gases arising directly out of, and in the course of employment.
- 12) Acquired immunodeficiency syndrome (AIDS), AIDS related complexes ARC), other manifestations of human immunodeficiency virus (HIV) infections, infectious



hepatitis viruses and tuberculosis in any occupation involving exposure to human blood or body fluids.

Recognizing that additional toxic or harmful substances or matter are continually being discovered and used or misused, the above enumerated occupational diseases are not intended to be exclusive, but such additional diseases shall not include hazards which are common to the public in general and which are not within the meaning of section 72-102(22)(a), Idaho Code, and the diseases enumerated in subsection (12) of this section pertaining to paid firemen shall not be subject to the limitations prescribed in section 72-439, Idaho Code.

**72-439. ACTUALLY INCURRED/NONACUTE OCCUPATIONAL DISEASE.**

- 1) An employer shall not be liable for any compensation for an occupational disease unless such disease is actually incurred in the employer's employment.
- 2) An employer shall not be liable for any compensation for a nonacute occupational disease unless the employee was exposed to the hazard of such disease for a period of sixty (60) days for the same employer.
- 3) Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefore.

**72-440. TIME OF DEPENDENCY—DEATH BENEFITS.** No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which would give right to compensation, arose subsequent to the beginning of the first compensable disability, save only to posthumous children of a marriage existing at the beginning of such disability.

**72-441. NO COMPENSATION IN CASE OF MISREPRESENTATION.** No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease.

72-443. PERIOD OF EXPOSURE IN SILICOSIS CASES. No claim for disability or death from silicosis shall be maintained or prosecuted unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust over a period of not less than five (5) years, the last two (2) of which shall have been in this state, under a contract of employment existing in this state, provided, that if the employee shall have been employed by the same employer during the whole of such five (5) year period his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this state.

**72-444. NO COMPENSATION FOR PARTIAL DISABILITY FROM SILICOSIS.** Compensation shall not be payable for partial disability due to silicosis.

**72-445. COMPENSATION FOR TOTAL DISABILITY OR DEATH FROM COMPLICATED SILICOSIS.** In case of disability or death from silicosis, complicated with tuberculosis of the lungs, income benefits shall be payable as for uncomplicated silicosis, provided, that the silicosis was an essential factor in causing such disability or death. In case of disability or death from silicosis complicated with any other disease, or from any other disease complicated with silicosis, the income benefits shall be reduced as provided in section 72-406[, Idaho Code].

**72-446. NONDISABLING SILICOSIS—COMPENSATION UPON SEVERANCE FROM EMPLOYMENT.**

- 1) When an employee, because he has nondisabling silicosis, is discharged from employment in which he is engaged, or when such an employee, after an examination as provided in subsection (2) of this section, and a finding by the medical panel that it is inadvisable for him to continue in his employment, terminates his employment, the commission may allow such compensation on account of such termination of employment as it may deem just, as support money pending his change of employment, payable as in this law elsewhere provided, but in no case to exceed five thousand dollars (\$5,000).
- 2) Upon application of any employer or employee, the commission may direct any employee of such employer or any employee who, in the course of his employment has been exposed to the inhalation of silica dust, to submit to a medical examination to determine whether the employee has silicosis, and the degree thereof. The results of the examination shall be submitted to the commission, which shall submit copies of such reports to the employer and employee, who shall have opportunity to rebut the same, provided, request therefore is made to the commission within thirty (30) days from the mailing of such report to the parties. The commission shall make its findings as to whether it is inadvisable for the employee to continue in his employment.

**72-447. RECURRING DERMATITIS.** A person who has suffered disability from dermatitis and has received income benefits therefore shall not be entitled to income benefits for disability from a later attack of dermatitis due to substantially the same cause, unless immediately preceding the date of the later disablement he has been engaged in the occupation to which the recurrence of the disease is ascribed and under the same employer for at least sixty (60) days.

**NOTICE AND LIMITATIONS.**

- 1) Unless written notice of the manifestation of an occupational disease is given to the employer within sixty (60) days after its first manifestation, or to the industrial commission if the employer cannot be reasonably located within ninety (90) days after the first manifestation, and unless claim for worker's compensation benefits for an occupational disease is filed with the industrial commission within one (1) year after the first manifestation, all rights of the employee to worker's compensation due to the occupational disease shall be forever barred.
- 2) Unless written notice of death from an occupational disease is given to the employer within ninety (90) days after the death, or to the industrial commission if the

employer cannot be reasonably located within ninety (90) days after the death, and unless claim for worker's compensation benefits for the death is filed with the industrial commission within one (1) year after the death, all rights to worker's compensation benefits for the death shall be forever barred.

- 3) If notice is given to the industrial commission under subsection (1) or (2) of this section, the industrial commission shall promptly give notice to the employer and the surety.

**72-449. POST MORTEM EXAMINATION.** Upon the filing of a claim for compensation for death from an occupational disease when an autopsy is necessary accurately and scientifically to ascertain and determine the cause of death, the autopsy shall be ordered by the commission. The commission may designate a duly licensed physician, who is a specialist in such examination, to perform or attend the autopsy and to certify his findings thereon. Such findings shall be filed with the commission and shall be a public record. The commission also may exercise such authority on its own motion or on application made to it at any time by any party in interest, in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered, and no compensation shall be payable during the continuance of such refusal.

**72-450. RETRAINING.** Following a hearing upon a motion of the employer, the employee, or the commission, if the commission deems a permanently disabled employee, after the period of recovery, is receptive to and in need of retraining in another field, skill or vocation in order to restore his earning capacity, the commission may authorize or order such retraining and during the period of retraining or any extension thereof, the employer shall continue to pay the disabled employee, as a subsistence benefit, temporary total or temporary partial disability benefits as the case may be. The period of retraining shall be fixed by the commission but shall not exceed fifty-two (52) weeks unless the commission, following application and hearing, deems it advisable to extend the period of retraining, in which case the increased period shall not exceed fifty-two (52) weeks. An employer and employee may mutually agree to a retraining program without the necessity of a hearing before the commission.

**72-451. PSYCHOLOGICAL ACCIDENTS AND INJURIES.** Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

- 1) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where: (i) it results in resultant physical injury so long as the psychological mishap or event meets the other criteria of this section, and (ii) it is readily recognized and identifiable as having occurred in the workplace, and (iii) it must be the product of a sudden and extraordinary event; and
- 2) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel related action including, but

not limited to, disciplinary action, changes in duty, job evaluation or employment termination; and

- 3) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section; and
- 4) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; and
- 5) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker's compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and statistics manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and
- 6) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required. Nothing herein shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.

This section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker's compensation claim may have occurred prior to July 1, 1994.

## **CHAPTER 5**

### **Industrial Commission**

#### **72-501. CREATION OF COMMISSION—APPOINTMENT, TERM OF OFFICE—QUALIFICATIONS—AFFILIATIONS—EFFECT OF ACCEPTING APPOINTMENT—VACANCIES—REMOVAL OF MEMBER FOR CAUSE.**

- 1) A commission is hereby created to be known as the industrial commission consisting of three (3) members, to be appointed by the governor, with the approval of the senate. The industrial commission shall be, for the purposes of section 20, article IV, Idaho Constitution, an executive department of the state government.
- 2) The term of each member of the commission shall be six (6) years, except that the members first appointed shall be those serving as members of the industrial accident board on the date this law becomes effective, each to hold office for the balance of his term for which appointed, to-wit, one (1) until the second Monday of January, 1973, one (1) until the second Monday of January, 1975, and one (1) until the second Monday of January, 1977. On the expiration of his term, an incumbent member may continue in tenure until his successor is appointed and qualified.
- 3) No person shall be eligible to appointment as a member of the
- 4) commission unless he shall be at least thirty (30) years of age, a qualified elector and a resident of this state not less than three (3) years consecutively next preceding his

appointment, of good moral character and of previous experience and training to qualify him efficiently and justly to discharge the duties of his office.

- 5) Not more than one (1) of the appointees to the commission shall be a person who, on account of his previous vocations, employment or affiliations can be classed as a representative of employers, and not more than one (1) of the appointees shall be a person who on account of his previous vocation, employment or affiliations can be classed as a representative of workmen. The third appointee shall be an attorney at law duly licensed to practice in this state. Not more than two (2) of the members of the commission shall belong to the same political party.
- 6) During his tenure in office a member shall devote full time to his duties as a member of the commission. As an official exercising judicial functions, he shall not engage in partisan political activities and shall conform his conduct to commonly acceptable standards of judicial ethics.
- 7) Any vacancy during a term may be filled by the governor with the approval of the senate. If any appointment is made during the recess of the legislature it shall be subject to confirmation by the senate during its next ensuing session.
- 8) A member may be disciplined or removed or retired from office by the judicial council in accordance with the procedure prescribed in section 1-2103, Idaho Code, for any cause set forth therein, subject to the review procedure and disposition of such a proceeding by the Supreme Court as in said section provided.

**72-501A. REHABILITATION DIVISION—BUDGET AND EXPENSE—  
COMPOSITION AND IMPLEMENTATION.**

In order to assist in reducing the period of temporary disability resulting from an injury and to aid in restoring the injured employee to gainful employment with the least possible permanent physical impairment, the commission shall establish within the commission a rehabilitation division and adopt a program concerning itself with both physical and vocational rehabilitation, the latter of which shall include job placement.

The commission is authorized to budget and expend for such rehabilitation program such funds as may be paid into the industrial administration fund or rehabilitation account thereof by a special premium tax provided by law for this purpose.

The composition of the rehabilitation division and implementation of the rehabilitation program shall be in the discretion of the commission with the counsel, advice, cooperation and expertise of representatives of industry, labor, sureties and the legal and medical professions as well as institutions, hospitals and clinics having physical rehabilitation facilities and with the assistance of the state board for professional-technical education, when such board is carrying out the duties of chapter 23, title 33, Idaho Code.

**72-502. REFERENCES TO INDUSTRIAL COMMISSION TO INCLUDE INDUSTRIAL ACCIDENT BOARD.** The references in the Idaho Constitution, Idaho Code and Idaho Rules of Civil Procedure to the “industrial accident board” and “board” shall be deemed to be references to the industrial commission.

**72-503. SALARY.** Commencing July 1, 2008, the annual salary of each member of the industrial commission shall be eighty-nine thousand seven hundred eleven dollars

(\$89,711). Industrial commissioner salaries shall be paid from sources set by the legislature. Each member of the industrial commission shall devote full time to the performance of his duties.

**72-504. ORGANIZATION—CHAIRMAN—SECRETARY.** The members of the commission shall select one (1) of their members as chairman, and shall select a person qualified, in the judgment of the commission, by experience and training, as secretary, who need not be a member, each of whom shall perform such duties as in this law prescribed and as the commission may from time to time direct.

**72-505. QUORUM—MAJORITY TO ACT—EFFECT OF VACANCY.**

- 1) Quorum. A majority of the commission shall constitute a quorum for the transaction of business.
- 2) Act of commission by majority. The act of a majority of the commission when in sessions as the commission shall be deemed to be the act of the commission.
- 3) Effect of vacancy. A vacancy on the commission shall not impair the right of the remaining members to perform the duties and exercise all the power and authority of the commission.

**72-506. ACTS OF COMMISSION OR REFERENCE-HEARING OFFICERS.**

- 1) Any investigation, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any member thereof or any hearing officer, referee or examiner appointed by the commission for that purpose.
- 2) Every finding, order, decision or award made by any member, hearing officer, referee, or examiner pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission, and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

**72-507. SEAL.** The commission shall have a seal of which the secretary shall be custodian, bearing the following inscription: "Industrial Commission, State of Idaho, seal." The seal shall be affixed to all writs, orders, awards, authentications of copies of records and to such other instruments as the commission shall direct.

**72-508. AUTHORITY TO ADOPT RULES AND REGULATIONS.** Pursuant to the provisions of chapter 52, title 67, Idaho Code, the commission shall have authority to promulgate and adopt reasonable rules and regulations for affecting the purposes of this act. Notwithstanding the provisions of chapter 52, title 67, Idaho Code, the commission shall have authority to promulgate and adopt reasonable rules and regulations involving judicial matters. In administrative matters and all other matters, the commission shall be bound by the provisions of chapter 52, title 67, Idaho Code. Rules and regulations as promulgated and adopted, if not inconsistent with law, shall be binding in the administration of this law.

**72-509. OFFICES AND SUPPLIES.**

- 1) The principal office of the commission shall be located in Ada County.
- 2) The commission may establish such branch offices, divisions, sections and advisory committees in such localities in this state as it deems necessary to administer this act, in addition to the offices and committees herein otherwise provided for, and shall have power to rent temporary quarters deemed requisite for the purpose of administering this law.
- 3) The commission may acquire office furniture, furnishings, equipment, stationery and supplies deemed requisite for the purpose of administering this law.

**72-510. PAYMENT OF EXPENSES.** The commission shall make such expenditures as may be necessary for the adequate administration of this law, including salaries, other personal services, actual and necessary traveling and other expenses and disbursements of the members of the commission, its officers and employees, incurred while on official business, either within or without the state, office rent, the purchase and rental of vehicles, books, periodicals, office equipment and supplies, printing and binding, cost of membership in official organizations, attendance at meetings and conventions and for all other purposes concerned with subject matters cognizable within this law. All expenditures of the commission, unless otherwise provided in this law, shall be paid out of the industrial administration fund after approval by the board of examiners.

**72-511. RECORDS AND FORMS.** The commission shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this law. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards, and such other books or records as it shall deem requisite for the purposes and efficient administration of this law. All such records shall be kept in the office of the commission.

**72-512. REPORTS.** The commission shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports and bulletins covering its operation, proceedings and matters relative to its work as it may deem advisable.

**72-513. SPECIFIED EMPLOYEES—EXEMPT FROM PERSONNEL SYSTEM.**

The secretary, medical officers, division or section officers, hearing officers, field counselors, examiners and referees, shall be exempt from the system of personnel administration prescribed by chapter 53, title 67, Idaho Code. Field counselors shall not be deemed or considered social workers or engaged in social work.

**72-514. ASSISTANTS.** The commission shall have the power to employ during its pleasure such additional officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this law or to perform the duties and exercise the powers conferred by law upon the commission.

**72-515. FEES.** The commission shall have power and authority to fix, charge and collect fees, as follows:

- 1) For copies of papers and records not required to be certified or otherwise authenticated by the commission;
- 2) For certified copies of official documents and orders filed in its offices;
- 3) For copies of the evidence taken at any proceeding furnished any person other than the claimant or the employer; transcripts of evidence shall be furnished the claimant and the employer on request;
- 4) For publications issued under its authority.

The fees charged and collected under this section shall be deposited monthly in the state treasury to the credit of the industrial administration fund, accompanied by a detailed statement.

#### **72-516. REPORTS.**

Biennially the commission shall make a report to the governor and through him to the state legislature on the operation of this law, including recommendations as to improvements in the law and administration thereof, and a statistical analysis of industrial injury and occupational disease experience and compensation costs.

The commission may prepare and publish such other statistical and informational reports and analyses based upon the reports and records available which, in its opinion, will be useful in attaining public understanding of the purposes, effectiveness, costs, coverage and administrative procedures of workmen's compensation and rehabilitation in the state, and in providing basic information regarding the occurrence and sources of industrial injuries and occupational diseases for the use of public and private agencies engaged in industrial injury and occupational disease prevention activities.

**72-517. COOPERATION WITH OTHER AGENCIES.** The commission shall have the authority to enter into cooperative agreements with the director of the department of labor, the administrator of the division of building safety, the director of the department of health and welfare, state board of education, state board for professional-technical education, state nuclear energy commission, and with other state agencies and with their successors, and with federal and private agencies, and to cooperate with programs sponsored by all such agencies to facilitate the carrying out of the purposes of this law.

#### **72-518. DUTIES OF ATTORNEY GENERAL—REPRESENTATION IN COURT.**

- 1) In any civil action to enforce the provisions of this law, or of any rule or regulation issued pursuant thereto, the commission and the state shall be represented by the attorney general, or if an action is brought in any court of any other state, by any attorney qualified to appear in the courts of that state.
- 2) Any criminal action for violation of any provision of this law or of any rule or regulation issued pursuant thereto shall be prosecuted by the attorney general, or, at his request and under his direction, by the prosecuting attorney of any county wherein the defendant resides or has a place of business.

#### **72-519. CREATION OF INDUSTRIAL ADMINISTRATION FUND—PURPOSE.**

A fund is hereby created to be known as the industrial administration fund for the purpose of providing funds for administering the workmen's compensation law.



**72-520. INDUSTRIAL COMMISSION ADMINISTRATOR OF FUND.** The industrial administration fund shall be administered by the commission without liability on the part of the state or the commission beyond the amount of the fund. The commission is authorized to credit or remit, refund or pay back any premium tax or penalty or portion thereof paid under this act which the commission determines was paid or collected erroneously or illegally.

**72-521. STATE TREASURER CUSTODIAN OF FUND—DUTIES.** The state treasurer shall be custodian of the industrial administration fund. He shall give a separate and an additional bond in an amount and with sureties approved by the commissioner [director] of [the department of] insurance, conditioned for the faithful performance of his duty as custodian of this fund.

**72-522. DEPOSIT AND INVESTMENT OF FUND—INTEREST.** The state treasurer shall deposit or, on order of the commission, invest any portion of the industrial administration fund not needed for immediate or currently anticipated use, in the manner and subject to all the provisions of law respecting the depositing and investing of state funds by him. Interest earned by such portion of the fund so invested shall be collected by the state treasurer and placed to the credit of the fund.

**72-523. SOURCE OF FUND—PREMIUM TAX.** The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall semiannually, within thirty (30) days after February 1 and July 1 of each year, pay into the state treasury to be deposited in the industrial administration fund a premium tax as follows:

- 1) Commencing July 1, 1993, every surety, other than self-insurers authorized to transact worker's compensation insurance, a sum equal to two and one-half percent (2.5%) of the net premiums written by each respectively on worker's compensation insurance in this state during the preceding six (6) months' period, but in no case less than seventy-five dollars (\$75.00); and
- 2) Each self-insurer, a sum equal to two and one-half percent (2.5%) of the amount of premium such employer who is a self-insurer would be required to pay as premium to the state insurance fund, but in no case less than seventy-five dollars (\$75.00).
- 3) Any insurer making any payment into the industrial administration fund under the provisions of subsection (1) of this section shall be entitled to deduct one and three-tenths percent (1.3%) of the net premiums written as computed above from any sum that it is required to pay into the department of insurance as a tax on worker's compensation premiums.
- 4) In arriving at net premiums written, dividends paid, declared or payable shall not be deducted.
- 5) For the purposes of this section and section 72-524, Idaho Code, net premiums written shall mean the amount of gross direct premiums written, less returned premiums and premiums on policies not taken.

**72-524. SURETIES' REPORTS OF TAX BASIS.** Every surety, other than a self-insurer shall, under oath of the person or officers making the report, within thirty (30) days after February 1 and July 1 of each year, report to the commission the net amount of premium written on worker's compensation insurance in this state during the preceding six (6) months' period, and every self-insurer shall, within thirty (30) days after February 1 and July 1 of each year, report in the same manner to the commission the total payroll for the preceding six (6) months' period. The commission shall have the right, at any time and as often as it requires, to verify the worker's compensation premiums written by any surety, and to inspect or cause to be inspected the records of any surety underwriting or authorized to underwrite worker's compensation liability in the state of Idaho for premiums written verification purposes. Failure of any such surety to allow such verification or inspection shall constitute sufficient cause enabling the commission to revoke such surety's authority to underwrite worker's compensation liability of any and all employers located, or doing business, in the state of Idaho.

**72-525. CIVIL ACTION FOR COLLECTION OF PREMIUM TAX—DUTIES OF ATTORNEY GENERAL.** If any surety required to make payment under the provisions of this law shall fail, for a period of ten (10) days after such payment is due as provided by section 72-523, [Idaho Code,] to pay into the state treasury to be deposited in the industrial administration fund the amount due, it shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the amount due, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

**72-526. PENALTY FOR DEFAULT—COLLECTION BY CIVIL ACTION—DUTY OF ATTORNEY GENERAL.** Any surety who is in default for ten (10) days in any payment required to be made under the provisions of this law shall be liable for a penalty for every ten (10) day period or any part thereof during which such failure continues of ten percent (10%) of the amount originally due. It shall be the duty of the attorney general to bring a civil action in the name of the state in the proper court to collect the penalty herein provided, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

**72-527. CIVIL PENALTY FOR SURETY'S MISREPRESENTATION—DUTY OF ATTORNEY GENERAL.** Any surety who shall willfully misrepresent the amount to be paid into the state treasury under the provisions of this law shall be liable to the state for an amount ten (10) times the difference between the payment made and the amount that should have been paid had such misrepresentation not been made; the liability to the state under this section shall be enforced in a civil action brought by the attorney general in the name of the state in the proper court, and the amount collected shall be paid into the state treasury to be deposited in the industrial administration fund.

## **72-528. STATISTICAL INFORMATION REQUIRED.**

- 1) Statistical information now provided to the industrial commission is inadequate and incomplete, making it impossible to compute the total cost of the workmen's compensation system, both to employers and the people of the state of Idaho.
- 2) In addition to all information that sureties, self-insurers, the state insurance fund, the industrial special indemnity fund and noninsured employers now supply to the industrial commission, they shall be required to report to the industrial commission all litigation expenses paid by them in any case litigated before the industrial commission, and if appealed to a higher court, all costs expended on appeal. This reporting requirement shall include all fees paid to attorneys, all expenses charged by attorneys, charges for reports or testimony of witnesses, costs of any depositions taken, any costs for investigation made before or during the hearing, costs of research or legal briefs, and all filing fees paid on account of the litigation.
- 3) All attorneys engaged in representing any claimant in any litigated workmen's compensation claim must report to the industrial commission all attorney fees and all expenses which were incurred in the litigation and charged to the claimant. This requirement shall extend to any appeal or appeals that may be taken to a higher court by or on behalf of the claimant.
- 4) The industrial commission may expand the forms presently used by sureties or employers providing workmen's compensation coverage under the law by adding appropriate space or spaces to provide the additional information required in this section.
- 5) The industrial commission shall supply all attorneys representing claimants with a form upon which a report in compliance with this section can be made.
- 6) Reports required hereunder must be filed with the industrial commission not later than thirty (30) days following the time of entry of an award by the industrial commission; in the event of an appeal to a higher court, not later than thirty (30) days following a final ruling by the court.
- 7) The industrial commission may make such rules as are necessary to require compliance with the provisions of this section, including refusing to allow attorneys who fail to comply with the provisions of this section the right to appear before the industrial commission.
- 8) The provisions of this section shall apply to all cases in which an application for hearing is filed with the industrial commission on or after July 1, 1988.

## **CHAPTER 6**

### **Employer Reports**

#### **72-601. RECORD OF INJURIES—NECESSITY—AVAILABILITY—FAILURE TO KEEP.**

- 1) Employers' records of injuries. An employer shall keep a record of each injury and occupational disease fatal or otherwise, arising out of and in the course of employment, reported to the employer or of which he otherwise may have knowledge.

Such record shall include a description of the injury or disease and the manner in which the same occurred, a statement of the time during which an employee was unable to work because of the affliction and such other information as the commission may require to be kept.

- 2) Failure to keep records a misdemeanor. Any employer who willfully fails or refuses to keep records of injuries and occupational diseases as required by this section shall be guilty of a misdemeanor.

#### **72-602. EMPLOYERS' NOTICE OF INJURY AND REPORTS.**

- 1) First report—Notice of injury or occupational disease. As soon as practicable but not later than ten (10) days after the occurrence of an injury or occupational disease, requiring treatment by a physician or resulting in absence from work for one (1) day or more, a report thereof shall be made in writing by the employer to the commission in the form prescribed by the commission; the mailing to the commission of the written report within the time prescribed shall be compliance.
- 2) Extended disability--Sixty (60) day supplemental and final reports. If the disability extends beyond a period of sixty (60) days, the employer shall make a supplemental report to the commission at the end of such period, in the form prescribed by the commission, that the employee is still disabled.
- 3) Supplemental report on termination of disability. Upon termination of the disability of the employee, the employer shall make a final supplemental report to the commission, in the form prescribed by the commission.
- 4) Summary of compensation and medical services, paid and payable. Within such time, and under such conditions, as the commission shall prescribe by rule or regulation, but not more often than sixty (60) days after the termination of the disability of the employee, the employer or other party liable to pay the compensation provided for by this act shall file with the commission a summary showing the total compensation payments made or to be made for such employee. The time prescribed by the commission for the filing of such summaries may be different for medical and related benefit cases only as over against cases in which monetary benefits have been made to any such employee.
- 5) Failure to file report a misdemeanor. An employer who willfully fails or refuses to make any report required by this section shall be guilty of a misdemeanor.

**72-603. EMPLOYERS' REPORT OF EMPLOYEES.** Requirement to keep records and to report. Subject to the provisions of this law, every employer shall keep an accurate record of the number and job classification of his employees and the wages paid, and upon demand of the commission shall furnish the commission a sworn statement of the same. Such records shall not be open to inspection except on request of the commission. The commission shall have the right, at any time and as often as it requires, to verify the number of employees and the amount of the payroll, and to inspect or cause to be inspected such records.

Information received from employers shall be subject to disclosure as provided in chapter 3, title 9, Idaho Code.

**72-604. FAILURE TO REPORT TOLLS EMPLOYEE LIMITATIONS.** When the employer has knowledge of an occupational disease, injury, or death and willfully fails or refuses to file the report as required by section 72-602(1), Idaho Code, the notice of change of status required by section 72-806, Idaho Code, the limitations prescribed in section 72-701 and section 72-706, Idaho Code, shall not run against the claim of any person seeking compensation until such report or notice shall have been filed.

## **CHAPTER 7**

### **Procedures**

**72-701. NOTICE OF INJURY AND CLAIM FOR COMPENSATION FOR INJURY—LIMITATIONS.** No proceedings under this law shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable but not later than sixty (60) days after the happening thereof, and unless a claim for compensation with respect thereto shall have been made within one (1) year after the date of the accident or, in the case of death, then within one (1) year after such death, whether or not a claim for compensation has been made by the employee. Such notice and such claim may be made by any person claiming to be entitled to compensation or by someone in his behalf. If payments of compensation have been made voluntarily or if an application requesting a hearing has been filed with the commission, the making of a claim within said period shall not be required.

**72-702. FORM OF NOTICE AND CLAIM.** Such notice and such claim shall be in writing; the notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature and cause of the injury or disease and shall be signed by him or by a person on his behalf, or, in the event of his death, by any one or more of his dependents, or by a person on their behalf. The notice may include the claim.

**72-703. GIVING OF NOTICE AND MAKING OF CLAIM.** Any notice under this law shall be given to the employer, or, if the employer is a partnership, then to any one (1) of the partners. If the employer is a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by registered or certified mail addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

**72-704. SUFFICIENCY OF NOTICE—KNOWLEDGE OF EMPLOYER.** A notice given under the provisions of section 72-701 or section 72-448, Idaho Code, shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the injury, or disease, or otherwise, unless it is shown by the employer that he was in fact prejudiced thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this law if it is shown that the employer, his agent or representative

had knowledge of the injury or occupational disease or that the employer has not been prejudiced by such delay or want of notice.

**72-705. LIMITATION OF TIME—MINORS AND INCOMPETENTS.** No limitation of time provided in this law shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

**72-706. LIMITATION ON TIME ON APPLICATION FOR HEARING.**

- 1) When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.
- 2) When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of the accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.
- 3) When income benefits discontinued. If income benefits have been paid and discontinued more than four (4) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease, the claimant shall have one (1) year from the date of the last payment of income benefits within which to make and file with the commission an application requesting a hearing for additional income benefits.
- 4) Medical benefits. The payment of medical benefits beyond five (5) years from the date of the accident causing the injury or the date of first manifestation of an occupational disease shall not extend the time for filing a claim or an application requesting a hearing for additional income benefits as provided in this section.
- 5) Right to medical benefits not affected. Except under circumstances provided in subsection (1) of this section, the claimant's right to medical benefits under the provisions of section 72-432(1), Idaho Code, shall not be otherwise barred by this section.
- 6) Relief barred. In the event an application is not made and filed as in this section provided, relief on any such claim shall be forever barred.

**72-707. COMMISSION HAS JURISDICTION OF DISPUTES.** All questions arising under this law, if not settled by agreement or stipulation of the interested parties with the approval of the commission, except as otherwise herein provided, shall be determined by the commission.

**72-708. PROCESS AND PROCEDURE.** Process and procedure under this law shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity.

**72-709. ATTENDANCE OF WITNESSES—PRODUCTION OF DOCUMENTS—DEPOSITION—WITNESS FEES.**

- 1) The commission or any member thereof or any hearing officer, examiner or referee appointed by the commission shall have the power to subpoena witnesses, administer oaths, take testimony, issue subpoenas duces tecum, and to examine such of the books and records of the parties to a proceeding as relates to the questions in dispute.
- 2) The district court shall have the power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers and records.
- 3) The testimony of any witness for use as evidence in any proceeding may be taken by deposition or interrogatories.
- 4) No person shall be required to attend as a witness in any such proceeding unless his lawful mileage and witness fee for one (1) day's attendance shall first be paid or tendered to him.

**72-710. TRANSCRIPTS OF PROCEEDINGS.** A stenographic or machine transcription of any proceeding or of testimony adduced at any hearing shall be taken by the commission.

**72-711. COMPENSATION AGREEMENTS.** If the employer and the afflicted employee reach an agreement in regard to compensation under this law, a memorandum of the agreement shall be filed with the commission, and, if approved by it, thereupon the memorandum shall for all purposes be an award by the commission and be enforceable under the provisions of section 72-735, unless modified as provided in section 72-719. An agreement shall be approved by the commission only when the terms conform to the provisions of this law.

**72-712. HEARINGS.** Upon application of any party to the proceeding, or when ordered by the commission or a member thereof or a hearing officer, referee or examiner, and when issues in a case cannot be resolved by pre-hearing conferences or otherwise, a hearing shall be held for the purpose of determining the issues.

**72-713. NOTICE OF HEARINGS—SERVICE.** The commission shall give at least ten (10) days' written notice of the time and place of hearing and of the issues to be heard, either by personal service or by registered or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address, as shown in the records and files of the commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the commission.

**72-714. HEARINGS, WHERE AND HOW CONDUCTED.**

- 1) The hearing may be held in the city or town or within the county where the injury or disease occurred, or in such other place as the commission deems most convenient for the parties and most appropriate for ascertaining their rights.

- 2) If the place of hearing claimant's testimony is outside the county and the claimant's presence is deemed necessary, the commission shall cause or require to be paid to the claimant a reasonable sum to reimburse him for his travel expense, unless otherwise agreed by the parties.
- 3) The commission, or member thereof, or a hearing officer, referee or examiner, to whom the matter has been assigned, shall make such inquiries and investigations as may be deemed necessary.
- 4) The authority of the commission, or of a member, hearing officer, referee or examiner, shall include the right to enter premises at any reasonable time where an injury, disease or death has occurred and to make such examination of any tool, appliance, process, machinery or environmental or other condition as may be relevant to a determination of the cause and circumstances of the injury, disease, or death.

**72-715. DISOBEDIENCE TO COMMISSION'S DIRECTIVE PROCESS.** If any person in proceedings before the commission or a member thereof, or hearing officer, referee or examiner, disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same or neglects to produce, after having been ordered to do so, any pertinent book, paper or document or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath or affirmation as a witness, or after taking the oath or affirmation refuses to be examined according to law, the commission, or member thereof, or hearing officer, referee or examiner, shall certify the facts to the district court in the jurisdiction where the offense is committed and the court, if the evidence so warrants, shall punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process in the presence of the court.

**72-716. RECORD OF PROCEEDINGS—SERVICE OF ORDER OR AWARD.** A decision of the commission together with the transcript of the evidence, findings of fact, rulings of law, award or order, and any other matter pertinent to the questions arising during the hearing shall be filed in the office of the commission. A copy of the decision shall be immediately sent to the parties by United States mail.

**72-717. EFFECT OF DECISION BY ONE MEMBER OR ASSIGNED OFFICER—CLAIMS FOR REVIEW.** If the matter has been assigned for hearing by a member, hearing officer, referee, or examiner, the record of such hearing, together with the recommended findings and determination, shall be submitted to the commission for its review and decision.

**72-718. FINALITY OF COMMISSION'S DECISION.** A decision of the commission, in the absence of fraud, 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 or rehearing of the decision, or the commission may rehear or reconsider its decision on its own initiative, and in any such events the decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on



rehearing or reconsideration. Final decisions may be appealed to the Supreme Court as provided by section 72-724, Idaho Code.

**72-719. MODIFICATION OF AWARDS AND AGREEMENTS—GROUNDS—TIME WITHIN WHICH MADE.**

- 1) On application made by a party in interest filed with the commission at any time within five (5) years of the date of the accident causing the injury or date of first manifestation of an occupational disease, on the ground of a change in conditions, the commission may, but not oftener than once in six (6) months, review any order, agreement or award upon any of the following grounds:
  - a) Change in the nature or extent of the employee's injury or disablement; or
  - b) Fraud.
- 2) The commission on such review may make an award ending, diminishing or increasing the compensation previously agreed upon or awarded, subject to the maximum and minimum provided in this law, and shall make its findings of fact, rulings of law and order or award, file the same in the office of the commission, and immediately send a copy thereof to the parties.
- 3) The commission, on its own motion at any time within five (5) years of the date of the accident causing the injury or date of first manifestation of an occupational disease, may review a case in order to correct a manifest injustice.
- 4) This section shall not apply to a commutation of payments under section 72-404[, Idaho Code.

**72-718. POWERS OF COMMISSION—SAFETY.**

- 1) Except as provided in subsection (2) of this section, whenever it receives a written request for an inspection or has written documented information that any employer subject to the commission's jurisdiction in worker safety matters is employing workers in or about any structure, room or place of employment which is not constructed and maintained in conformity with reasonable standards of construction as shall render it safe, or is employing workers on, or with, tools, equipment or machinery which are not equipped with safety devices, safeguards or other means of protection well adapted to render employees and places of employment safe, the commission is authorized to inspect such places of employment, to compel such employer to cease employing workers in such places, or on, or with, such tools, appliances or machinery, if they are deemed unsafe, and, pursuant to the provisions of chapter 52, title 67, Idaho Code, to adopt reasonable minimum safety standards.
- 2) The provisions of this section requiring a written request or written documentation prior to an inspection shall not apply to:
  - a) Inspections conducted pursuant to rules promulgated by the commission relating to the logging safety program, boilers and pressure vessels; or
  - b) Inspections of buildings owned or maintained by a political subdivision of the state if such political subdivision has not, pursuant to chapter 41, title 39, Idaho Code, adopted applicable building codes and instituted and implemented a code enforcement program; provided however, that inspections by the commission of

such buildings shall be conducted on an annual basis only. For purposes of this subsection, "political subdivision" means any governmental unit or special district of the state of Idaho.

**72-721. RULES FOR SAFETY—PROTECTIVE APPLIANCES.** The commission is empowered to require all employers to adopt rules which have been approved by it for the protection and safety of employees and for preventing the contraction of occupational diseases; to require all employers to keep such rules posted in conspicuous places in and about the premises; and to require employers to install, use or adopt such protective or safety appliances as the commission may deem necessary for the protection of the employees.

**72-722. UNSAFE CONDITIONS—PROCEDURE—WARNING ORDER—SAFETY INSPECTION—HEARING—DECISION.**

- 1) The commission is empowered, whenever it has information that employees are employed in or about places, or on, or with, tools, equipment or machinery which are not constructed or equipped to properly protect life, health and safety of the employees, or which do not conform to minimum safety standards adopted by the commission, to immediately notify, by United States mail, the owner or lessee of the premises or the proprietor or operator of the business there carried on, of the fact that it has such information and to require such owner, lessee, proprietor or operator to immediately render such places of employment safe, or to equip with proper safety devices, safeguards or other means or methods of protection, such tools, equipment or machines so as to render his employees and the place of employment safe, or to cease employing workmen in or about such places or on or about such tools, equipment or machinery.
- 2) Upon receiving such notice from the commission, such owner, lessee, proprietor or operator shall immediately conform to the order of the commission or shall notify the commission that he claims he is not operating in violation of such order.
- 3) Upon receiving such information from such owner, lessee, proprietor or operator, the commission shall, unless such information was obtained by inspection by the commission, inspect or cause to be inspected, said place of employment or tools, equipment or machinery, and if upon such inspection the commission is of the opinion that the place of employment is not unsafe or that the tools, equipment or machinery have proper safety devices, safeguards or other means or methods of protection which are well adapted to render the employees and places of employment safe, it shall so notify the owner.
- 4) If after such inspection the commission is of the opinion that the place of employment is not constructed or maintained to render it reasonably safe or that the tools, equipment or machines are not equipped with proper safety devices, safeguards or other means or methods of protection which are well adapted to render the employees and places of employment safe, it shall designate a time and place for hearing and may assign the matter for hearing by a member of the commission, or a hearing officer, referee or examiner.

- 5) The commission or the officer to whom the matter is assigned for hearing shall make such inquiry and investigation as shall be deemed necessary. The hearing may be held in the city or town within the county where such places of employment are situated or such other place as the commission deems most convenient for the parties and most appropriate for ascertaining their rights.
- 6) Thereafter, the applicable procedure shall be as set forth in sections 72-714 to 72-718, inclusive.

**72-723. VIOLATION OF SAFETY ORDERS A MISDEMEANOR.** Every employer, employee or other person who, either individually or acting as an officer, agent or employee of a corporation or other person, violates any decision or order of the commission made after the hearing provided in the foregoing section, or who shall fail or refuse to comply with such order, or part thereof, or who, directly or indirectly, knowingly induces another to do so, is guilty of a misdemeanor.

Every such person shall also be liable to a penalty of one dollar (\$1.00) for each employee for every day during which such failure continues, to be recovered in an action brought by the commission in the name of the state of Idaho, and the amount so collected shall be paid into the industrial administration fund, and for this purpose the district court in the county in which such employer carries on any part of his trade or occupation shall have jurisdiction.

If any employer shall fail for a period of ten (10) days to comply with such order of the commission, he may be enjoined by such district court from carrying on such trade or occupation while such failure continues.

All proceedings in the courts under this section shall be brought by the commission in the name of the state of Idaho.

**72-724. APPEAL TO SUPREME COURT.** An appeal may be made to the Supreme Court by such parties from such decisions and orders of the commission and within such times and in such manner as prescribed by Rule of the Supreme Court.

**72-725. RECORD ON APPEAL.** The agency's record and reporter's transcript in an appeal to the Supreme Court shall contain such portions and documents of the proceedings of the commission, and be prepared, processed and transmitted to the Supreme Court as provided by Rule of the Supreme Court. Provided, the cost of the transcript and record shall be paid for as provided by order of the industrial commission.

**72-731. STAY ON APPEAL.** An appeal to the Supreme Court shall automatically operate as a supersedeas or stay of the award, order or decision being disputed on the appeal unless the commission shall otherwise order.

**72-732. DISPOSITION OF APPEAL—JURISDICTION OF SUPREME COURT.**

Upon hearing the court may affirm or set aside such order or award, or may set it aside only upon any of the following grounds:

- 1) The commission's findings of fact are not based on any substantial competent evidence;
- 2) The commission has acted without jurisdiction or in excess of its powers;

- 3) The findings of fact, order or award were procured by fraud;
- 4) The findings of fact do not as a matter of law support the order or award.

**72-733. LIMITED JURISDICTION OF COURTS.** Except as herein provided, no court of this state shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order or award of the commission, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its duties.

**72-734. INTEREST ON COMPENSATION AWARDS.** Whenever a decision shall have been entered by the commission awarding compensation of any kind to a claimant, such award shall accrue and the employer shall become liable for, and shall pay, interest thereon from the date of such decision pursuant to the rates established and existing as of the date of such decision, pursuant to section 28-22-104(2), Idaho Code. Such interest shall accrue on all compensation then due and payable, and on all compensation successively becoming due thereafter, from the respective due dates, regardless of whether an appeal shall be taken from the decision of the commission, until the time of payment thereof.

**72-735. ENFORCEMENT OF AWARD—FILING IN DISTRICT COURT—DUTY OF COURT TO ENTER JUDGMENT.**

- 1) In the event of default in payment of compensation due under an award and on or after the 30th day from the date upon which compensation became due, any party in interest may file in the district court for the county in which the injury or disease occurred if such occurred within the state, otherwise in the district court for the county in which the employer resides, a certified copy of the decision of the commission awarding compensation from which no appeal has been taken within the time allowed therefore, or a certified copy of the memorandum of agreement approved by the commission, and thereupon the court without notice shall render a decree or judgment in accordance therewith and cause the parties to be notified thereof.
- 2) In case the employer maintains no place of business in this state, he shall be deemed to have appointed the secretary of state his agent for the purpose of acceptance of notice of entry of such decree or judgment and the secretary of state shall take reasonable steps to give actual notice thereof to the employer.
- 3) The fee required to be paid to the clerk of the district court for the filing of the petition or entry of such decree or judgment and for any enforcement procedure thereupon shall be the same as that provided by law for appeals to the district court from inferior tribunals.

**72-736. DISTRICT COURT JUDGMENT NONAPPEALABLE—ALIEN UPON EXECUTION.** The decree or judgment from the district court entered pursuant to section 72-735, [Idaho Code,] shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though said decree or judgment had been rendered in an action duly heard and determined by said court, and shall with like effect be entered and docketed, except that there shall be no appeal therefrom and the same shall not

constitute a lien upon the real property of the employer until recorded as any other judgment.

**72-737. REVISION OF DISTRICT COURT'S JUDGMENT UPON MODIFICATION OF AWARD BY COMMISSION.** The district court, upon the filing with it of a certified copy of a decision of the commission ending, diminishing or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so it will conform to said decision.

## CHAPTER 8

### Miscellaneous Provisions

**72-801. FALSE REPRESENTATION A MISDEMEANOR—FORFEITURE OF COMPENSATION.** If, for the purpose of obtaining any benefit or payment under the provisions of this law, either for himself or for any other person, any one willfully makes a false statement or representation, he shall be guilty of a misdemeanor and upon conviction for such offense he shall forfeit all right to compensation under this law.

**72-802. COMPENSATION NOT ASSIGNABLE—EXEMPT FROM EXECUTION.** No claims for compensation under this law shall be assignable, and all compensation and claims therefore shall be exempt from all claims of creditors, except the restrictions under this section shall not apply to enforcement of an order of any court for the support of any person by execution, garnishment or wage withholding under chapter 12, title 7, Idaho Code.

**72-803. CLAIMS OF ATTORNEYS AND PHYSICIANS AND FOR MEDICAL AND RELATED SERVICES—APPROVAL.** Claims of attorneys and claims for medical services and for medicine and related benefits shall be subject to approval by the commission; provided however, that fees for physician services shall be set using relative value units from the current year resource based relative value system (RBRVS) as it is modified from time to time, multiplied by conversion factors to be determined by the commission in rule. Factors will be set for, at least, the following CPT code areas: medicine, surgery, physical medicine, radiology, anesthesia and pathology. The fees shall be adjusted each year using the same methodology as set forth in section 56-136, Idaho Code. In cases where RBRVS units are not available or have no relation to industrial claims, relative value units for fees for physician services shall be determined by the commission. Initial conversion factors shall be determined by the commission no later than January 1, 2006, to be effective April 1, 2006.

**72-804. ATTORNEY'S FEES—PUNITIVE COSTS IN CERTAIN CASES.** If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt

of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

**72-805. LAW NOT RETROACTIVE.** The provisions of this law shall not apply to injuries received and occupational diseases manifested or to the compensation payable therefore prior to the taking effect of this law, except as in this law otherwise provided.

**72-806. NOTICE OF CHANGE OF STATUS.** A workman shall receive written notice within fifteen (15) days of any change of status or condition including, but not limited to, the denial, reduction or cessation of medical and/or monetary compensation benefits, which directly or indirectly affects the level of compensation benefits to which he might presently or ultimately be entitled. If any change in compensation benefits is based upon a medical report or medical reports from any physician or any other practitioner of the healing arts, a copy of such report shall be attached to the written notice which the workman shall receive. The industrial commission shall by rule and regulation, determine by whom the notice shall be given and the form for such notice. In the absence of a rule governing a particular situation, the employer's insurer, or in the case of self-insurers, the employer, shall be responsible for giving the notice required herein.

## **CHAPTER 9**

### **State Insurance Fund**

**72-901. BOARD OF DIRECTORS OF STATE INSURANCE FUND—CREATION OF STATE INSURANCE FUND.**

- 1) There is hereby created as an independent body corporate politic a fund, to be known as the state insurance fund, for the purpose of insuring employers against liability for compensation under this worker's compensation law and the occupational disease compensation law and of securing to the persons entitled thereto the compensation provided by said laws. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be administered without liability on the part of the state. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of compensation under the worker's compensation law and the occupational disease compensation law and of expenses of administering such fund.
- 2) The governor shall appoint five (5) persons to be the board of directors of the state insurance fund. One (1) member shall be a licensed insurance agent, one (1) member shall represent businesses of the state, one (1) member shall be a representative of labor, one (1) member shall be a member of the state senate and one (1) member shall

be a member of the state house of representatives. The governor shall appoint a chairman from the five (5) directors. The directors shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, provided that the first two (2) appointments the governor makes after the effective date of this act shall serve a term of two (2) years and the other three (3) members shall serve a term of four (4) years. Thereafter, a member shall serve a term of four (4) years. A certificate of appointment shall be filed in the office of the secretary of state. A majority of the members shall constitute a quorum for the transaction of business or the exercise of any power or function of the state insurance fund and a majority vote of the members shall be necessary for any action taken by the board of directors. The members of the board of directors shall appoint a manager of the state insurance fund who shall serve at their pleasure and such other officers and employees as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee. Members of the board of directors shall receive a compensation for service like that prescribed in section 59-509(h), Idaho Code.

- 3) It shall be the duty of the board of directors to direct the policies and operation of the state insurance fund to assure that the state insurance fund is run as an efficient insurance company, remains actuarially sound and maintains the public purposes for which the state insurance fund was created.
- 4) The state insurance fund is subject to and shall comply with the provisions of the Idaho insurance code, title 41, Idaho Code. For purposes of regulation, the state insurance fund shall be deemed to be a mutual insurer. The state insurance fund shall not be a member of the Idaho insurance guaranty association.
- 5) Nothing in this chapter, or in title 41, Idaho Code, shall be construed to authorize the state insurance fund to operate as an insurer in other states.

**72-902. STATE INSURANCE MANAGER—POWERS AND DUTIES OF STATE INSURANCE MANAGER.** The board of directors of the state insurance fund shall appoint a manager of the state insurance fund, whose duties, subject to the direction and supervision of the board, shall be to conduct the business of the state insurance fund, and do any and all things which are necessary and convenient in the administration thereof, or in connection with the insurance business to be carried on under the provisions of this chapter. The manager shall have skill and expertise in managing and administering within the insurance industry, shall be of good moral character and shall be bonded in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code.

**72-903. FURTHER STATEMENT OF POWERS.**

The manager shall have full power to determine the rates to be charged for insurance in said fund, and to conduct all business in relation thereto, all of which business shall be conducted in the name of the state insurance manager.

Premium payments, voluntary compensation overpayments, and penalties pursuant to the provisions of this act, which remain uncollected four (4) years after they have become due, may be charged off as uncollectible by the manager, if no assets belonging to the liable person and subject to attachment can be found, and in the opinion of the manager there is no likelihood of collection, and the records relating thereto may be destroyed.

The manager may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records or reports of the fund or transcripts thereof, as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under this act if the original record or records would have been admissible therein. The manager may provide by regulation for the destruction or disposition, after reasonable periods, of any records, reports, transcripts or reproductions thereof, or other papers in the custody of the manager, the preservation of which is no longer necessary for the establishment of premium liability or benefit rights or for any purpose necessary to the proper administration of the fund.

**72-904. POWER TO SUE AND BE SUED.** The manager may, in his official name, sue and be sued in all the courts of the state, and before the industrial commission in all actions or proceedings arising out of anything done or offered in connection with the state insurance fund or business relating thereto.

**72-905. CONTRACTS.** The manager may make contracts of insurance as herein provided and such other contracts relating to the state insurance fund as are authorized or permitted under the provisions of this chapter.

**72-906. EMPLOYMENT OF ASSISTANTS.** The manager may employ such assistants, experts, statisticians, actuaries, accountants, inspectors, clerks, and other employees as necessary to carry out the provisions of this chapter and to perform the duties imposed upon him by this chapter. The personnel policies and compensation schedules for employees shall be adopted by the board of directors and shall be comparable in scope to other insurance companies doing business in the state and the region. Employees shall be members of the public employee retirement system.

**72-907. PERSONAL LIABILITY.** The manager shall not, nor shall any person employed by him, be personally liable in his private capacity for or on account of any act performed or contract entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the state insurance fund or affairs relating thereto.

**72-908. SALARIES, EXPENSES AND PAYMENT OF SAME.** The salary of the manager of the state insurance fund, and the salary or compensation of employees in said fund, and all expenses incurred by said fund shall be audited and paid out of the moneys belonging to said fund.

**72-909. DELEGATION OF POWERS.** The manager, as successor of the compensation insurance commission may act through proper deputies and may delegate to such deputies such power as he deems necessary or convenient. Among the powers which may be so delegated shall be the power to enter into contracts of insurance, insuring employers against liability for compensation under Workmen's Compensation Law and Occupational Disease Compensation Law, and insuring to employees the compensation



fixed by said laws; also the power to make agreements, subject to the approval of the industrial commission having jurisdiction, for the settlement of claims against said fund for compensation for injuries in accordance with the provisions of said laws; also the power to determine to whom and through whom payments of such compensation shall be made; and also the power to contract with physicians, surgeons and hospitals for medical and surgical treatment and care and nursing of injured persons entitled to compensation from said fund.

**72-910. STATE TREASURER CUSTODIAN OF FUND.** The state treasurer shall be the custodian of the state insurance fund, and all disbursements therefrom shall be paid by him upon warrants signed by the state controller, or upon sight drafts signed by the state insurance manager as provided by section 72-927, Idaho Code. The state treasurer shall give a separate and additional bond in an amount to be fixed by the governor, and with sureties approved by him, conditioned for the faithful performance of his duty as custodian of the state insurance fund. The state treasurer may deposit any portion of the said fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

**72-912. INVESTMENT OF SURPLUS OR RESERVE.** The endowment fund investment board shall at the direction of the manager invest any of the surplus or reserve funds belonging to the state insurance fund in real estate and the same securities and investments authorized for investments by insurance companies in Idaho as shall be approved by the manager. The endowment fund investment board shall be the custodian of all such securities or evidences of indebtedness, provided that the endowment fund investment board may employ a custodial bank to hold such securities. The state insurance fund is authorized to pay the actual expenses of the endowment fund investment board which the board incurs in investing surplus or reserve funds and which are approved by the manager of the state insurance fund. It shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all warrants or vouchers drawn on the state insurance manager and by the state controller. The endowment fund investment board at the request of the manager may sell any of such securities, the proceeds thereof to be paid over to the state treasurer for said insurance fund. Where such funds of the state insurance fund have been or are hereafter invested, with real property as security, and the said real property has been or is hereafter acquired by the state of Idaho by reason of foreclosure proceedings, voluntary deed, or otherwise, such property shall be held in trust by the state of Idaho for the benefit of the state insurance fund and may be sold by the endowment fund investment board at the request of the manager of said fund, and said sale may be had at private sale or public auction, upon such terms and under such conditions as the endowment fund investment board deems for the best interest of the state, but no sale of real estate at private sale may be had for a less price than the amount, with accrued interest, costs and expenses, which has been invested by the state insurance fund in said real estate. Where such sale is to be made at public auction, it must take place in the county where the real estate is situated, and notice of time and place of sale must be posted in three (3) of the

most public places in such county, and published in a newspaper, if there be one (1) printed in the said county, for at least once a week for not less than two (2) consecutive weeks, within thirty (30) days prior to the sale. Where such sale is to be made at private sale, it must take place in the county where the real estate is situated, and notice of time and place of sale must be posted in three (3) of the most public places in such county, and published in a newspaper, if there be one (1) printed in said county, for at least once a week for not less than two (2) consecutive weeks, within thirty (30) days prior to the sale. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen (15) days from the first publication of notice, and the sale must not be made before that day, but must be made within six (6) months thereafter. The bids or offers must be in writing, sealed, and delivered to the investment manager of the endowment fund investment board. The real estate and tenements, or the part thereof or interest therein to be sold, must be described with common certainty in the notice. The deed or deeds to such real estate shall be executed in the name of the state of Idaho as required by section 16, chapter 4 of the constitution of the state of Idaho, and the proceeds from any such sale be paid over to the state treasurer for said insurance funds.

**72-912A. APPOINTMENT OF INVESTMENT MANAGERS.** The manager of the state insurance fund may direct the endowment fund investment board to select and contract with a minimum of one (1) investment manager to manage the investment of the state insurance funds. The designated investment manager or managers, shall, subject to the direction of the endowment fund investment board, exert control over the funds as though the investment manager were the owner thereof. The endowment fund investment board shall be responsible for assuring that the investment manager complies with this act.

**72-913. CLASSIFICATION OF RISKS AND ADJUSTMENT OF PREMIUMS.** Employments insured in the state insurance fund shall be divided by the manager, for the purposes of the said fund, into classes. Separate accounts shall be kept of the amounts collected and expended in respect to each such class for convenience in determining equitable rates; but for the purpose of paying compensation, the state insurance fund shall be deemed one (1) and indivisible. The manager shall have power to rearrange any of the classes by withdrawing any employment embraced in it and transferring it wholly or in part to any other class, and from such employments to set up new classes in his discretion. The manager shall determine the hazards of the different classes and fix the rates of premiums therefore based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; but for such purpose and in so fixing such rates of premium, such rates shall be fixed with due regard to the physical hazards of each industry, occupation, or employment, and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and with due regard to the accessibility of medical and hospital facilities.

**72-914. ACCOUNTS.** The manager shall keep an account of the money paid in premiums by each of the several classes of employments, and the expense of administering the state insurance fund, and the disbursements on account of injuries and deaths of employees in each of said classes, including the setting up of reserves adequate to meet anticipated and unexpected losses and to carry the claims to maturity; and also an account of the money received from each individual employer; and of the amount disbursed from the state insurance fund for expenses, and on account of injuries and disablement and death of the employees of such employer, including the reserves so set up.

Examination of Fund: The state insurance fund shall be examined by the department of insurance at least once in five (5) years. For such purpose the director of the department of insurance shall appoint as examiner one (1) or more competent persons not officers of or connected with any insurance corporation other than as policyholders. The examiner or examiners so appointed shall make a full and true report of such examination, verified under oath, and such report when completed shall be included in and made a part of any report required by law to be made by the fund to the governor of this state. At the direction of the director of the department of insurance, the costs of such examination shall be paid by the fund in accordance with section 41-228, Idaho Code.

The director of the department of insurance shall transmit to the governor a copy of the official examination of the state insurance fund immediately upon its completion by the examiner or examiners, and a copy of such examination report shall be filed in the department of insurance and be open to public inspection.

**72-915. DIVIDENDS.** At the end of every year, and at such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

**72-917. READJUSTMENT OF PAYROLLS.** If the amount of premium collected from any employer at the beginning of any period is ascertained by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, and adjustment of the amount of such premium shall be made at the end of such period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and if such wage expenditure for such period is less than the amount of which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such period, such employer shall immediately upon being advised of the true amount of such premium due forthwith pay

to the manager an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such period, for deposit in the state insurance fund.

**72-918. POLICIES AND PAYMENT OF PREMIUMS.**

- 1) Every employer insuring in the state insurance fund shall receive from the manager a contract or policy of insurance.
- 2) Except as otherwise provided in this chapter, all premiums shall be paid by every employer who elects to insure with the state insurance fund to the manager semi-annually, or at such times as may be prescribed by the manager. Receipts shall be given for such payments and the money shall be paid over to the state treasurer to the credit of the state insurance fund.
- 3) Premiums may be paid quarterly by public employers and deposits from public employers shall not be required in an amount in excess of the previous quarter's earned payment.

**72-919. ACTIONS FOR COLLECTION IN CASE OF DEFAULT—PENALTY— CANCELATION OF POLICY.**

If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the manager, and it shall be the duty of the manager forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due; and the same, when collected by the manager shall be paid into the state insurance fund, and such employer's compliance with the provisions of this chapter requiring payment to be made to the state insurance fund shall date from the time of the payment of said money so collected to the manager.

The policy of insurance held by an employer who fails to comply with reasonable requirements established by the manager, or who is in default in his premium payments for more than thirty (30) days may be canceled at the discretion of the manager. An employer who is in default for 10 days in payment of any premium shall also be liable to a penalty for every day during which such failure continues of \$1.00 for every employee, to be recovered in an action brought by the manager and the amounts so collected shall be paid into the state insurance fund. The manager may, however, in his discretion, for good cause shown, remit any such penalty in whole or in part, provided the employer in default subsequently pays the premium.

**72-920. WITHDRAWAL FROM FUND.** Any employer may upon complying with subdivision 2 of section 72-801, withdraw from the fund by turning in his insurance contract or policy for cancellation, provided he is not in arrears for premiums due to the fund and has given to the manager 30 days' written notice of his intention to withdraw; and also provided that in case any employer so withdraws, his liability to assessments shall continue after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

Any employer so withdrawing may, however, terminate his entire liability by paying to the manager such sum as said manager may deem sufficient to cover such liabilities.

**72-921. REINSURANCE.** The manager may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers, the cost of which shall be paid out of current premium income.

**72-922. AUDIT OF PAYROLLS.** Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him to each employee, and shall furnish to the manager, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the manager shall require to verify the number of employees and the amount of payroll.

**72-923. FALSIFICATION OF PAYROLL.** An employer who shall misrepresent the amount of the payroll upon which the premiums chargeable by the state insurance fund are to be based shall be liable to the manager 10 times the amount of the difference between the premiums paid and the amount the employer should have paid had his payroll been correctly computed; and the liability to the manager under this section shall be enforced in a civil action by the manager, and any amount so collected shall become a part of the state insurance fund.

**72-924. WILFUL MISREPRESENTATION.** Any person, who willfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

**72-925. INSPECTIONS.** The manager shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the manager shall have free access to such premises during regular working hours, and at other reasonable times.

**72-926. DISCLOSURES PROHIBITED.** Information acquired by the manager from employers or employees pursuant to this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and any officer or employee of the manager or of the state insurance fund who, without authority of the manager or pursuant to his rules, or as otherwise required by law, shall disclose the same, shall be guilty of a misdemeanor.

**72-927. PAYMENT OF COMPENSATION AND REFUNDS.** The state insurance manager shall submit each month to the state board of examiners an estimate of the amount necessary to meet the current disbursements for workmen's compensation insurance losses and premium refunds to policyholders from the state insurance fund, during each succeeding calendar month, and when such estimate shall be approved by the state board of examiners, the state treasurer is authorized to pay the same out of the state insurance fund upon sight drafts drawn by the state insurance manager. At the end of each calendar month the state insurance manager shall account to the state board of examiners for all money so received, furnishing proper vouchers therefore.

**72-928. INSURANCE BY PUBLIC CORPORATIONS—PROVISION FOR IDAHO NATIONAL GUARD.**

- a) A public corporation may insure against its liability for compensation with the state insurance fund and not with any other insurance carrier, unless such fund shall refuse to accept the risk when the application for insurance is made: Provided however that the benefits secured by section 72-103, Idaho Code, to members of the Idaho national guard while on duty shall be secured in the manner prescribed in subsections (b) and (c) of this section; and provided further that the restrictions of this section shall not apply to any governmental hospital whose operation is financed primarily by patient care revenue.
- b) All claims for compensation against the Idaho national guard accruing on or after March 5, 1949, under the provisions of title 72, Idaho Code, on account of members of the Idaho national guard while on duty shall be deemed secured by the state insurance fund, and payment thereof shall be made to claimants entitled thereto in accordance with the provisions of title 72, Idaho Code, in the same manner and amount as any other employment insured by the state insurance fund. The manager of the state insurance fund shall service all claims as though they were insured claims and not require payment of any premium as a condition of securing the liability of the Idaho national guard, but the state insurance fund, shall in lieu of any premium, be reimbursed, as provided in subsection (c) of this section, for moneys paid out on account of the liability of the Idaho national guard. Nothing in this subsection shall be construed to amend or modify any substantive provision of this title. No charge shall be made by the fund for administration of the guard's liability hereunder.
- c) Commencing on July 1, 1950, and quarterly thereafter, the manager of the state insurance fund shall prepare in the form of a claim an itemized statement of all moneys paid out by the fund pursuant to subsection (b) of this section during the quarter concerned on account of the liability as an employer of Idaho national guard. Such statement shall list the amount of payments made and to whom and on whose account such payments are made, and shall be forwarded to the adjutant general of the state, who shall indorse thereon his approval of the statement and forward the same to the board of examiners. The board of examiners shall examine such claim and if the board finds the claim in accordance with law the board shall order the state treasurer to pay to the state insurance fund an amount equal to the total sum of moneys paid out as set forth in such statement. There is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, a sum of money sufficient to meet these quarterly claims as they are from time to time presented. The claim statement filed by the manager as of July 1, 1950 shall cover all claims pursuant to this section between March 5, 1949 and July 1, 1950.

**72-929. MARITIME RISK COVERAGE.** Notwithstanding any Idaho Code provision to the contrary, the state insurance fund may participate in any pooling arrangement that is under the direction and control of the national council on compensation insurance that will provide insurance for risks located in the state of Idaho which are subject to the United States longshoremen's and harbor workers' compensation act. The state insurance

fund is hereby authorized to pay any reasonable assessments that arise out of participation in such a pooling arrangement.

## **CHAPTER 10**

### **Crime Victims Compensation**

**72-1001. SHORT TITLE.** This chapter may be cited as “The Crime Victims Compensation Act.”

**72-1002. LEGISLATIVE PURPOSE AND INTENT.** The legislature hereby finds, determines and declares that victims of violent crime are often reduced to bereft and destitute circumstances as a result of the criminal acts perpetrated against them, that the financial or economic resources of such victims and their dependents are in many instances distressed or depleted as a result of injuries inflicted upon them by violent criminals.

That the general social and economic welfare of such victims and their dependents is and ought to be intimately affected with the public interest, that the deplorable plight of these unfortunate citizens should not go unnoticed by our institutions and agencies of government.

The legislature hereby further finds, determines and declares that it is to the benefit of all that victims of violence and their dependents be assisted financially and socially whenever possible.

It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

**72-1003. DEFINITIONS.** As used in this chapter:

- 1) “Claimant” means any of the following claiming compensation under this chapter:
  - a) A victim;
  - b) A dependent of a deceased victim; or
  - c) An authorized person acting on behalf of any of them, including parent(s), legal guardian(s), and sibling(s), of a victim who is a minor.
- 2) “Collateral source” means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this chapter which the claimant has received or which is readily available to him from:
  - a) The offender;
  - b) The government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two (2) or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;
  - c) Social security, Medicare, and Medicaid;
  - d) Worker's compensation;
  - e) Wage continuation programs of any employer;

- f) Proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or
  - g) A contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this chapter shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this chapter are a primary source.
- 3) “Commission” means the industrial commission.
  - 4) “Criminally injurious conduct” means intentional, knowing, or reckless conduct that:
    - a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims compensation program for which the victim is eligible as eligibility is set forth in this statute;
    - b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;
    - c) Results in injury or death; and
    - d) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death; provided that criminally injurious conduct shall include violations of the provisions of section 18-4006 3(b), 18-8004, 18-8006, 18-8007, 67-7027, 67-7034 or 67-7035, Idaho Code.
  - 5) “Dependent” means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child if under the age of eighteen (18) years or incapable of self-support and unmarried and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.
  - 6) “Extenuating circumstances” means that a victim requires further mental health treatment due to trauma arising out of covered criminal conduct in order to perform major life functions or the activities of daily living.
  - 7) “Injury” means actual bodily harm or disfigurement and, with respect to a victim, includes pregnancy, venereal disease, mental or nervous shock, or extreme mental distress. For the purposes of this chapter, “extreme mental distress” means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life.
  - 8) “Victim” means a person who suffers injury or death as a result of:
    - a) Criminally injurious conduct;
    - b) His good faith effort to prevent criminally injurious conduct; or
    - c) His good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.
  - 9) “Welfare benefits” as used in subsection (2) of this section, shall include sums payable to or on behalf of an indigent person under chapter 35, title 31, Idaho Code.

#### **72-1004. POWERS AND DUTIES OF COMMISSION.**



- 1) The commission shall:
  - a) Adopt rules to implement this chapter in compliance with chapter 52, title 67, Idaho Code;
  - b) Prescribe forms for applications for compensation; and
  - c) Determine all matters relating to claims for compensation.
- 2) The commission may:
  - a) Request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the commission to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this chapter;
  - b) Subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;
  - c) Take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;
  - d) Require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this chapter and the procedure for applying for compensation under this chapter;
  - e) Require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the commission may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the crime victims compensation account; and
  - f) Require claimants to sign a release and provide information to determine eligibility for compensation under this chapter. Any information received by the commission pursuant to this subsection shall be kept confidential except as provided in section 72-1007, Idaho Code.

**72-1005. REHABILITATION OF VICTIMS.** The commission shall refer victims who have been disabled through criminally injurious conduct and who are receiving benefits under this chapter to an appropriate treatment facility or program, including mental health counseling and care. If the referral is to the division of vocational rehabilitation, the division shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such program.

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division shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such program.

**72-1006. ATTORNEYS' FEES.**

- 1) The commission may grant attorneys' fees to attorneys for representing claimants before the commission. Any attorney's fee granted by the commission shall be in addition to compensation awarded the claimant under this chapter.
- 2) The commission may regulate the amount of the attorney's fee in any claim under this chapter when an attorney is representing a claimant.
- 3) In no claim or case may attorney fees in excess of five percent (5%) of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

**72-1007. PUBLIC INSPECTION AND DISCLOSURE OF COMMISSION'S RECORDS.** The information and records the commission maintains in its possession in the administration of this chapter shall be kept confidential and are exempt from public disclosure under chapter 3, title 9, Idaho Code, provided however:

- 1) During the commission's regular office hours any claimant, or his attorney or authorized representative, may examine all files maintained by the commission in connection with his application for compensation;
- 2) Upon an adequate showing to the court in a separate civil or criminal action that the specific information or records are not obtainable through diligent effort from any independent source, the court may inspect such records in camera to determine whether the public interest in disclosing the records outweighs the public or private interest in maintaining the confidentiality of such records;
- 3) Information and records maintained by the commission may be disclosed to public employees and officials in the performance of their official duties; and
- 4) Information and records maintained by the commission may be disclosed to health care providers who are:
  - a) Treating or examining victims claiming benefits under this chapter; or
  - b) Giving medical advice to the commission regarding any claim.

**72-1008. LIMITATION OF BENEFIT ENTITLEMENTS TO PROPORTIONATE SHARE OF AVAILABLE FUNDS.** Claimants receiving benefits under this chapter are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the commission determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the commission may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

**72-1009. CRIME VICTIMS COMPENSATION ACCOUNT.** The crime victims compensation account is hereby established in the dedicated fund. Moneys shall be paid

into the account as provided by law. Moneys in the account may be appropriated only for the purposes of this chapter, which shall include administrative expenses.

**72-1010. RECEIPT OF FUNDS.** The commission may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts, or to receive grants, gifts or donations from any source.

**72-1011. PENALTY FOR FRAUDULENTLY OBTAINING BENEFITS.** Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in section 18-2403, Idaho Code, and upon conviction shall, in addition to being punished as provided in chapter 24, title 18, Idaho Code, forfeit and repay any compensation paid under this chapter.

**72-1012. APPLICATION FOR COMPENSATION.** An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the com 72-1013. **INFORMAL HEARINGS.** The commission may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the commission may subpoena witnesses and documents as set forth in section 72-709, Idaho Code. Hearings held under this section are not considered contested case hearings under the Idaho administrative procedures act. However, the commission shall adopt rules regarding the commission's informal hearing procedures.

**72-1014. EVIDENCE OF CONDITION.**

- 1) The commission may require the claimant to supplement the application with any reasonably available medical reports or other documents relating to the injury or condition for which compensation is claimed. Failure to provide the requested supporting documents or reports may result in the denial of the claimant's application for compensation or claim for payment. Health care providers are authorized to submit directly to the commission, pursuant to the claimant's original release as provided in the application for compensation, any information that is required to support a claimant's application or that is necessary to process a claim for payment.
- 2) If the physical or mental condition of a victim or claimant is material to a claim, the commission may order the victim or claimant to submit from time to time to an examination by a physician or other licensed health professional or may order an autopsy of a deceased victim. The commission shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the commission a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the commission shall furnish a copy of the report to him. If the victim is deceased, the commission, on request, shall furnish a copy of the report to the claimant.

**72-1015. ENFORCEMENT OF COMMISSION'S ORDERS—IMPROPER ASSERTION OF PRIVILEGE.** If a person refuses to comply with an order of the commission or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship or counselor-client relationship, the commission may make any just order, including denial of the claim.

**72-1016. LIMITATIONS ON AWARDS.**

- 1) Compensation may not be awarded unless the claim is filed with the commission within one (1) year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the commission for good cause shown.
- 2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.
- 3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or the commission finds there was good cause for the failure to report within that time.
- 4) In order to be entitled to benefits under this chapter, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The commission, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.
- 5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.
- 6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this chapter.
- 7)
  - a) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the commission finds to be the victim's contribution to the infliction of death or injury.
  - b) Compensation otherwise payable to a claimant shall be reduced by fifty percent (50%) if at the time the injury was incurred claimant was engaged in a felony or was in violation of section 18-8004 or 67-7034, Idaho Code, and compensation otherwise payable may be further reduced pursuant to regulation of the industrial commission if claimant's actions contributed to the injury.

**72-1017. TENTATIVE AWARD OF COMPENSATION.** If the commission determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

**72-1018. AWARD OF COMPENSATION.**

- 1) The commission shall award compensation benefits under this chapter, if satisfied by a preponderance of the evidence that the requirements for compensation have been met.
- 2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing or an appeal of the conviction is pending or a rehearing or new trial has been ordered. The commission may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under section 72-1017, Idaho Code.

**72-1019. COMPENSATION BENEFITS.**

- 1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct, subject to a maximum of one hundred seventy-five dollars (\$175). Weekly compensation payments shall be made at the end of each two (2) week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for one (1) week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.
- 2) The commission may order payment of reasonable expenses actually incurred by the claimant for reasonable services by a physician or surgeon, reasonable hospital services and medicines, mental health counseling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct. Payment for the costs of forensic and medical examinations of alleged victims of sexual assault performed for the purposes of gathering evidence for possible prosecution, after collections from any third party who has liability, shall be made by the commission. The commission shall establish a procedure for summary processing of such claims.
- 3)
  - a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive aggregate weekly benefits amounting to sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one hundred seventy-five dollars (\$175) per week. Weekly compensation payments shall be made at the end of each two (2) week period.
  - b) Benefits under subsection (3) (a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the commission determines that other payment arrangements should be made. If a spouse dies or remarries,

- benefits under subsection (3) (a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.
- 4) Reasonable funeral and burial or cremation expenses of the victim, together with actual expenses of transportation of the victim's body, shall be paid in an amount not exceeding five thousand dollars (\$5,000) if all other collateral sources have properly paid such expenses but have not covered all such expenses.
  - 5)
    - a) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act or acts of criminally injurious conduct involving the same offender and occurring within a six (6) month period, may not exceed twenty-five thousand dollars (\$25,000) in the aggregate.
    - b) The limitation of subsection (5)(a) of this section is subject to the further limitation that payments for mental health treatment received as a result of the victim's injury may not exceed two thousand five hundred dollars (\$2,500) unless the industrial commission finds extenuating circumstances. If the commission finds a victim to have extenuating circumstances as defined in section 72-1003, Idaho Code, the victim is eligible for payments up to the maximum benefit allowed under paragraph (a) of this subsection (5). The commission shall reevaluate the victim's qualifications for extenuating circumstances not less often than annually.
  - 6) Compensation benefits are not payable for pain and suffering or property damage.
  - 7)
    - a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the commission be awarded weekly compensation benefits in an amount determined by the commission not to exceed one hundred fifty dollars (\$150) per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (2) of this section.
    - b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death, may, in the discretion of the commission, be awarded, in an aggregate amount payable to all dependents, a sum not to exceed one hundred fifty dollars (\$150) per week which shall be payable in the manner and for the period provided by subsection (3) (b) of this section or for such shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (4) of this section.
    - c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed twenty thousand dollars (\$20,000), and the limitations of subsection (6) of this section apply to compensation under this subsection (7).

- 8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every two (2) weeks.
- 9)
  - a) Subject to the limitations in subsections (9)(b) and (9)(c) of this section, the spouse, parent, grandparent, child, grandchild, brother or sister of a victim who is killed, kidnapped, sexually assaulted or subjected to domestic violence or child injury is entitled to reimbursement for mental health treatment received as a result of such criminally injurious conduct.
  - b) Total payments made under subsection (9) (a) of this section, may not exceed five hundred dollars (\$500) for each person or one thousand five hundred dollars (\$1,500) for a family.
  - c) With regard to claims filed pursuant to this section, in order for family members of victims of crime to be entitled to benefits, the victim of the crime must also have been awarded benefits for the crime itself.
- 10) A claimant or a spouse, parent, child or sibling of a claimant or victim may be reimbursed for his or her expenses for necessary travel incurred in connection with obtaining benefits covered pursuant to this chapter and in accordance with rules of the commission.

**72-1020. AWARD NOT SUBJECT TO EXECUTION, ATTACHMENT, GARNISHMENT, OR ASSIGNMENT—EXCEPTION.**

- 1) An award is not subject to execution, attachment, garnishment, or other process.
- 2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:
  - a) An assignment of a right to compensation for work loss to secure payment of maintenance or child support; or
  - b) An assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

**72-1021. RECONSIDERATION AND REVIEW OF COMMISSION'S DECISIONS.**

- 1) The commission, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The commission shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.
- 2) The right of reconsideration does not affect the finality of a commission decision.

**72-1022. NO APPEAL.** There shall be no right of appeal from a final determination of the commission.

**725-1023. SUBROGATION.**

- 1) If a claimant seeks compensation under this chapter and compensation is awarded, the account is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or from or against any other source for all compensation

paid under this chapter. The account's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or against another source from which payment may be recovered for benefits compensable under this chapter within one (1) year from the date the criminally injurious conduct occurred, the commission may institute the action in the name of the claimant or the claimant's personal representative.

- 2) If the claimant institutes the action, the commission shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.
- 3) If the commission institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the account in pursuit of the action, the excess shall be paid to the claimant.
- 4) If a judgment or recovery includes both damages for bodily injury or death for which the commission has ordered compensation paid under this chapter and damages for which the commission has not ordered compensation paid, then the account's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or other source from which payment can be recovered for benefits compensable under this chapter in such a way as to avoid and preclude the account from receiving its proper subrogation share as provided in this section. The commission shall order the release of any lien provided for in subsection (1) of this section upon receipt of the account's subrogation share.
- 5) Moneys received under the provisions of this section shall be paid to the account.

#### **72-1024. EFFECT OF AWARD ON PROBATION AND PAROLE OF OFFENDER.**

- 1) When placing any convicted person on probation, the court may set as a condition of probation the payment to the account of an amount equal to any benefits paid from the account to or for the benefit of a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.
- 2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

#### **72-1025. FINES—REIMBURSEMENTS—PRIORITY—DISPOSITION.**

- 1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:
  - a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than fifty dollars (\$50.00) per felony count;
  - b) For each conviction or finding of guilt of each misdemeanor count, a fine or reimbursement of twenty-five dollars (\$25.00) per misdemeanor count;



- c) In addition to any fine or reimbursement ordered under subsection (a) or (b) above, the court shall impose a fine or reimbursement of not less than two hundred dollars (\$200) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108, 18-6605 and 18-6608, Idaho Code.
- 2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.
- 3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.

## **CHAPTER 11**

### **Peace Officer and Detention Officer Temporary Disability Act**

**72-1101. LEGISLATIVE INTENT.** The purpose of this chapter is to provide a full salary to employees in certain dangerous occupations who have been injured on the job. The legislature finds that the rights and protections provided to peace officers and detention officers under this chapter constitute matters of statewide concern. Since these officers are employed in dangerous conditions, it is necessary that this chapter be applicable to all such officers wherever situated within the state of Idaho. In addition to the provisions of this chapter, state and local law enforcement agencies may provide additional monetary protections for their employees.

**72-1102. SHORT TITLE.** This chapter shall be known and may be cited as the "Peace Officer and Detention Officer Temporary Disability Act."

**72-1103. DEFINITIONS.** As used in this chapter, unless the context requires otherwise:

- 1) "Detention officer" means an employee in a county jail who is responsible for the safety, care, protection and monitoring of county jail inmates; and
- 2) "Peace officer" means any employee of a police or other law enforcement agency that is a part of or administered by the state or any political subdivision thereof who has the duty to arrest and whose duties include the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state or any political subdivision of this state and shall include, but not be limited to, appointed chiefs, elected sheriffs, and fish and game officers.

**72-1104. COMPENSATION AND COSTS.** On and after July 1, 2008, and subject to available funds in the peace officer and detention officer temporary disability fund established in section 72-1105, Idaho Code:

- 1) Any peace officer or detention officer employed by the state of Idaho or any city or county thereof who is injured in the performance of his or her duties when responding to an emergency, or when in the pursuit of an actual or suspected violator of the law, and by reason thereof is temporarily incapacitated from performing his or her duties and qualifies for worker's compensation wage loss benefits under title 72, Idaho Code, shall be paid his or her full rate of base salary, as fixed by the state or by applicable

ordinance or resolution, until the temporary disability arising from such injury has ceased. The employer shall withhold, collect and pay income tax on the salary paid to the employee as required by chapter 30, title 63, Idaho Code. Determinations and any disputes regarding entitlement to benefits under this chapter shall be decided by the industrial commission in accordance with the provisions of title 72, Idaho Code, and commission rules.

- 2) During the period for which the salary for temporary incapacity shall be paid by the employer, any worker's compensation received or collected by the employee shall be remitted to the state or to the respective city or county, as applicable, and paid into the treasury thereof. In addition, the employer shall be reimbursed for any remaining amount of salary not covered by such worker's compensation by application to the peace officer and detention officer temporary disability fund, as established in section 72-1105, Idaho Code, pursuant to rules adopted by the industrial commission; provided however, that any such reimbursement from the fund shall continue only during such period as the employee qualifies for worker's compensation wage loss benefits under title 72, Idaho Code.

#### **72-1105. FUND ESTABLISHED—FINES—PRIORITY—DISPOSITION.**

- 1) The peace officer and detention officer temporary disability fund is hereby created in the state treasury and shall be administered by the industrial commission for the purpose of providing a full rate of salary for any peace officer or detention officer who is injured while engaged in those activities as provided in section 72-1104, Idaho Code, and is thereby temporarily incapacitated from performing his or her duties. Moneys shall be paid into the fund as provided by law and shall consist of fines collected pursuant to subsection (2) of this section, appropriations, gifts, grants, donations and income from any other source. Moneys in the fund may be appropriated only for the purposes of this chapter, which shall include administrative expenses. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.
- 2) In addition to any other fine that may be imposed upon each person found guilty of criminal activity, the court shall impose a fine in the amount of three dollars (\$3.00) for each conviction or finding of guilt of each felony or misdemeanor count, unless the court orders that such fine be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court.
- 3) Except as otherwise provided in section 72-1025, Idaho Code, the fine imposed under this section shall have priority over all other judgments of the court, except an order to pay court costs.
- 4) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines imposed under this section shall be paid into the peace officer and detention officer temporary disability fund.

## CHAPTER 12

[Reserved]

## CHAPTER 13

### Employment Security Law

**72-1301. SHORT TITLE.** This act shall be known as the "Employment Security Law."

**72-1302. DECLARATION OF STATE PUBLIC POLICY.** The public policy of this state is as follows: Economic insecurity due to unemployment is a serious threat to the well-being of our people. Unemployment is a subject of national and state concern. This chapter addresses this problem by encouraging employers to offer stable employment and by systematically accumulating funds during periods of employment to pay benefits for periods of unemployment. The legislature declares that the general welfare of our citizens requires the enactment of this measure and sets aside unemployment reserves to be used for workers who are unemployed through no fault of their own.

**72-1303. DEFINITIONS.** Unless the context clearly requires otherwise, these terms shall have the following meanings when used in this chapter.

**72-1304. AGRICULTURAL LABOR.**

- 1) "Agricultural labor" means all services performed:
  - a) On a farm, in the employ of any person in connection with cultivating the soil, or raising or harvesting any agricultural, aquacultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, fish, poultry, and fur-bearing animals and wildlife;
  - b) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;
  - c) In connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and used exclusively for supplying and storing water, at least ninety percent (90%) of which was ultimately delivered for agricultural purposes during the preceding calendar year; and
  - d) In the employ of any farm operator or group of operators, organized or unorganized, in handling, planting, drying, packing, packaging, eviscerating, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural, aquacultural or horticultural commodities, if such operator or group, in both the current and preceding calendar years produced more than one-half (1/2) of the commodities with respect to which such service is performed.

This subsection is not applicable to services performed in commercial canning, freezing, or dehydrating, or in connection with any agricultural, aquacultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

- 2) "Farm" includes stock, dairy, fish, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, hatcheries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural, aquacultural or horticultural commodities, and orchards.
- 3) "Unmanufactured state" means retention of its original form and substance.
- 4) "Terminal market" means a place of business to which products are shipped in a sorted, graded, packaged condition, ready for immediate sale.

**72-1305. ANNUAL PAYROLL.** "Annual payroll" means total payroll for a period of twelve (12) consecutive calendar months ending on June 30 of any year.

**72-1306. BASE PERIOD.**

- 1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year.
- 2) "Alternate base period" means the first four (4) of the last five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. To use the alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

**72-1307. BENEFITS.** "Benefits" means the money paid to an individual with respect to his unemployment.

**72-1308. BENEFIT YEAR.** "Benefit year" means a period of fifty-two (52) consecutive weeks beginning with the first day of the week in which an individual files a new valid claim for benefits; except that the benefit year shall be fifty-three (53) weeks if the filing of a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year cannot be established until the expiration of the current benefit year.

**72-1309. COMMISSION.** "Commission" means the industrial commission.

**72-1310. BONUS PAYMENT.** "Bonus payment" means wages paid for employment by an employer which are either:

- 1) Additional remuneration for meritorious service and not customarily paid to his employees at regular payroll intervals; or
- 2) Additional remuneration based upon production, length of service, or profits, which at the time paid covers service rendered in two (2) or more calendar quarters. Bonus payments shall be reported by employers as prescribed by rule.

**72-1311. CALENDAR QUARTER.** "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31, in each year.

**72-1312. COMPENSABLE WEEK.** "Compensable week" means a week of unemployment, all of which occurred within the benefit year, for which an eligible claimant is entitled to benefits and during which:

- 1) The claimant had either no work or less than full-time work; and
- 2) No benefits have been paid to the claimant; and
- 3) The claimant complied with all of the personal eligibility conditions of section 72-1366, Idaho Code; and
- 4) The total wages payable to the claimant for less than full-time work performed in such week amounted to less than one and one-half (1 1/2) times his weekly benefit amount; provided, however, that any benefits which a claimant receives for any week shall be reduced by an amount equal to the amount received as pension, retirement pay, annuity, or any other similar payment which is based on the previous work of such individual which is reasonably attributable to such week, if the payment is made under a plan maintained or contributed to by the base period employer and the claimant has made no contributions to the plan; and
- 5) All of which occurred after a waiting week as defined in section 72-1329, Idaho Code.

**72-1313. COMPUTATION DATE.** "Computation date" means the June 30 immediately prior to the calendar year for which a covered employer's taxable wage rate is effective.

**72-1314. CONTRIBUTIONS.** "Contributions" means the payments required to be paid into the employment security fund by any covered employer pursuant to sections 72-1349 through 72-1353, Idaho Code.

**72-1315. COVERED EMPLOYER.** "Covered employer" means:

- 1) Any person who, in any calendar quarter in either the current or preceding calendar year paid for services in covered employment wages of one thousand five hundred dollars (\$1,500) or more, or for some portion of a day in each of twenty (20) different calendar weeks, whether or not consecutive, in either the current or preceding calendar year employed at least one (1) individual, irrespective of whether the same individual was in employment in each such day. For purposes of this subsection there shall not be taken into account any wages paid to, or in employment of, an employee performing domestic services referred to in subsection (8) of this section.
- 2) All individuals performing services within this state for an employer who maintains two (2) or more separate establishments within this state shall be deemed to be performing services for a single employer.
- 3) Each individual engaged to perform or assist in performing the work of any person in the service of an employer shall be deemed to be employed by such employer for all the purposes of this chapter, whether such individual was engaged or paid directly by such employer or by such person, provided the employer had actual or constructive knowledge of the work.
- 4) Any employer, whether or not an employer at the time of acquisition, who acquires the organization, trade, or business or substantially all the assets thereof, of another who at the time of such acquisition was a covered employer.
- 5) In the case of agricultural labor, any person who:

- a) During any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of twenty thousand dollars (\$20,000) or more for agricultural labor; or
  - b) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day.
  - c) Such labor is not agricultural labor when it is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, unless the individual is required to be covered by the federal unemployment tax act.
- 6) A licensed farm labor contractor, as provided in chapter 16, title 44, Idaho Code, who furnishes any individual to perform agricultural labor for another person.
  - 7) An unlicensed, nonexempt farm labor contractor, as provided in chapter 16, title 44, Idaho Code, who furnishes any individual to perform agricultural labor for another person, not treated as a covered employer under subsection (5) of this section. If an unlicensed, nonexempt farm labor contractor furnishes any individual to perform agricultural labor for another person who is treated as a covered employer under subsection (5) of this section, both such other person and the unlicensed, nonexempt farm labor contractor shall be jointly and severally liable for any moneys due under the provisions of this chapter.
  - 8) In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars (\$1,000) or more for such service.  
A person treated as a covered employer under this subsection (8) shall not be treated as a covered employer with respect to wages paid for any service other than domestic service referred to in this subsection (8) unless such person is treated as a covered employer under subsection (1) or (5) of this section, with respect to such other service.
  - 9) Any governmental entity as defined in section 72-1322C, Idaho Code.
  - 10) A nonprofit organization as defined in section 72-1322D, Idaho Code.
  - 11) An employer who has elected coverage pursuant to the provisions of subsection (3) of section 72-1352, Idaho Code.

**72-1315A. COST REIMBURSEMENT EMPLOYER.** "Cost reimbursement employer" means a covered employer who is eligible and elects to reimburse the fund for proportionate benefit costs in lieu of contributions as provided in sections 72-1349A and 72-1349B, Idaho Code.

**72-1316. COVERED EMPLOYMENT.**

- 1) "Covered employment" means an individual's entire service performed by him for wages or under any contract of hire, written or oral, express or implied, for a covered employer or covered employers.
- 2) Notwithstanding any other provision of state law, services shall be deemed to be in covered employment if a tax is required to be paid or was required to be paid the previous year on such services under the federal unemployment tax act or if the

director determines that as a condition for full tax credit against the tax imposed by the federal unemployment tax act such services are required to be covered under this chapter.

- 3) Services covered by an election pursuant to section 72-1352, Idaho Code, and services covered by an election approved by the director pursuant to section 72-1344, Idaho Code, shall be deemed to be covered employment during the effective period of such election.
- 4) Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment unless it is shown:
  - a) That the 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; and
  - b) That the worker is engaged in an independently established trade, occupation, profession, or business.
- 5) "Covered employment" shall include an individual's entire service, performed within or both within and without this state:
  - a) If the service is localized in this state; or
  - b) If the service is not localized in any state but some of the service is performed in this state, and:
    - i) The individual's base of operations or the place from which such service is directed or controlled is in this state; or
    - ii) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
  - c) Service shall be deemed to be localized within a state if:
    - i) The service is performed entirely within such state; or
    - ii) The service is performed both within and without such state, but the service performed without such state is incidental, temporary or transitory in nature or consists of isolated transactions, as compared to the individual's service within the state.
  - d) "Covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if:
    - i) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and
    - ii) The place from which the service is directed or controlled is in this state.
- 6) "Covered employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer, other than service which is deemed "covered employment" under the provisions of subsection (5) of this section or the parallel provisions of another state's law, if:
  - a) The employer's principal place of business in the United States is located in this state; or
  - b) The employer has no place of business in the United States; but
    - i) Is an individual who is a resident of this state; or
    - ii) Is a corporation which is organized under the laws of this state; or

- iii) Is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or
- c) None of the criteria of provision (a) or (b) of this subsection is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service, under the law of this state;
- d) An "American employer" for purposes of this subparagraph means a person who is:
  - i) An individual who is a resident of the United States; or
  - ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or
  - iii) A trust if all of the trustees are residents of the United States; or
  - iv) A corporation organized under the laws of the United States or of any state.
- e) For purposes of this subsection, "United States" means the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

**72-1316A. EXEMPT EMPLOYMENT.** "Exempt employment" means service performed:

- 1) By an individual in the employ of his spouse or child.
- 2) By a person under the age of twenty-one (21) years in the employ of his father or mother.
- 3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This subsection shall not apply to service performed in a program established at the request of an employer or group of employers.
- 4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.
- 5) In the employ of a governmental entity in the exercise of duties:
  - a) As an elected official;
  - b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;
  - c) As a member of the state national guard or air national guard;
  - d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
  - e) In a position which, pursuant to the laws of this state, is designated as
    - i) a major nontenured policymaking or advisory position, or
    - ii) a policymaking or advisory position which ordinarily does not require more than eight (8) hours per week.
- 6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.
- 7) In the employ of:



- a) A church or convention or association of churches; or An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or
  - b) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or
  - c) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
- 8) By a program participant in a facility that provides rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the labor market.
  - 9) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.
  - 10) Service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress other than the social security act.
  - 11) As a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school approved pursuant to state law.
  - 12) By an individual under the age of eighteen (18) years of age in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.
  - 13) By an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
  - 14) By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
  - 15) Service covered by an election approved by the agency charged with the administration of any other state or federal unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code.
  - 16) In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.
  - 17) In the employ of a hospital by a resident patient of such hospital.
  - 18) By a member of an AmeriCorps program.
  - 19) By an individual who is paid less than fifty dollars (\$50.00) per calendar quarter for performing work that is not in the course of the employer's trade or business, and who is not regularly employed by such employer to perform such service. For the purposes

of this subsection, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

- a) On each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or
- b) Such individual was so employed by such employer in the performance of such service during the preceding calendar quarter.

**72-1317. CUT-OFF DATE.** September 30 immediately following the computation date is designated as the cut-off date for experience rating purposes.

**72-1318. DIRECTOR—DEPARTMENT.** "Director" means the director of the department of labor, the individual appointed pursuant to section 59-904, Idaho Code. "Department" means the department of labor.

**72-1319. ELIGIBLE EMPLOYER.**

- 1) "Eligible employer" means a covered employer who has completed a qualifying period as defined in subsection (2) of this section, and who has filed all payroll reports required, has paid, on or before the cut-off date, all contributions and penalties due and has established a record of accumulated contributions in excess of benefits charged to his account. For the purposes of this section, delinquencies of a minor nature may be disregarded if the director is satisfied that such covered employer has acted in good faith and that forfeiture of a reduced taxable wage rate because of such minor delinquency would be inequitable.
- 2) "Qualifying period" shall be the period of three (3) consecutive years ending on the computation date in which, during all of said years, the employer shall be chargeable for benefits under this state law, except, that a new employer shall have a qualifying period of one (1) year ending on the computation date in which, during all of said year, the employer shall be chargeable for benefits under this state law.

**72-1319A. DEFICIT EMPLOYER.** "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cut-off date.

**72-1319B. TAXABLE WAGE RATE.** "Taxable wage rate" means the numerical values calculated in accordance with section 72-1350, Idaho Code, for the purpose of establishing contribution rates, training tax rates and reserve tax rates for covered employers.

**72-1320. CREW LEADER.** "Crew leader" means an individual who:

- 1) Furnishes individuals to perform agricultural labor for any other person;
- 2) Pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them; and
- 3) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

**72-1322. EXPERIENCE RATING.** "Experience rating" means a method of determining variable taxable wage rates allowed to covered employers.

**72-1322A. HOSPITAL.** "Hospital" means any institution which has been licensed by, certified, or approved by the state board of health and welfare as a hospital.

**72-1322B. EDUCATIONAL INSTITUTION.** "Educational institution" means:

- 1) An institution of higher education which:
  - a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; and
  - b) Is authorized to provide a program of education beyond high school; and
  - c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or a program of training to prepare students for gainful employment in a recognized occupation.
- 2) A primary or secondary school which provides education from preschool and kindergarten through grade twelve (12).

**72-1322C. GOVERNMENTAL ENTITY.**

"Governmental entity" means this state or any of its instrumentalities, political subdivisions, or districts of whatever type or nature including, but not limited to, school districts, cities, counties, taxing districts, or other entities, as well as any instrumentality of one (1) or more of the foregoing or that is jointly owned by this state or a political subdivision thereof and one (1) or more other states or political subdivisions of this or other states, if service for any such governmental entity is excluded from "employment" as defined in the federal unemployment tax act, 26 U.S.C. 3306(c)(7).

**72-1322D. NONPROFIT ORGANIZATION.** "Nonprofit organization" means a religious, charitable, educational, or other organization which is described in section 501(c) (3) of the federal internal revenue code and which is exempt from tax under section 501(a) of such code.

**72-1323. INTERESTED PARTIES.** "Interested party" with respect to a claim for benefits means the claimant, the claimant's last regular employer, the employer whose account is chargeable for experience rating purposes, the cost reimbursement employer who may be billed for any portion of benefits claimed, and the director or an authorized representative of any of them; "interested party" with respect to proceedings involving employer liability means the employer and the director or an authorized representative.

**72-1324. PAYROLL.** "Payroll" means the amount of wages, as defined in section 72-1328, Idaho Code, paid by a covered employer for covered employment.

**72-1325. PERSON.** "Person" means any individual and any other entity recognized by Idaho law, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person.

**72-1327. STATE.** "State" includes, in addition to the states of the United States of America, the District of Columbia, the Dominion of Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

**72-1327A. VALID CLAIM.** "Valid claim" means any application for benefits which is found to be eligible as provided in section 72-1367, Idaho Code, and which has been filed in accordance with this chapter and such rules as the director may prescribe.

**72-1328. WAGES.**

- 1) "Wages" shall include:
  - a) All remuneration for personal services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash;
  - b) All tips received while performing services in covered employment totaling twenty dollars (\$20.00) or more in a month, which are reported in writing to the employer as required under federal law;
  - c) Any employer contribution under a qualified cash or deferred agreement as defined in 26 U.S.C. 401(k) to the extent such contribution is not included in gross income by reason of 26 U.S.C. 402(a)(8).
- 2) The term "wages" shall not include:
  - a) Payments (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), made to, or on behalf of, an individual or any of his dependents under a plan established by an employer which makes provision generally for individuals performing service for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (i) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a worker's compensation law), or (ii) medical or hospitalization expenses in connection with sickness or accident disability, or (iii) death;
  - b) Payments on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual performing services for him after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer;
  - c) Payments made by an employer to, or on behalf of, an individual performing services for him or his beneficiary (i) from or to a trust described in section 401(a) of the Federal Internal Revenue Code which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (ii) under or to an annuity plan which, at the time of such payments, is a plan described in section 403(a) of the Federal Internal Revenue Code, under a cafeteria plan within the meaning of section 125 of the Federal Internal Revenue Code;

- d) Payments made by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in his employ under section 3101 of the Federal Internal Revenue Code; or
- 3) Noncash payments for farm work. Any third party which makes a sickness or accident disability payment, which is not excluded from wages under subsection (2)(a)(i) of this section, shall be treated as the employer with respect to such payment of wages for the purposes of this chapter.

**72-1329. WAITING WEEK.** "Waiting week" means the first week of a benefit year that meets the criteria for a compensable week in section 72-1312(1) through (4), Idaho Code, but for which no benefits will be paid to the claimant. Every claimant shall have a waiting week each benefit year.

**72-1330. WEEK.** "Week" means a period of seven (7) consecutive days ending at midnight on Saturday.

**72-1331. ADMINISTRATION.** The employment security law shall be administered by the director, who shall be appointed by the governor. Any appointments made under this section shall be confirmed by the state senate.

**72-1332. AUTHORITY AND DUTIES OF THE COMMISSION.** The commission is authorized to hear and decide matters appealed to it in accordance with the provisions of this chapter and the federal unemployment tax act. In addition to salaries paid from the industrial administration fund each member of the commission shall receive a salary to be paid from the employment security administration fund in an amount equal to one-half (1/2) of the salary paid from the industrial administration fund. Prior to the beginning of each fiscal year, the department and the commission shall negotiate an amount to be paid the commission to reimburse it for the cost of personal and nonpersonal services involved in hearing appeals as provided in section 72-1368(6), Idaho Code.

**72-1333. DEPARTMENT OF LABOR—AUTHORITY AND DUTIES OF THE DIRECTOR.**

- 1) The director shall administer the employment security law, chapter 13, title 72, Idaho Code, the minimum wage law, chapter 15, title 44, Idaho Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims for wages, the provisions of section 44-1812, Idaho Code, relating to minimum medical and health standards for paid firefighters, the disability determinations service established pursuant to 42 U.S.C. 421, and shall perform such other duties relating to labor and workforce development as may be imposed upon him by law. The director shall be the successor in law to the office enumerated in section 1, article XIII, of the constitution of the state of Idaho. The director shall have the authority to employ individuals, make expenditures, require reports, make investigations, perform travel and take other actions deemed necessary. The director shall organize the department of labor which is hereby created, and which shall, for the purposes of section 20, article IV, of the constitution of the

state of Idaho, be an executive department of the state government. The director shall have an official seal which shall be judicially noticed.

- 2) The director shall have the authority pursuant to chapter 52, title 67, Idaho Code, to adopt, amend, or rescind rules as he deems necessary for the proper performance of all duties imposed upon him by law.
- 3) Subject to the provisions of chapter 53, title 67, Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators, employees of the Idaho career information system, and two (2) exempt positions to serve at the pleasure of the director.
- 4) The director shall make recommendations for amendments to the employment security law and other laws he is charged to implement as he deems proper.
- 5) The director shall have all the powers and duties as may have been or could have been exercised by his predecessors in law, except those powers and duties granted and reserved to the director of the department of commerce in titles 39, 49 and 67, Idaho Code, and he shall be the successor in law to all contractual obligations entered into by his predecessors in law, except for those contracts of the department of commerce, or contracts pertaining to any power or duty granted and reserved to the director of the department of commerce, in titles 39, 49 and 67, Idaho Code.

**72-1334. PUBLICATIONS.** The director shall print for distribution to the public labor and workforce development information and any other material deemed relevant and shall furnish the same upon request.

**72-1335. PERSONNEL.**

- 1) The director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, employees, and other persons as may be necessary. The director may delegate to any such person such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may, in the time, form and manner prescribed by chapter 8, title 59, Idaho Code, bond persons handling moneys or signing checks hereunder, such bond to be paid from the employment security administration fund.
- 2)
  - a) Subject only to the provisions of this chapter and such rules as the director may prescribe, the director is authorized and directed to establish and maintain a group pension plan providing retirement, disability, and death benefits for employees of the department through the means of group contracts negotiated with an insurer, licensed and qualified to do business under the laws of the state of Idaho.
  - b) Employees covered by the plan shall include all employees (other than temporary and hourly-rated employees) who are in employee status with the department and whose employment commenced before October 1, 1980.
  - c) Credited service shall mean all service by employees in the employ of the department (exclusive of leaves without pay other than military leave) as follows:
    - i) Past service rendered prior to the effective date of the plan by employees; for this purpose prior service shall include service in any of the predecessor, component organizations thereof, as determined appropriate by the director on

the effective date, and shall also include leave-of-absence for military service occurring within a period of otherwise continuous service in any such predecessor organizations.

- ii) Future service rendered on and after said effective date.
  - iii) An employee of the department placed on loan or special duty with other governmental units may be deemed to be in credited service when the costs of continuing credited service are made reimbursable in accordance with an agreement approved by the director.
- d) For each year of credited service each employee covered under the plan shall receive a monthly pension commencing upon retirement at or after age sixty-five (65) and continuing until death, of not less than one and one-half percent (1 1/2%) of monthly earnings, except that appropriate schedules and conditions for service retirement, early retirement, disability retirement, and contingency annuity options shall be included in the insurance plan. Notwithstanding any other provisions of this section to the contrary, the director is authorized and directed to negotiate with the insurer to invest any interest, dividends, earnings, or other moneys accruing to the funds financing the employees' retirement program with the insurer to purchase additional retirement benefits. The purchase of said additional benefits shall be contingent upon actuarial appraisals of the plan and shall be based on sound actuarial principles. Total retirement benefits to be provided under the program shall meet the requirements of the Internal Revenue Service for integration purposes.
- e) The cost of past service, future service and disability pensions shall be calculated according to sound actuarial principles. The costs of the plan, including funding of past service pensions which shall be funded over a period of time consistent with good insurance practices, shall be paid from administrative funds available to the department. Each employee covered under the plan shall by payroll deduction contribute toward the cost of future service pensions at not less than the rate paid by the department, but not to exceed seven percent (7%) of monthly earnings.
- f) Upon termination of service, an employee may elect to receive the refund of his contributions plus interest or may elect to have the tax-deferred contributions and interest directly rolled over to an individual retirement account or annuity or to another qualified retirement plan that accepts the roll over, pursuant to 26 U.S.C. 402(c). A vested employee, as provided in the insurance contract, who leaves his contributions in the plan will remain entitled to the pension purchased by the contributions made on his behalf, and all other privileges under the plan.
- g) If an employee dies more than ten (10) years before his normal retirement date, all of his contributions plus interest will be returned to a previously-named beneficiary, subject to survivor benefits as provided in the plan. The following provisions of this subsection shall be subject to a contingency annuity option. If an employee dies on or after the date ten (10) years prior to his normal retirement date, it will be assumed that he retired on the first day of the month following his date of death, and his beneficiary shall receive, beginning on the assumed retirement date, one hundred twenty (120) monthly pension payments. The amount of monthly pension payable will be based on the credit accrued to that time and the employee's assumed earlier retirement age. If death occurs after

retirement but before one hundred twenty (120) monthly pension payments have been made, the monthly pension will be continued to his beneficiary until a total of one hundred twenty (120) monthly payments have been made.

**72-1336. ADVISORY BODY AND SPECIAL COMMITTEES.**

- 1) The governor shall appoint a workforce development council in accordance with section 111 of the federal workforce investment act of 1998, as amended (29 U.S.C. 2821) and federal regulations promulgated thereunder. Members of the body shall serve at the pleasure of the governor and shall be reimbursed for ordinary and actual expenses. The governor shall prescribe the duties and functions of the workforce development council which shall include, but not be limited to, the following:
  - a) To serve as an advisory body to the department on matters related to workforce development policy and programs;
  - b) To approve and provide oversight of department expenditures from the employment security special administration fund established under section 72-1347A, Idaho Code;
  - c) To develop and provide oversight of procedures, criteria and performance measures for the workforce development training fund established under section 72-1347B, Idaho Code; and To serve as the state workforce investment board in accordance with section 111 of the federal workforce investment act of 1998, as amended, and federal regulations promulgated thereunder.
- 2) The director may appoint special committees in connection with the administration of this chapter.

**72-1337. RECORDS AND REPORTS.**

- 1) Each employer that is a "covered employer," as defined in section 72-1315, Idaho Code, shall complete and submit to the director an Idaho business registration form within six (6) months of becoming a covered employer.
- 2) Each employer shall keep accurate records, for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection and be subject to being copied by the director at any reasonable time. The director, a member of the commission or an appeals examiner may require from any employer any sworn or unsworn reports which are deemed necessary in the exercise of their duties.

**72-1338. OATHS AND WITNESSES.** The director, a member of the commission, and an appeals examiner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of evidence deemed necessary in connection with a disputed claim or in the exercise of their duties.

**72-1339. ENFORCEMENT OF SUBPOENAS.** Any subpoena issued pursuant to section 72-1338, Idaho Code, may be enforced by the district courts of this state within the jurisdiction in which the inquiry is being conducted or within the jurisdiction in which the person to whom the subpoena was issued resides or conducts his business. The court shall have jurisdiction to hear the parties, determine the reasonableness of the subpoena,



and set aside, modify, or enforce the subpoena by its order in accordance with the evidence. Any failure to obey such court order may be punished by the court as a contempt thereof.

**72-1340. PROTECTION AGAINST SELF-INCRIMINATION.** No person shall be excused from attending and testifying or from producing documentary evidence before the director, the commission, or an appeals examiner, or in obedience to the subpoena of any of them, on the ground that the testimony or documentary evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce documentary evidence except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

**72-1341. FEDERAL-STATE COOPERATION.**

- 1) The director shall cooperate with the United States department of labor, and is directed to take such action as may be necessary to secure to Idaho all advantages under federal laws providing for federal-state cooperation in the administration of unemployment insurance laws, the reduction or prevention of unemployment, and the full development of the workforce resources of this state. The director shall cooperate with the United States department of labor with regards to the receipt or expenditure by this state of moneys granted under any federal acts and shall comply with the requirements of the United States department of labor in preparing reports and ensuring the correctness of the reports.
- 2) The director is authorized to make investigations, secure and transmit information, make available services and facilities and exercise other powers provided herein to facilitate the administration of any state or federal unemployment insurance or public employment service law. The director may utilize information, services and facilities made available to the state by any agency charged with the administration of an unemployment insurance or public employment service law.

72-1342. DISCLOSURE OF INFORMATION. Employment security information, as defined in section 9-340C (7), Idaho Code, shall be exempt from disclosure as provided in chapter 3, title 9, Idaho Code, except that such information may be disclosed as is necessary for the proper administration of programs under this chapter or may be made available to public officials for use in the performance of official duties subject to such restrictions and fees as the director may by rule prescribe. The director may by rule prescribe the form of written, informed consent by a person that is adequate for disclosure of employment security information pertaining to that person to a third party, as provided in section 9-340C(7), Idaho Code, and the security requirements and cost provisions that apply to such disclosures.

**72-1343. PRESERVATION AND DESTRUCTION OF RECORDS.**

- 1) The director may make such summaries or reproductions of records in his custody in whatever form for the effective and economical preservation of the information

contained therein, and such summaries or reproductions, duly authenticated, shall be admissible in any proceeding under this chapter if the original records would have been admissible.

- 2) The director may order the destruction or disposition of records in his custody if the preservation of such records is not necessary for the proper performance of his duties.

#### **72-1344. RECIPROCAL ARRANGEMENTS AND COOPERATION.**

- 1) The director is authorized to enter into reciprocal arrangements with appropriate agencies of other states or of the federal government, or both, whereby:
  - a) An employer of an individual who customarily provides services for the employer in more than one (1) state may elect to have the services deemed performed entirely in one (1) state if the state is one in which:
    - i) (i) any part of the individual's services are performed, or (ii) the individual has his residence, or (iii) the employer maintains a place of business, provided the individual agrees with the election and the agency charged with the administration of such state's unemployment insurance law approves it;
  - b) Potential rights to benefits accumulated under the unemployment insurance laws of the federal government may constitute the basis for the payment of benefits through a single appropriate agency under terms which the director finds will be fair to all affected interests and will not result in a substantial loss to the employment security fund;
  - c) The director shall participate in any wage combining plan that the secretary of labor may approve as provided in 26 U.S.C. 3304(a)(9)(B) of the federal unemployment tax act. Other arrangements outside the scope of the federal plan may be entered into if fair and reasonable provisions for reimbursement to the employment security fund for any benefits paid are included. Under such a plan, wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment insurance law of another state or of the federal government, may be deemed to be wages for covered employment for the purpose of determining his rights to benefits under this chapter, and wages for covered employment, on the basis of which an individual may become entitled to benefits under this chapter, may be deemed to be wages or services on the basis of which unemployment insurance under the law of another state or of the federal government is payable; and
  - d) Contributions due under this act with respect to wages for covered employment shall for the purposes of sections 72-1354 through 72-1364, Idaho Code, be deemed to have been paid to the employment security fund as of the date payment was made as contributions therefore under another state or federal unemployment insurance law. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund of such contributions as the director finds will be fair to all affected interests.
- 2) Reimbursements paid from the employment security fund pursuant to paragraph (c) of subsection (1) of this section shall be deemed to be benefits for the purposes of this chapter. The director is authorized to make and receive reimbursements to and from other state or federal agencies in accordance with arrangements entered into pursuant to subsection (1) of this section.

- 3) The director is authorized to enter into arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment insurance law of any foreign government may be utilized for taking claims and paying benefits.

**72-1345. STATE EMPLOYMENT SERVICE.** A state employment service shall be operated as part of the department. The director shall establish and maintain free public employment offices as may be necessary for the proper administration of this chapter, and for the purpose of performing the functions of the Wagner-Peyser Act, 29 U.S.C. 49. The provisions of said act are accepted by this state, and the department is designated the agency of this state for the purposes of said act. The department shall provide priority service for veterans in cooperation with the United States veterans employment service.

**72-1345A. IDAHO CAREER INFORMATION SYSTEM.** The Idaho career information system is hereby established within the department to provide current and accurate occupational, educational and related career information to help Idaho citizens understand the link between educational preparation and work, explore education and career alternatives, and successfully seek work. The Idaho career information system shall be responsible for carrying out the duties required by section 118 of the Carl D. Perkins career and technical education act of 2006 (20 U.S.C. 2328(c)), as amended. All moneys received by the Idaho career information system for its products and services shall be deposited in the career information system account, which is hereby established in the state treasury, subject to appropriation. Employees of the Idaho career information system shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The workforce development council established pursuant to section 72-1336, Idaho Code, shall serve as an advisory body to the department on matters related to the Idaho career information system.

**72-1346. EMPLOYMENT SECURITY FUND.**

- 1) Establishment and Control. There is established in the state treasury, separate and apart from all other funds of this state, an "Employment Security Fund," which shall be perpetually appropriated to the director to be administered pursuant to the provisions of this chapter and the social security act. This fund shall consist of all contributions collected pursuant to this chapter, payments in lieu of contributions, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, moneys temporarily deposited in the clearing account, and all other moneys received for the fund from any other source.
- 2) Accounts and Deposits. The state controller shall maintain within the fund three (3) separate accounts: (i) a clearing account, (ii) an unemployment trust fund account, and (iii) a benefit account. Upon receipt by the director, all moneys payable to the fund shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. After clearance, all moneys in the clearing account shall, except as otherwise provided, be deposited promptly with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act (42

U.S.C. 1104), any provisions of law in this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the federal unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank in the same manner as required by the general public depository law of this state and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund.

- 3) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 72-1357, Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the social security act (42 U.S.C. 1103), shall be used exclusively as provided in subsection (4) of this section. The director through the treasurer shall requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of benefits and refunds for a reasonable period. Upon receipt, such moneys shall be deposited in the benefit account. Expenditures of moneys in the benefit and clearing accounts shall not require the approval of the board of examiners or be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director. Upon agreement between the director and state controller, amounts in the benefit account may be transferred to a revolving account established and maintained in a depository bank from which the director may issue checks for the payment of benefits and refunds. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in subsection (2) of this section. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account after the expiration of the period for which such sums were requisitioned, may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund.
- 4) Reed Act Moneys. Reed act moneys credited to this state's account in the federal unemployment trust fund by the secretary of the treasury of the United States

pursuant to section 903 of the social security act (42 U.S.C. 1103) may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Moneys may only be requisitioned and used for the payment of expenses incurred for the administration of this chapter if the expenses are incurred and the money is requisitioned after the enactment of a specific appropriation by the legislature which specifies the purposes for which such money is appropriated and the amounts appropriated therefore. Such appropriation is subject to the following conditions:

- a) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and
  - b) The amount which may be obligated at any time may not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the social security act (42 U.S.C. 1103) exceeds the aggregate of the amounts used by this state and charged against the amounts transferred to the account of this state. For the purposes of this subsection, amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into.
- 5) Reed act moneys requisitioned for the payment of benefits shall be deposited in the benefit account established in this section. Reed act moneys requisitioned for the payment of administrative expenses pursuant to a specific appropriation shall be deposited in the employment security administration fund, section 72-1347, Idaho Code, except that moneys appropriated for the purchase of lands and buildings shall be deposited in the state employment security administrative and reimbursement fund in accordance with section 72-1348, Idaho Code. Money so deposited shall, until expended, remain part of the employment security fund and, if not expended, shall be promptly returned to this state's account in the federal unemployment trust fund.

**72-1346A. ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT TO EMPLOYMENT SECURITY FUND—FEDERAL ADVANCE INTEREST REPAYMENT FUND.**

- 1) In the event the director determines that it is necessary to obtain advances from the federal unemployment account in the unemployment trust fund pursuant to title XII of the social security act (42 U.S.C. 1321), and that a request for such advances is authorized under section 1201 of the social security act, or under any other act of congress extending such authority, the director shall request the governor to make application to the secretary of labor of the United States for such advances.
- 2) The governor is authorized to make application to the secretary of labor of the United States to obtain advances pursuant to title XII of the social security act (42 U.S.C. 1321 et seq.). Funds so advanced shall be for the payment of unemployment insurance benefits.
- 3) Any amount transferred to the employment security fund by the secretary of the treasury of the United States in accordance with this section shall be repaid from the employment security fund as provided in section 1202 of the social security act (42 U.S.C. 1322).

- 4) There is established in the state treasury the "Federal Advance Interest Repayment Fund." This fund shall consist of all moneys collected pursuant to subsection (5) of this section and interest earned upon any moneys in the fund. All moneys in the fund are perpetually appropriated to the director for the payment of interest on any advance made to this state pursuant to title XII of the social security act, except that if, at the end of any calendar year, all advances and interest have been repaid, any remaining balance in the fund shall be transferred to the employment security fund. Interest charges due and payable pursuant to section 1202 of the social security act, may be paid by the director from the federal advance interest repayment fund. Such expenditures shall not be subject to any law requiring specific appropriations or other formal release by state officers of money in their custody, nor shall such expenditures require the approval of the board of examiners.
- 5) A federal advance interest repayment tax may be levied in accordance with the following provisions when required under paragraph (b) of this subsection:
  - a) On the first day of the third month of a calendar quarter, the director shall:
    - i) Estimate the interest payable on federal advances obtained under subsections (1) and (2) of this section;
    - ii) Estimate the amount of federal advance interest repayment tax receipts expected to be collected during the quarter for any preceding calendar quarter in which such tax was assessed;
    - iii) Add the amount in the federal advance interest repayment fund on the last day of the immediately preceding calendar quarter to the estimate in paragraph (ii) of this subsection; and
    - iv) Subtract the sum obtained in paragraph (iii) from the estimate in paragraph (i) of this subsection.
  - b) If the remainder obtained under paragraph (iv) of subsection (5)(a) of this section is more than zero, each covered employer subject to this section may, at the director's sole discretion, be assessed a federal advance interest repayment tax. Such tax shall be a percentage of the contributions payable under sections 72-1349 and 72-1350, Idaho Code, for the calendar quarter, but in no case shall be less than one dollar (\$1.00). The percentage shall be determined by dividing the remainder in paragraph (iv) of subsection (5) (a) of this section by the estimated amount of contributions due and payable on wages paid during the quarter. The percentage shall be rounded up to the next one-tenth of a percent (0.1%).
  - c) The tax assessed shall be collected and paid in accordance with such rules as the director may prescribe. All such taxes collected shall be deposited in the federal advance interest repayment fund. Any such tax imposed in a calendar quarter shall be paid on or before the last day of the second month following the close of such calendar quarter. An extension of time for payment may be granted for good cause in accordance with section 72-1349(4), Idaho Code.
  - d) If any covered employer fails to pay such tax on or before the date on which they are due, such tax shall bear penalty at a rate of five dollars (\$5.00) for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amount of the tax due and payable. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this subsection shall be paid into the federal

- advance interest payment fund. Furthermore, if any employer becomes delinquent in making payment of the tax as required by this subsection, such employer shall be subject to the collection provisions in sections 72-1355 and 72-1360, Idaho Code.
- e) A covered employer may make application to the director for a refund or credit of any amount erroneously paid as tax under this subsection. Such applications and the director's determinations regarding them shall be made in accordance with the provisions of section 72-1357, Idaho Code.
  - f) This section does not apply to covered employers eligible and electing the cost reimbursement payment method under section 72-1349A, Idaho Code.

**72-1347. EMPLOYMENT SECURITY ADMINISTRATION FUND.**

- 1) There is established in the state treasury the "Employment Security Administration Fund." All moneys deposited in said fund are perpetually appropriated to the director. Expenditures from the fund shall be in accordance with this chapter on the approval of the director and shall not require approval by the board of examiners, and shall not lapse at any time or be transferred to any other fund, except that the director may establish a revolving fund for the purpose of paying current cash items in connection with administrative expenses. All moneys in this fund which are received from the federal government shall be expended solely for the purposes and in the amounts found necessary by the secretary, United States department of labor, for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state to this fund, all moneys received from the United States for this fund, all moneys received from any other source for such purpose, and any moneys received from the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies. Such moneys shall be secured by the depository in which they are held as required by the general depository law of the state, chapter 1, title 57, Idaho Code, and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the fund.
- 2) Reimbursement of fund. If any moneys received from the United States department of labor under title III of the social security act, are found by the United States department of labor to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the United States department of labor for the proper administration of this chapter, such moneys shall be replaced by moneys in the state employment security administrative and reimbursement fund as provided in section 72-1348, Idaho Code, but if the moneys therein are insufficient, the balance shall be replaced by moneys in the department of labor special administration fund, section 72-1347A(3), Idaho Code.

**72-1347A. EMPLOYMENT SECURITY RESERVE FUND—SPECIAL ADMINISTRATION FUND.**

- 1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the employment security reserve fund, hereinafter "reserve fund." Except as provided herein, all proceeds from the reserve tax defined in subsection (2) of this section shall be paid into the reserve fund. The moneys in the reserve fund may be used by the director for loans to the employment security fund, section 72-1346, Idaho Code, as security for loans from the federal unemployment insurance trust fund, and for the repayment of any interest bearing advances, including interest, made under title XII of the social security act, 42 USC 1321 through 1324, and shall be available to the director for expenditure in accordance with the provisions of this section. The state treasurer shall be the custodian of the reserve fund and shall invest said moneys in accordance with law. The state treasurer shall disburse the moneys from the reserve fund in accordance with the directions of the director.
- 2) A reserve tax is imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, except deficit employers who have been assigned a taxable wage rate from deficit rate class six pursuant to section 72-1350(8)(a), Idaho Code. The reserve tax shall be due and payable at the same time and in the same manner as contributions. If the reserve fund is less than one percent (1%) of state taxable wages in the penultimate year as of September 30 of the preceding calendar year, the reserve tax rate for all eligible, standard-rated and deficit employers shall be equal to the taxable wage rate then in effect less the assigned contribution rate and training tax rate. The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the reserve tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section and the collection of the reserve tax, the director is granted all rights, authority, and prerogatives granted the director under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions and reserve taxes shall first be applied to pay any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section 72-1346, Idaho Code, and delinquent reserve taxes to the reserve fund pursuant to this section. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Reserve taxes paid pursuant to this subsection may not be deducted in whole or in part by any employer from the wages of individuals in its employ. All reserve taxes collected pursuant to this subsection shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the reserve fund established in subsection (1) of this section. No reserve tax shall be imposed for any calendar year if, as of September 30 of the preceding calendar year, the balance of the reserve fund equals or exceeds one percent (1%) of the state taxable wages for the



penultimate calendar year, or exceeds forty-nine percent (49%) of the actual balance of the employment security fund, section 72-1346, Idaho Code. Provided however, and notwithstanding any other provisions of this subsection, for calendar year 2006, the imposition of a reserve tax shall not be precluded even if the balance of the reserve fund exceeds forty-nine percent (49%) of the actual balance of the employment security fund.

- 3) The interest earned from investment of the reserve fund shall be deposited in a fund established in the state treasurer's office, to be known as the department of labor special administration fund, hereinafter "special administration fund." The moneys in the special administration fund shall be held separate and apart from all other public funds of this state. The state treasurer shall be the custodian of this fund and may invest said moneys in accordance with law. Any interest earned on said moneys shall be deposited in the special administration fund. In the absence of a specific appropriation, the moneys in the special administration fund are perpetually appropriated to the director and may be expended with the approval of the advisory council appointed pursuant to section 72-1336, Idaho Code, for costs related to programs administered by the department. The director shall report annually to the joint finance-appropriations committee and the advisory council the expenditures and disbursements made from the fund during the preceding fiscal year, and the expenditures and disbursements and commitments made during the current fiscal year to date.
- 4) Administrative costs related to the reserve fund and the special administration fund shall be paid from federal administrative grants received under title III of the social security act, to the extent permitted by federal law, and then from the special administration fund.

#### **72-1347B. WORKFORCE DEVELOPMENT TRAINING FUND.**

- 1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the workforce development training fund, hereinafter "training fund." Except as provided herein, all proceeds from the training tax defined in subsection (4) of this section shall be paid into the training fund. The state treasurer shall be the custodian of the training fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director. In any month when the unencumbered balance in the training fund exceeds six million dollars (\$6,000,000), the excess amount over six million dollars (\$6,000,000) shall be transferred to the employment security reserve fund, section 72-1347A, Idaho Code. For the purposes of this subsection (1), the unencumbered balance in the training fund is the balance in such fund reduced by the sum of:
  - a) The amounts that have been obligated pursuant to fully-executed workforce development training fund contracts;
  - b) The amounts that have been obligated pursuant to letters of intent for proposed job training projects; and
  - c) Any administrative costs related to the training fund that are due and payable.

- 2) All moneys in the training fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section. The purpose of the training fund is to provide or expand training and retraining opportunities in an expeditious manner that would not otherwise exist for Idaho's workforce. The training fund is intended to supplement, but not to supplant or compete with, money available through existing training programs. The moneys in the training fund shall be used for the following purposes:
  - a) To provide training for skills necessary for specific economic opportunities and industrial expansion initiatives;
  - b) To provide training to upgrade the skills of currently employed workers at risk of being permanently laid off;
  - c) For refunds of training taxes erroneously collected and deposited in the workforce training fund;
  - d) For all administrative expenses incurred by the department associated with the collection of the training tax and any other administrative expenses associated with the training fund.
- 3) Expenditures from the training fund for purposes authorized in paragraphs (a) and (b) of subsection (2) of this section shall be approved by the director, and the director of the department of commerce, in consultation with the office of the governor, based on procedures, criteria and performance measures established by the council appointed pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of professional-technical education. Expenditures from the training fund for purposes authorized in paragraphs (c) and (d) of subsection (2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations committee the commitments and expenditures made from the training fund in the preceding fiscal year and the results of the activities funded by the training fund.
- 4) A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2012, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.
- 5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions, reserve taxes and the training tax shall first be applied to any penalty and interest imposed pursuant to the

provisions of this chapter and shall then be applied pro rata to delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (1) of this section.

- 6) Administrative costs related to the training fund shall be paid from the training fund in accordance with subsection (3) of this section.

#### **72-1348. STATE EMPLOYMENT SECURITY ADMINISTRATIVE AND REIMBURSEMENT FUND.**

- 1) There is created in the state treasury the "State Employment Security Administrative and Reimbursement Fund." Notwithstanding the provisions of sections 72-1346 and 72-1347, Idaho Code, the fund shall consist of:
  - a) All penalties, and all interest on judgments or accounts secured by liens, collected pursuant to the provisions of sections 72-1347A, 72-1347B and 72-1354 through 72-1364, Idaho Code, but only after such interest and penalties have been deposited in the clearing account and are thereafter transferred to this fund in such amounts as, in the discretion of the director, will leave a sufficient balance of interest and penalties in the clearing account to pay refunds; and
  - b) Reed act moneys appropriated for the purchase of land and buildings pursuant to section 72-1346(5), Idaho Code.
- 2) Moneys referred to in subsection (1)(a) of this section are perpetually appropriated to the director and may be used upon written authorization of the board of examiners for any lawful purpose, including, but not limited to:
  - a) As a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to reimbursement upon receipt of the federal funds;
  - b) For the payment of costs of administration including costs not validly chargeable against federal grants;
  - c) For the payment of refunds of penalties pursuant to section 72-1357, Idaho Code; and
  - d) For the purchase of land and buildings for the purpose of providing office space for the department.
- 3) Moneys referred to in subsection (1) (b) of this section may be used by the department to acquire for and in the name of the state by term purchase agreement lands and buildings for office space for the department at such places as the director finds necessary. An agreement made for the purchase of remises pursuant to this subsection shall be subject to the approval of the attorney general as to form and title.

Premises purchased pursuant to this section shall be used for the department, or if it is desirable to move the department, similar space will be furnished by the state to the department without further payment therefore by the United States.

**72-1349. PAYMENT OF CONTRIBUTIONS.**

- 1) Contributions shall be paid on taxable wages for each calendar year equal to the amount determined in accordance with section 72-1350, Idaho Code. Contributions on wages paid to an individual under another state unemployment insurance law, or paid by an employer's predecessor during the calendar year, shall be counted in complying with this provision.
- 2) Contributions shall accrue and become payable by each covered employer for each calendar quarter with respect to wages for covered employment. Such contributions shall become due and be paid by each covered employer to the director for the employment security fund and shall not be deducted from the wages of individuals employed by such employer. All moneys required to be paid by a covered employer pursuant to this chapter shall immediately, upon becoming due and payable, become or be deemed money belonging to the state, and every covered employer shall hold or be deemed to hold said money separately, aside, or in trust from any other funds, moneys or accounts, for the state of Idaho for payment in the manner and at the times provided by law.
- 3) The contributions payable by each covered employer, with respect to covered employment, accruing in each calendar quarter, shall be paid on or before the last day of the month following the close of said calendar quarter.
- 4) The director may, for good cause shown by a covered employer, extend the time for payment of his contributions or any part thereof, but no such extension of time shall postpone the due date more than sixty (60) days. Contributions with respect to which an extension of time for payment has been granted shall be paid on or before the last day of the period of the extension.
- 5) Whenever it appears to be essential to the proper administration of this chapter that collection of the contributions of a covered employer must be made more often than quarterly, the director shall have authority to demand payment of the contributions forthwith.
- 6) In accordance with rules the director may prescribe, any person or persons entering into a formal contract with the state, any county, city, town, school or irrigation district, or any quasi public corporation of the state, for the construction, alteration, or repair of any public building or public work, the contract price of which exceeds the sum of one thousand dollars (\$1,000) may be required before commencing such work, to execute a surety bond in an amount sufficient to cover contributions when due. If the director, who shall approve said bond, determines that said bond has become insufficient, he may require that a new bond be provided in the amount he directs. Failure on the part of the employer covered by the bond to pay the full amount of his contributions when due shall render the surety liable on said bond as though the surety was the employer and subject to the other provisions of this chapter.
- 7) In the payment of any contributions a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar (\$1.00).

**72-1349A. FINANCING OF BENEFIT PAYMENTS BY NONPROFIT ORGANIZATIONS AND GOVERNMENTAL ENTITIES.**

- 1) Benefits paid to employees of governmental entities and nonprofit organizations shall be financed in accordance with the provisions of this section. A group of such organizations or entities may elect, with the approval of the director, to act as a group in fulfilling the requirements of this chapter.
- 2) Liability for contributions and election of reimbursements. A nonprofit organization or governmental entity shall pay contributions under the provisions of section 72-1349, Idaho Code, unless it elects, in accordance with this section to pay to the director an amount equal to the full amount of regular benefits paid and the amount paid for extended benefits for which the department is not reimbursed by the federal government, for any reason including, but not limited to, payments made as a result of a determination or payments erroneously paid or paid as a result of a determination of eligibility which is subsequently reversed if said payment or any portion thereof was made as a result of wages earned in the employ of such organization or entity. Any sums recovered by the department from a claimant as a result of said payments shall be credited to the account of the nonprofit organization or governmental entity which reimbursed the fund for the payment of said benefits. Where such benefits are paid utilizing wages paid by two (2) or more employers, the portion of benefits to be repaid by the organization or entity shall be its proportionate share. This shall be computed on the basis of the relationship between wages utilized which were earned for services performed for such organization or entity and the total wages utilized in paying such benefits.
- 3) Any nonprofit organization or governmental entity may elect to become liable for payments in lieu of contributions, provided it files with the director a written notice of election not later than thirty (30) days prior to the beginning of any taxable year or within thirty (30) days after the date of the final determination that such organization or entity is subject to this chapter. Such election shall be effective for not less than two (2) full taxable years after the election is made, and will continue to be in effect until terminated. The organization or entity must file with the director a written notice of termination of such election not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective. The director may, in his discretion, terminate an election as provided in this section or extend the period within which a notice of election or a notice of termination must be filed. The director shall notify each nonprofit organization and governmental entity of any determination he makes of its status as an employer and of the effective date of any election which it makes and of any termination of such election.
- 4) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this subsection, including either paragraph (a) or paragraph (b).
  - a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the director shall bill each organization or entity (or group of organizations or entities) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits paid, and the amount paid for extended benefits for which the department is not reimbursed

by the federal government, if paid as a result of wages earned in the employ of such.

- b) Payment in advance. Nonprofit organizations or governmental entities may elect to make payments in lieu of contributions in advance of actual billing for payment costs. Advance payments shall be made as follows: At the end of each calendar quarter, the nonprofit organization or governmental entity shall pay one percent (1%) of its total quarterly payroll unless the director determines that a lesser percentage will cover the cost of payment of benefits to the employees of said employer. For purposes of this section, the total quarterly payroll for school districts shall be computed based upon only those school districts which have elected cost reimbursement status. Such payments shall become due and payable within thirty (30) days following the quarter ending.

At the end of such taxable year, the director shall compute the benefit costs attributable to the employer as provided in subsection (2) of this section. The director will then debit the employer's account with these costs. When payments exceed benefit costs, either the employer will be credited on subsequent benefit costs with the overpayment or, at the director's discretion, the overpayment will be refunded to the employer. When payments are not sufficient to pay benefit costs, either the employer will be billed the additional amount necessary to pay such costs or, at the director's discretion, the employer's advance payment rate for the next taxable year will be set at a rate that will cover such costs.

- 5) Bond requirements. Any nonprofit organization that elects to become liable for payments in lieu of contributions may be required to obtain and deposit with the director a surety bond approved by the director. The amount of the bond shall be determined by the director on the basis of potential liability for benefit costs of each employing nonprofit organization. Such bond shall be in force for a period of not less than two (2) years, and shall be renewed not less frequently than two (2) year intervals for as long as the organization continues to be liable for payments in lieu of contributions. The director shall require adjustments to be made in the bond filed as deemed appropriate. When upward adjustments are required, the adjusted bond shall be filed within thirty (30) days of the date notice of the required adjustment was mailed. Failure by an organization covered by such bond to pay the full amount of payments due, together with interest and penalties, as provided in section 72-1354, Idaho Code, shall render the surety liable on said bond to the extent of the bond, as though the surety was a liable organization.
- 6) Failure to pay timely. If any nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the director may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year. Any nonprofit organization or governmental entity becoming delinquent in making payments in lieu of contributions shall be subject to the same penalty provisions as any other covered employer as provided in this chapter.
- 7) Appeals procedure. Nonprofit organizations and governmental entities making payments in lieu of contributions may appeal a determination made pursuant to this section as provided in section 72-1361, Idaho Code.

- 8) In the payment of any payments in lieu of contributions a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar (\$1.00).

**72-1349B. FINANCING OF BENEFITS PAYMENTS BY PROFESSIONAL EMPLOYERS AND THEIR CLIENTS.**

- 1) Nonprofit organizations and governmental entities excepted. Financing of benefits for workers assigned by a professional employer to a nonprofit organization or a governmental entity shall be paid as provided in section 72-1349A, Idaho Code. Financing of benefits for workers assigned by a professional employer to any entity other than a nonprofit organization or governmental entity shall be made in accordance with the provisions of this section.
- 2) Liability for contributions. Unless a professional employer meets the minimum requirements of this chapter, its client shall remain liable as a covered employer for any payments due under the provisions of this chapter. During the term of a professional employer arrangement, a professional employer is liable for the payment of all moneys due pursuant to this chapter as a result of wages paid to employees assigned to a client company, except compensation paid to sole proprietors or partners in the client company.
- 3) Joint and several liability. A client is jointly and severally liable for any unpaid moneys due under the provisions of this chapter from the professional employer for wages paid to workers assigned to the client.
- 4) Reporting requirements. The professional employer shall report and make all payments under its state employer account number. The professional employer shall keep separate records and submit separate quarterly wage reports for each of its clients. The professional employer shall pay contributions for its clients collectively using the professional employer's contribution rate unless it elects to pay the contribution for certain clients individually in which instance the contribution shall be paid using the individual client's contribution rate.
- 5) Interested party. As between a professional employer and its client, the professional employer company shall be deemed to be the interested party for purposes of section 72-1323, Idaho Code, and all proceedings to determine rights to benefits under the provisions of this chapter.
- 6) Temporary workers. The provisions of this section do not apply to an entity that provides temporary workers on a temporary help basis, provided that the entity is liable as the employer for all payments due under the provisions of this chapter as a result of wages paid to those temporary workers.
- 7) Rebuttable presumption. When a professional employer assigns workers to only one (1) client and its affiliates, there is a rebuttable presumption that the client entered into a professional employer arrangement to avoid calculation of the proper taxable wage rate. If the professional employer fails to rebut this presumption, the director, pursuant to section 72-1353, Idaho Code, shall issue an administrative determination of coverage holding the client to be the covered employer for purposes of this chapter.
- 8) A client ceasing to pay wages. Whenever a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of

sections 72-1351 and 72-1352, Idaho Code. If a client which has ceased to pay wages subsequently becomes subject to this chapter because it resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of section 72-1351, Idaho Code.

- 9) Succession of experience factors. Whenever a professional employer arrangement is entered, the separate account and experience factors of payroll and reserve shall be transferred to the professional employer for the purpose of determining the professional employer's contribution rate to be paid on behalf of the client. Upon the expiration or termination of the professional employer arrangement, so much of the professional employer's separate account and experience factors of payroll and reserve as is attributable to the client shall be transferred to the terminating client for the purpose of determining the client's subsequent rate of contribution. In the event the professional employer elects to pay the client's contribution separately as provided in subsection (4) of this section, then the client's experience factors of payroll and reserve shall remain with the client employer for the duration of the professional employer arrangement.

#### **72-1349C. TREATMENT OF INDIAN TRIBES.**

- 1) In addition to the definition provided in section 72-1315, Idaho Code, the term "covered employer" shall also include any Indian tribe for which service in covered employment is performed.
- 2) In addition to the definition provided in section 72-1316, Idaho Code, the term "covered employment" shall also include service performed in the employ of an Indian tribe as defined in section 3306(u) of the federal unemployment tax act (FUTA), provided such service is excluded from "employment" as defined in FUTA solely by reason of section 3306(c) (7), FUTA, and is not otherwise excluded from covered employment under this chapter. For purposes of this section, the exemptions from covered employment in sections 72-1316A (5) and (9), Idaho Code, shall be applicable to services performed in the employ of an Indian tribe.
- 3) Benefits based on service in covered employment as that term is defined in this section, 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 under this chapter.
- 4) Indian tribes, or tribal units meaning subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe, subject to this chapter shall pay contributions under the same terms and conditions as all other covered employers unless the tribe elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.
  - a) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in section 72-1349A, Idaho Code, pertaining to nonprofit organizations and governmental entities subject to this chapter. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.
  - b) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same



basis as other employing units that have elected to make payments in lieu of contributions.

- c) At the discretion of the director, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions may be required to obtain and deposit with the director a surety bond approved by the director. The amount of the bond shall be determined by the director based on the employing entity's potential liability for benefit costs. Such bond shall be in force for a period of not less than two (2) years, and shall be renewed not less frequently than two (2) year intervals for as long as the Indian tribe or tribal unit continues to be liable for payments in lieu of contributions. The director may require adjustments to be made in the bond filed. When upward adjustments are required, the adjusted bond shall be filed within thirty (30) days of the date notice of the required adjustment was mailed. Failure by an Indian tribe or tribal unit covered by such bond to pay the full amount of payments due, together with interest and penalties as provided in section 72-1354, Idaho Code, shall render the surety liable on said bond to the extent of the bond, as though the surety was a liable organization.
- 5) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety (90) days of receipt of the bill shall cause the Indian tribe to lose the option to make payments in lieu of contributions as described in subsection (4) of this section, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
    - a) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment as described in this subsection (5) of this section, shall have such option reinstated if, after a period of one (1) year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.
    - b) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the director have been exhausted, shall cause services performed for such tribe to not be treated as "covered employment" for purposes of subsection (2) of this section.
    - c) The director may determine that any Indian tribe that loses coverage under paragraph (b) of this subsection may have services performed for such tribe again included as "covered employment" for purposes of subsection (2) of this section, if all contributions, payments in lieu of contributions, penalties and interest have been paid.
  - 6) Notices of payment and reporting delinquency to Indian tribes and their tribal units shall include information that failure to make full payment within the prescribed time frame:
    - a) Shall cause the Indian tribe to be liable for taxes under the federal unemployment tax act;
    - b) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and
    - c) Could cause the Indian tribe to be excepted from the definition of "covered employer" as provided in subsection (1) of this section, and services in the

- employ of the Indian tribe as provided in subsection (2) of this section, to be excepted from "covered employment."
- 7) An Indian tribe and its tribal units shall be jointly and severally liable for all payments due under this chapter, including assessments of interest and penalties.
  - 8) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe or tribal unit.
  - 9) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety (90) days of a final notice of delinquency, or fails to timely file a required bond, the director shall immediately notify the United States internal revenue service and the United States department of labor.

**72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES.**

- 1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars (\$100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter.
- 2) Prior to December 31 of each year, the director shall determine the taxable wage rates for the following calendar year for all covered employers, except cost reimbursement employers, in accordance with this section, provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar years 2005 and 2006, the taxable wage rates for all covered employers except cost reimbursement employers shall be determined as follows:
  - a) For calendar year 2005, the taxable wage rate shall be determined using a base tax rate of one and fifty hundredths percent (1.50%);
  - b) For calendar year 2006, the taxable wage rate shall be determined using a base tax rate of one and sixty-seven hundredths percent (1.67%) unless, at any time prior to September 30, 2005, the actual balance in the employment security fund, section 72-1346, Idaho Code, is fifty percent (50%) or less than the actual balance in the reserve fund, section 72-1347A, Idaho Code, in which case the taxable wage rate shall be determined using a base tax rate calculated in accordance with subsection (5) of this section.
- 3) An average high cost ratio shall be determined by calculating the average of the three (3) highest benefit cost rates in the twenty (20) year period ending with the preceding year. For the purposes of this section, the "benefit cost rate" is the total annual benefits paid, including the state's share of extended benefits but excluding the federal share of extended benefits and cost reimbursable benefits, divided by the total annual covered wages excluding cost reimbursable wages. The resulting average high cost ratio is multiplied by the desired fund size multiplier of eight-tenths (0.8), and the result, for the purposes of this section, is referred to as the "average high cost multiple" (AHCM).
- 4) The fund balance ratio shall be determined by dividing the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve fund, section 72-1347A, Idaho Code, on September 30 of the current calendar year by the

wages paid by all covered employers in Idaho, except cost reimbursement employers, in the preceding calendar year.

- 5) The base tax rate shall be determined as follows:
  - a) Divide the fund balance ratio by the AHCM;
  - b) Subtract the quotient obtained from the calculation in paragraph (5)(a) of this section from the number two (2);
  - c) Multiply the remainder obtained from the calculation in paragraph (5) (b) of this section by two and one-tenth percent (2.1%). The product obtained from this calculation shall equal the base tax rate, provided however, that the base tax rate shall not be less than sixty-three hundredths percent (0.63%) and shall not exceed three and thirty-six hundredths percent (3.36%).
- 6) The base tax rate calculated in accordance with subsection (5) of this section shall be used to determine the taxable wage rate effective the following calendar year for all covered employers except cost reimbursement employers as provided in subsections (7) and (8) of this section.
- 7) Table of Rate Classes, Tax Factors and Minimum and Maximum Taxable Wage Rates

Rate Class	Cumulative Taxable Payroll Limits			Eligible Employers	
	More than (% of Taxable Payroll)	Equal To or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1	--	12	0.2857	0.180%	0.960%
2	12	24	0.4762	0.300%	1.600%
3	24	36	0.5714	0.360%	1.920%
4	36	48	0.6667	0.420%	2.240%
5	48	60	0.7619	0.480%	2.560%
6	60	72	0.8571	0.540%	2.880%
7	72	--	0.9524	0.600%	3.200%
			Tax Factor	Standard- Rated Minimum Taxable Wage Rate	Employers Maximum Taxable Wage Rate
			1.000	1.000%	3.360%
Rate Class	Cumulative Taxable Payroll Limits			Deficit Employers	
	More than (% of Taxable Payroll)	Equal To or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
-1	--	30	1.7143	1.080%	4.800%
-2	30	50	1.9048	1.200%	5.200%
-3	50	65	2.0952	1.320%	5.600%

-4	65	80	2.2857	1.440%	6.000%
-5	80	95	2.6667	1.680%	6.400%
-6	95	--	2.6667	5.400%	6.800%

- 8) Each covered employer, except cost reimbursement employers, will be assigned a taxable wage rate and a contribution rate as follows:
- a) Each employer, except standard-rated employers, will be assigned to one (1) of the rate classes for eligible and deficit employers provided in subsection (7) of this section based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1351 and 72-1351A, Idaho Code.
  - b) For each rate class provided in subsection (7) of this section, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for that rate class in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for employers assigned to that rate class, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to that rate class and shall not exceed the maximum taxable wage rate assigned to that rate class in the table provided in subsection (7) of this section.
  - c) For standard-rated employers, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for standard-rated employers in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for standard-rated employers, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to standard-rated employers and shall not exceed the maximum taxable wage rate assigned to standard-rated employers in the table provided in subsection (7) of this section.
  - d) Deficit employers who have been assigned a taxable wage rate from deficit rate class six will be assigned contribution rates equal to their taxable wage rate.
  - e) All other eligible, standard-rated and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.
- 9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination, setting forth his reasons therefore. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

**72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RATING ACCOUNTS.**

- 1) Subject to the other provisions of this chapter, each eligible and deficit employer's, except cost reimbursement employers, taxable wage rate shall be determined in the manner set forth below for each calendar year:
  - a)
    - i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.
    - ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years were in excess of contributions paid, deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.
    - iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under this chapter for the purpose of computing any future "experience factor."
  - b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor: (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year

- ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.
- c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (b) of this subsection shall be segregated into groups whose limits shall be those set out in the table provided in section 72-1350(7), Idaho Code. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned a taxable wage rate in accordance with section 72-1350, Idaho Code.
  - d)
    - i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.
    - ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.
    - iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.
  - e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.
- 2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided in this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:
- a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;
  - b) If paid in accordance with the provisions of section 72-1368(10), Idaho Code, and the decision to pay benefits is subsequently reversed;

- c) For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;
  - d) If paid in accordance with the extended benefit program triggered by either national or state indicators;
  - e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is eligible to receive benefits due to layoff or a reduction in earnings from another employer.
- 3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. A determination of chargeability shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules.
- 4) An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cut-off date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.
- 5)
- a) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account of the predecessor shall, upon the joint application of the predecessor and the successor within the one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.
  - b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to

- the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.
- c)
    - i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.
    - ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.
  - d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

**72-1351A. MANDATORY TRANSFERS OF EXPERIENCE RATING ACCOUNTS AND FEDERAL CONFORMITY PROVISIONS REGARDING TRANSFERS OF EXPERIENCE AND ASSIGNMENT OF RATES.**

Notwithstanding any other provision of this chapter, the following shall apply regarding transfers of experience and assignment of rates:

- 1)
  - a) If a covered employer transfers its trade or business, or a portion thereof, to another employer, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the experience rating account attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated using the methods provided in section 72-1351(5) (b) and either (c) (i) or (c) (ii), Idaho Code. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply



the required payroll information, the transfer may be based on estimates of the allocable payrolls.

- b) If, following a transfer of experience under paragraph (a) of this subsection (1), the director determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.
- 2) Whenever a person who is not a covered employer under this chapter at the time such person acquires the trade or business of a covered employer, the experience rating account of the acquired business shall not be transferred to such person if the director finds that such person acquired the business primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the standard rate for new employers under section 72-1350, Idaho Code. In determining whether the trade or business was acquired primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include, but are not limited to, the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.
- 3)
    - a) It shall be a violation of this section if a person:
      - i) Makes any false statement to the department when the maker knows the statement to be false or acts with deliberate ignorance of or reckless disregard for the truth of the matter or willfully fails to disclose a material fact to the department in connection with the transfer of a trade or business;
      - ii) Prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true;
      - iii) Knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate; or
      - iv) Knowingly advises another person in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate.
    - b) If a person commits any of the acts described in paragraph (a) of this subsection (3), the person shall be subject to the following penalties:
      - i) If the person is a covered employer, a civil money penalty of ten percent (10%) of such person's taxable wages for the four (4) completed consecutive quarters preceding the violation shall be imposed for such year and said penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.
      - ii) If the person is not a covered employer, such person shall be subject to a civil money penalty of not more than five thousand dollars (\$5,000) for each

violation. Any such penalty shall be deposited in the state employment reimbursement fund as established by section 72-1348, Idaho Code.

- 4) Every person who knowingly makes any false statement to the department or knowingly fails to disclose a material fact to the department in connection with the transfer of a trade or business, or knowingly prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true, or knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, or knowingly advises another person to act in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, shall be guilty of a felony punishable as provided in section 18-112, Idaho Code.
- 5) For purposes of this section:
  - a) An employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.
  - b) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.
  - c) "Person" has the meaning given such term by section 7701(a) (1) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a) (1)).
  - d) A "transfer of a trade or business" occurs whenever a person in any manner acquires or succeeds to all or a portion of a trade or business. Factors the department may consider when determining whether a transfer of a trade or business has occurred include, but are not limited to, the following:
    - i) Whether the successor continued the business enterprise of the acquired business;
    - ii) Whether the successor purchased, leased or assumed machinery and manufacturing equipment, office equipment, business premises, the business or corporate name, inventories, a covenant not to compete or a list of customers;
    - iii) Continuity of business relationships with third parties such as vendors, suppliers and subcontractors;
    - iv) A transfer of good will;
    - v) A transfer of accounts receivable;
    - vi) Possession and use of the predecessor's sales correspondence and
    - vii) Whether the employees remained the same.
  - e) "Trade or business" includes, but is not limited to, the employer's workforce. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of a trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the

transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

- f) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.
- 6) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.
- 7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

#### **72-1352. PERIOD, TERMINATION, AND ELECTION OF EMPLOYER COVERAGE.**

- 1) Except as otherwise provided in subsection (3) of this section, any employer who is or becomes a covered employer within any calendar year shall be deemed to be a covered employer until his coverage is terminated.
- 2) The coverage of any covered employer may be terminated if:
  - a) As of the close of any calendar quarter, it is found that such covered employer had no individuals performing services for him in covered employment, and that the continued operation of his trade, profession, or business is not likely to result in his having a quarterly payroll of one thousand five hundred dollars (\$1,500) or more within the ensuing two (2) calendar quarters; or
  - b) As of the close of a calendar year, it is found that such covered employer did not pay or become liable to pay for services rendered to him in covered employment wages amounting to one thousand five hundred dollars (\$1,500) or more in any calendar quarter of such year, and that the continued operation of his trade, profession, or business is not likely to create covered employment as defined in section 72-1316, Idaho Code, within the ensuing calendar year.
  - c) Notwithstanding the provisions in subsection (2)(a) or (2)(b), the coverage of an employer may not be terminated if he is or was subject under the provisions of the federal unemployment tax act during the current or preceding calendar year.
- 3) Any employer for whom services are performed in this state which do not constitute covered employment, may file with the director a written request that all such services shall be deemed to constitute covered employment. Upon approval by the director, such services shall be deemed to constitute covered employment from the date stated in such approval for not less than two (2) calendar years. Such services shall cease to be covered employment as of January 1 of any calendar year subsequent to such two (2) calendar years, if not later than January 31 of such year either such employer has filed with the director a written notice of termination, or the director on his own motion, has given notice of termination of such coverage.
- 4) Benefits payable to the employees thus covered will be payable on the same basis and conditions that apply to all other covered employees.

#### **72-1353. ADMINISTRATIVE DETERMINATIONS OF COVERAGE.**

- 1) The director may, upon his own motion or upon application of any employer, make findings of fact and on the basis thereof determine whether such employer is a covered employer and whether services performed for or in connection with the

business of such employer constitutes covered employment. The determination shall become final unless, within fourteen (14) days after notice, an appeal is filed with the department setting forth the grounds for such appeal. A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing. Proceedings on appeal shall be had in accordance with the provisions of section 72-1361, Idaho Code.

- 2) In making any determination with respect to whether the services performed by a worker are performed in covered employment, the director may, on the basis of the available evidence, determine that other workers performing similar services for the employer are similarly situated with respect to the coverage of said services under the provision of this chapter, and that such services constitute covered employment.
- 3) In any proceeding to determine whether an employer is a covered employer or whether services are performed in covered employment, it shall be the burden of the employer to prove that the employer is not a covered employer, that services were not performed in covered employment, or that workers are not similarly situated with respect to the coverage of their services.

**72-1354. PENALTY ON UNPAID AMOUNTS.** If any amounts due under this chapter are not paid by any covered employer on or before the date on which they are due, such amounts shall bear penalty at the rate of four percent (4%) or twenty dollars (\$20.00), whichever is the larger, for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amounts due. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code. At the discretion of the director, the department may compromise the amount of penalty collected pursuant to this section if the employer shows he had good cause for failing to timely pay contributions.

**72-1355. COLLECTION BY SUIT.**

- 1) Civil actions in the district court may be brought to collect any amount due under the employment security law of this state or any other state or the federal government in the same manner provided by law for collection of debt. Any person found liable for any amount due under this chapter shall pay the costs of such action. No proceeding or action shall be maintained and no writ or process shall be issued by any court which has the purpose or effect of delaying the collection of any amounts due under this chapter or substituting any collection procedure for those prescribed in this chapter.
- 2) Any person who fails to comply with section 72-1349 or 72-1349A, Idaho Code, for a period of thirty (30) days or more may be enjoined by the district court of any county in which such person does business from carrying on his business while such delinquency continues.
- 3) All proceedings in the courts are to be brought by the director in the name of the state of Idaho.

### **72-1355A. CONTRACTORS' AND PRINCIPALS' LIABILITY FOR**

**CONTRIBUTIONS.** No covered employer which contracts with any contractor or subcontractor who is a covered employer under the provisions of this chapter shall make final payment to such contractor or subcontractor for any indebtedness due, until after the contractor or subcontractor has paid or has furnished a good and sufficient bond acceptable to the director for payment of contributions due, or to become due, in respect to personal services which have been performed by individuals for such contractor or subcontractor. Failure to comply with the provisions of this section shall render said covered employer directly liable for such contributions; and the director shall have all of the remedies of collection against said covered employer under the provisions of this chapter as though the services in question were performed directly for said covered employer.

**72-1356. PRIORITIES.** Where the assets of an employer subject to the provisions of this chapter are distributed by an order of court under Idaho law, including any receivership, assignment for the benefit of creditors, adjudication of insolvency, composition, administration of estates of decedents, or similar proceeding, amounts then or thereafter due under this chapter must be paid in full prior to all other unsecured claims except taxes, claims arising under the worker's compensation act, and claims for wages of not more than two hundred fifty dollars (\$250) to each claimant earned within four (4) months of the commencement of proceedings. In the case of such an employer's adjudication of bankruptcy, judicially confirmed extension proposal or composition under the bankruptcy law, amounts then or thereafter due under this chapter are entitled to such priority as is now or may hereafter be granted under 11 U.S.C. 507.

### **72-1357. ADJUSTMENTS AND REFUNDS.**

- 1) If any person shall make application for a refund or credit of any amounts paid under this chapter, the director shall, upon determining that such amounts or any portion thereof was erroneously collected, either allow credit therefore, without interest, in connection with subsequent payments, or shall refund from the fund in which the erroneous payment was deposited, without interest, the amount erroneously paid.
- 2) No refund or credit shall be allowed unless an application therefore is made on or before whichever of the following dates is later:
  - a) One (1) year from the date on which such payment was made; or
  - b) Three (3) years from the last day of the calendar quarter with respect to which such payment was made. For a like cause and within the same period a refund may be so made, or credit allowed, on the initiative of the director. Nothing in this chapter shall be construed to authorize any refund or credit of moneys due and payable under the law and regulations in effect at the time such moneys were paid.
- 3) In the event that any application for refund or credit is rejected in whole or in part, a written notice of rejection shall be forwarded to the applicant. Within fourteen (14) days after the mailing of such notice to the applicant's last known address, or in the absence of such mailing, within fourteen (14) days after delivery thereof, the applicant may appeal to the director for a hearing with regard to the rejection, setting forth the grounds for such appeal. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

**72-1358. DETERMINATION OF AMOUNTS DUE UPON FAILURE TO REPORT.**

If any covered employer fails to file a report when due under this chapter, or if such report when filed is incorrect or insufficient, the director may, on the basis of available information, determine the amount of wages paid in covered employment during the periods with respect to which the reports were or should have been made and the amount due under this chapter from the employer. The director shall give written notice of the determination to the employer. The determination shall become final unless the employer, within fourteen (14) days after the mailing of the notice to the employer's last known address, or, in the absence of such mailing, within fourteen (14) days after delivery thereof, files an appeal with the department. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

**72-1359. JEOPARDY ASSESSMENTS.** If the director determines that the collection of any amounts due from any covered employer under the provisions of this chapter will be jeopardized by delay, he may, whether or not the time prescribed by this chapter or any rules issued pursuant thereto for making reports and payments has expired, determine, on the basis of available information, the wages paid by such employer for covered employment and declare the amount due thereon immediately payable, and shall give written notice of such declaration to such employer. Any amounts, including penalty and interest, that are contained in such written declaration shall be subject to immediate seizure pursuant to section 72-1360A, Idaho Code, as well as through any other collection procedures allowed under law. Such jeopardy assessment shall become conclusive and binding upon the employer unless, within fourteen (14) days after the mailing of such declaration to the last known address of such employer or in the absence of such mailing, within fourteen (14) days after personal delivery upon the employer, the employer files an appeal to the department setting forth grounds for such appeal. In such cases, the right of appeal shall be conditioned upon the payment of the amount declared to be due, less any amount already collected, or upon giving appropriate security to the director for the payment thereof. Proceedings on such appeals shall be in accordance with the provisions of section 72-1361, Idaho Code.

**72-1360. LIENS.**

- 1) Upon the failure of any person to pay any amount when due under this chapter, including the failure to repay overpayments as that term is defined in section 72-1369, Idaho Code, the director may file with the office of the secretary of state, as provided in chapter 19, title 45, Idaho Code, a notice of lien.
- 2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with chapter 19, title 45, Idaho Code. When such notice is duly filed, all amounts due shall constitute a lien upon the entire interest, legal or equitable, in any property of such person, real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced by the director or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount secured by the lien shall bear interest at the rate of one and one-half (1 1/2) times the rate computed for judgments pursuant to section 28-22-104(2), Idaho Code, in effect on January 1 of the year in which the lien is filed,

rounded up to the nearest one-eighth percent (1/8%). The foregoing remedy shall be in addition to all other remedies provided by law. The amount of interest collected pursuant to this section may be compromised at the discretion of the director when such compromise is in the best interest of the department.

- 3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

#### **72-1360A. COLLECTION OF LIEN AMOUNTS.**

- 1) In addition to all other remedies or actions provided by this chapter, it shall be lawful for the director or his agent to collect any amounts secured by liens created pursuant to this chapter by seizure and sale of the property of any person liable for such amounts who fails to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof.
- 2) Property exempt from seizure shall be the same property as is exempt from execution under the provisions of chapter 6, title 11, Idaho Code.
- 3) In exercising his authority under subsection (1) of this section, the director may levy, or by his warrant, authorize any of his representatives, a sheriff or deputy to levy upon, seize and sell any nonexempt property belonging to any person liable for the amounts secured by the lien.
- 4) When a warrant is issued by the department for the collection of any amount due pursuant to a lien authorized by this chapter, it shall be directed to any authorized representative of the department, or to any sheriff or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. Upon the completion of his services pursuant to said warrant, the sheriff or deputy shall receive the same fees and expenses as are provided by law for services related to a writ of execution. All such fees and expenses shall be an obligation of the person liable for the amounts due and shall be collected from such person by virtue of the warrant. Any warrant issued by the director shall contain, at a minimum, the name and address of the liable person; the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.
- 5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which seizure is made, any other property subject to seizure shall be seized and sold until the amount due from such person, together with all expenses, is fully paid.
- 6) All persons are required, on demand of a representative of the department, a sheriff or deputy acting pursuant to this chapter, to produce all documentary evidence and statements relating to the property or rights in the property subject to seizure.

#### **72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION.**

Upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of rate of contribution, determination of coverage, determination of chargeability, or jeopardy determination, the director may transfer the appeal directly to an appeals examiner pursuant to section 72-1368(6), Idaho Code, or he

may issue a redetermination affirming, reversing or modifying the initial determination. A redetermination shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. Appeal procedures shall be governed by the provisions of section 72-1368(6), (7), (8), (9) and (11), Idaho Code. The party appealing shall have the burden of proving each issue appealed by clear and convincing evidence. 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 interested employers under this chapter.

**72-1362. LIABILITY OF SUCCESSOR.** Any person, whether or not a covered employer, who acquires the organization, trade, or business or a substantial part of the assets thereof, from a covered employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, for any contributions or penalties due or accrued and unpaid by such covered employer, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens; provided, that the lien shall not be valid against one who acquires from the said predecessor any interest in the said property or assets in good faith, for value and without notice of the lien. The director shall, upon written request therefore, and with permission of the owner, furnish such prospective purchaser with a written statement of the amount of contributions and penalties due or accrued and unpaid by the said covered employer as of the date of such acquisition, and the amount of the liability of the successor or the amount of the said lien shall in no event exceed the liability disclosed by such statement. The foregoing remedies shall be in addition to all other existing remedies against the covered employer or his successor.

**72-1364. UNCOLLECTIBLE ACCOUNTS.**

- 1) The director may enter into agreements of compromise with employers with respect to amounts due under this chapter when it is determined by the director that the employer is unable to make full payment.
- 2) Amounts due under this chapter, which are uncollected three (3) years after they become due, may be deemed uncollectible by the director if there is no likelihood of collection at a future date.

**72-1365. PAYMENT OF BENEFITS.**

- 1) Benefits shall be paid from the employment security fund to any unemployed individual who is eligible for benefits as provided by section 72-1366, Idaho Code.
- 2) Periodically, the department of health and welfare, bureau of child support enforcement, shall forward to the director a list containing the full name and social security number of persons from whom it is seeking child support. The director shall match the names and social security numbers on the list with its records of individuals eligible for benefits, and shall notify the department of health and welfare, bureau of child support enforcement, of the address and amount of benefits due each individual.
  - a) Voluntary withholding. The director shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under paragraph (g) of this subsection, the amount specified by the individual to the



director to be deducted and withheld under this subsection, if paragraph (b) of this subsection below is not applicable.

- b) Involuntary withholding. The director shall withhold any benefits of any person within the limits established by section 11-207, Idaho Code, upon notification and order by the department of health and welfare, bureau of child support enforcement, to collect any delinquent child support obligation which has been assigned on behalf of any individual to the department of health and welfare under sections 56-203A and 56-203B, Idaho Code, or a child support obligation which the department seeks to collect pursuant to chapter 12, title 7, Idaho Code. The set-off or withholding of any benefits of a claimant shall become final after the following conditions have been met:
  - i) The child support payment to be set-off or withheld is a child support obligation established by order as defined in section 7-1202, Idaho Code.
  - ii) All liabilities owed by reason of the provisions of section 72-1369, Idaho Code, have been collected by the director.
  - iii) Notice of the set-off or withholding has been mailed by registered or certified mail from the department of health and welfare, bureau of child support enforcement, to the claimant-obligor at the address listed on the claim. Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday, or state holidays as the 14th day), the claimant-obligor may file a protest in writing, requesting a hearing before the department of health and welfare to determine his liability to the obligee. The hearing, if requested, shall be held within thirty-five (35) days from the date of the initial notice to the claimant-obligor of the proposed set-off. No issues at that hearing may be considered which have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or within ten (10) days of the hearing by mail to the claimant-obligor.
  - iv) In its decision, the department of health and welfare may order the withholding and set-off of any subsequent benefits which may be due the claimant-obligor until the debt for which set-off is sought and any additional debts which are incurred by the claimant's failure to make additional periodic payments based upon the same court order are satisfied.
- c) Any amount deducted and withheld under paragraph (a) or (b) of this subsection shall be paid by the director to the appropriate state or local child support enforcement agency.
- d) Any amount deducted and withheld under paragraph (a) or (b) of this subsection shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.
- e) For purposes of paragraphs (a) through (d) of this subsection, the term "benefits" means any compensation payable under this chapter, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.
- f) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the director under the provisions of this section

which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

- g) The term "child support obligation" is defined for the purposes of these provisions as including only an obligation which is being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under part D of title IV of the social security act.
- h) The term "state or local child support enforcement agency" as used in these provisions means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (g) of this subsection.
- 3) Benefits shall be paid only to the extent that moneys are available for such payments in the employment security fund.
- 4) Benefits shall be paid not less frequently than biweekly.
- 5) Upon request, the department of health and welfare, bureau of child support enforcement, shall make the procedures established in this section for collecting child support available to county prosecuting attorneys. The provisions of this subsection apply only if appropriate arrangements have been made for reimbursement by the requesting prosecuting attorney for the administrative costs incurred by the bureau, which are attributable to the request.
- 6)
  - a) An individual filing a new claim for benefits shall, at the time of filing such claim, be advised that:
    - i) Benefits are subject to federal and state tax and requirements exist pertaining to estimated tax payments;
    - ii) The individual may elect to have federal income tax deducted and withheld from the individual's benefits at the amount specified in the federal internal revenue code;
    - iii) The individual shall be permitted to change a previously elected withholding status once during each benefit year.
  - b) Amounts deducted and withheld from benefits shall remain in the unemployment fund until transferred to the taxing authority as a payment of income tax.
  - c) The director shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.
  - d) Amounts shall not be deducted and withheld under this subsection until the following deductions are made and withheld in the following order:
    - i) First, amounts owed for overpayments of benefits deducted and withheld pursuant to the provisions of section 72-1369, Idaho Code;
    - ii) Second, amounts owed for child support obligations deducted and withheld pursuant to the provisions of subsection (2) of this section.
  - e) At the director's discretion, the director may promulgate rules allowing individuals to elect to have state income tax deducted and withheld from the individual's payment of benefits.

**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.
- 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, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection if:
      - (1) Such failure is due to the claimant's illness or disability which occurs after he has filed a claim and 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
    - ii) 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) 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 which 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.
- 5) The claimant's unemployment is not due to the fact that he left his employment voluntarily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment.
- 6) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. 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.
- 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) and (6) of this section, if:
- a) The claimant is a participant in a program sponsored by title I of the workforce investment act 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 one (1) year, except that this requirement may be waived pursuant to rules that the director may prescribe.

This subsection shall apply only if the claimant submits with each claim report a written certification from the training facility that the claimant is attending and satisfactorily completing the job training course. If the claimant fails to attend or otherwise participate in the job training course, it must be determined whether the claimant is able to work and available for suitable work as provided in subsection (4) (b) of this section.

- 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 not less than eighty percent (80%) of the average weekly wage in the individual's past employment.
- 10) 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) The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

- b) The claimant does not belong to a grade or class of workers with members employed at the premises at which the labor dispute occurs, who are participating in or directly interested 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.
  - 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 therefore 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 service 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 not 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 which 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 (b) 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 clause.
- c) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week which 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 (17), benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection (17) 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 which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

18) Benefits shall not be payable on the basis of services which substantially consist of participating in sports or athletic events or training or preparing to participate, for any week which 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).

19)

- a) Benefits shall not be payable on the basis of services performed by an alien unless the alien 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 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.

**72-1367. BENEFIT FORMULA.**

- 1) To be eligible an individual shall have the minimum qualifying amount of wages in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each

January 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section 44-1502, Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

- 2) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:
  - a) For calendar year 2006 and the calendar years thereafter, prior to December 31 of each year, the director shall determine the state average weekly wage paid by covered employers for the preceding calendar year and the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under this subsection
    - i) The maximum weekly benefit amount shall be determined based on the following table, using a percentage of the state average weekly wage paid by covered employers for the preceding calendar year and the base tax rate that has been calculated for the following calendar year pursuant to section 72-1350, Idaho Code:

Maximum WBA Index		Average Weekly Wage Percentage
Base Tax Rate At Least	Less Than	
0.630%	0.840%	60%
0.840%	1.155%	59%
1.155%	1.470%	58%
1.470%	1.785%	57%
1.785%	2.100%	56%
2.100%	2.415%	55%
2.415%	2.730%	54%
2.730%	3.045%	53%
3.045%	3.360%	52%

- b) Effective for new claims filed in the first full week of July 2005, and filed thereafter until the first full week of the following January, the maximum weekly benefit amount shall be fifty-seven percent (57%) of the state average weekly wage paid by covered employers for the preceding calendar year. Prior to December 31, 2005, the director shall determine, by using the table provided in subsection (2) (a) of this section, the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under subsection (2) (a) of this section.
- 3) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on his ratio of total base period earnings to highest quarter base period earnings.

Ratio of Total Base Period Earnings to Highest Quarter	Full Weeks of Benefit
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Earnings		Entitlement
At Least	Less Than	
1.25	1.50	10
1.50	1.625	11
1.625	1.750	12
1.750	1.875	13
1.875	2.00	14
Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement
At Least	Less Than	
2.00	2.125	15
2.125	2.250	16
2.250	2.375	17
2.375	2.500	18
2.500	2.625	19
2.625	2.750	20
2.750	2.875	21
2.875	3.000	22
3.000	3.125	23
3.125	3.250	24
3.250	3.500	25
3.500	--	26

- 4) If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half (1/2) of his weekly benefit amount, the amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from the benefits payable to the claimant. For purposes of this subsection, severance pay shall be deemed wages, even if the claimant was required to sign a release of claims as a condition of receiving the pay from the employer. "Severance pay" means a payment or payments made to a claimant by an employer as a result of the severance of the employment relationship.
- 5) Benefits payable to an individual shall be rounded to the next lower full dollar amount.

**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) 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):
  - i) 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
  - ii) Equaled or exceeded six percent (6%).
- 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, the rate of insured unemployment (not seasonally adjusted):
  - i) 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) Was less than five percent (5%).
- 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.
- 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.
- 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.
- 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 available 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) 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:
- a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;
  - b) 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;
  - c) 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.
  - d) 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, 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.
- 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.

**72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE.**

- 1) Claims for benefits shall be made in accordance with 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 representative of the department hereinafter referred to as a claims examiner shall examine a claim filed pursuant to subsection (1) of this section and, on the basis of the facts found by him, shall determine whether the claimant is eligible for benefits and, if eligible, the date his benefit year begins, the weekly benefit amount, the total benefit amount, the base period wages, and the base period covered employers. In the event of a denial of benefits, the determination shall include the reasons for the ineligibility. Before the determination becomes final or an appeal is filed, the claims examiner, on his 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.
- 4) The director may make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, or that additional wages of the claimant or other facts pertinent to such determination 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 of the original determination, 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 of the original determination. Subject to the same limitations and for the same reasons, the director may make a special redetermination in any case in which the final decision has been rendered by an appeals examiner, the commission, or a court and may apply to the appeal tribunal which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a special redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from the special redetermination.

- 5) All interested parties shall be entitled to prompt service of notice of determinations and decisions. A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.
- 6) To hear and decide appeals from determinations and redeterminations, the director shall appoint appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination or redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the claims examiner 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. 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.



**72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST –  
COLLECTION AND WAIVER.**

- 1) Any person who received benefits to which he was not entitled under the provisions of this chapter or under an unemployment insurance law of any state or of the federal government shall be liable to repay the benefits and the benefits shall, for the purpose of this chapter, be considered to be overpayments.
- 2) Civil penalties. The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:
  - a) Twenty-five percent (25%) of any resulting overpayment for the first determination;
  - b) Fifty percent (50%) of any resulting overpayment for the second determination; and
  - c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.
- 3) Any overpayment, civil penalty and/or interest which has not been repaid may, in addition to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section 72-1360, Idaho Code, be collected with interest thereon at the rate prescribed in section 72-1360(2), Idaho Code. The director may also file a civil action in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, penalties and interest, the director shall have all the rights and remedies provided by the laws of this state, and any person adjudged liable in such civil action for any overpayments shall pay the costs of such action. A civil action filed pursuant to this subsection (3) shall be commenced within five (5) years from the date of the final determination establishing liability to repay. Any judgment obtained pursuant to this section shall, upon compliance with the requirements of chapter 19, title 45, Idaho Code, become a lien of the same type, duration and priority as if it were created pursuant to section 72-1360, Idaho Code.
- 4) Collection of overpayments.
  - a) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director, be deducted from any future benefits payable to the claimant under the provisions of this chapter. Such overpayments not recovered within five (5) years from the date of the final determination establishing liability to repay may be deemed uncollectible.
  - b) Overpayments resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant which have not been recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible.
- 5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if:
  - a) The benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error; or

- b) Such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported. The director, in his sole discretion, may also compromise a civil penalty assessed under subsection (2) of this section and/or interest.
- 6) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this chapter if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

**72-1370. DISTRIBUTION OF BENEFIT PAYMENTS UPON DEATH.** Whenever a benefit claimant dies, having completed a compensable period prior to his death, benefits due the deceased claimant at the time of death shall be payable, without administration, to the surviving spouse, if any, or, if there be no surviving spouse, to the dependent child or children.

**72-1373. MISREPRESENTATION TO OBTAIN BENEFITS OR TO PREVENT PAYMENTS OR TO EVADE CONTRIBUTION LIABILITY—CRIMINAL PENALTY.**

- 1) The making of a false statement when the maker knows the statement to be false, or the willful [willful] failure to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an unemployment insurance law of any state or of the federal government, either for the benefit of the maker or for any other person, is hereby declared to be a felony.
- 2) The making by an employer or any officer or agent of an employer or any other person of a false statement or representation when the maker knows the statement or representation to be false, or the willful failure to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining a covered employer or to avoid or reduce any contribution or other payment required from a covered employer under this chapter or under any unemployment insurance law of any state or of the federal government, or the willful failure or refusal to make such contributions or other payment or to furnish any such reports required under this chapter is hereby declared to be a misdemeanor.

**72-1372. CIVIL PENALTIES.**

- 1) The following civil penalties shall be assessed by the director:
  - a) If a determination is made finding that an employer willfully filed a false report, a monetary penalty equal to one hundred percent (100%) of the amount that would be due if the employer had filed a correct report or two hundred fifty dollars (\$250), whichever is greater, shall be added to the liability of the employer for each quarter for which the employer willfully filed a false report. For the purposes of this section, a false report includes, but is not limited to, a report for a period wherein an employer pays remuneration for personal services which meets the definition of "wages" under section 72-1328, Idaho Code, and the payment is concealed, hidden, or otherwise not reported to the department.

- b) If a determination is made finding that an employer willfully failed to file the employer's quarterly unemployment insurance tax report when due, the director shall assess a monetary penalty equal to:
    - i) Seventy-five dollars (\$75.00) or twenty-five percent (25%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had not been found in any previous determination to have willfully failed to file a timely quarterly report for any of the sixteen (16) preceding consecutive calendar quarters; or
    - ii) One hundred fifty dollars (\$150) or fifty percent (50%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination to have willfully failed to file a timely quarterly report for no more than one (1) of the sixteen (16) preceding consecutive calendar quarters; or
    - iii) Two hundred fifty dollars (\$250) or one hundred percent (100%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination or determinations to have willfully failed to file a timely quarterly report for two (2) or more of the sixteen (16) preceding consecutive calendar quarters.
  - c) If a determination is made finding that an employer, or any officer or agent or employee of the employer with the employer's knowledge, willfully made a false statement or representation or willfully failed to report a material fact when submitting facts to the department concerning a claimant's separation from the employer, a penalty in an amount equal to ten (10) times the weekly benefit amount of such claimant shall be added to the liability of the employer.
  - d) If a determination is made finding that an employer has induced, solicited, coerced or colluded with an employee or former employee to file a false or fraudulent claim for benefits under this chapter, a penalty in an amount equal to ten (10) times the weekly benefit amount of such employee or former employee shall be added to the liability of the employer.
  - e) If a determination is made finding that an employer failed to complete and submit an Idaho business registration form when due, as required by section 72-1337(1), Idaho Code, a penalty of five hundred dollars (\$500) shall be assessed against the employer.
  - f) For purposes of paragraphs (c) and (d) of this subsection (1), the term "weekly benefit amount" means the amount calculated pursuant to section 72-1367(2), Idaho Code.
  - g) If a determination is made finding that a person has made any unauthorized disclosure of employment security information in violation of the provisions of chapter 3, title 9, Idaho Code, or section 72-1342, Idaho Code, or rules promulgated thereunder, a penalty of five hundred dollars (\$500) for each act of unauthorized disclosure shall be assessed against the person.
- 2) At the discretion of the director, the department may waive all or any part of the penalties imposed pursuant to subsections (1)(a) through (1)(f) of this section if the employer shows to the satisfaction of the director that it had good cause for failing to comply with the requirements of this chapter and rules promulgated thereunder.

- 3) Determinations imposing civil penalties pursuant to this section shall be served in accordance with section 72-1368(5), Idaho Code. Penalties imposed pursuant to this section shall be due and payable twenty (20) days after the date the determination was served unless an appeal is filed in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder. Such appeals shall be conducted in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder.
- 4) Civil penalties imposed by this section shall be in addition to any other penalties authorized by this chapter. The provisions of this chapter that apply to the collection of contributions, and the rules promulgated thereunder, shall also apply to the collection of penalties imposed pursuant to this section. Amounts collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

**72-1373. VIOLATION OF THIS LAW OR RULES THEREUNDER.** Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed in this chapter, nor provided by any other applicable statute, shall be guilty of a misdemeanor, and each day such violation continues shall be deemed to be a separate misdemeanor.

**72-1374. UNAUTHORIZED DISCLOSURE OF INFORMATION.** If any of the following persons, in violation of the provisions of chapter 3, title 9, Idaho Code, or section 72-1342, Idaho Code, or rules promulgated thereunder, makes any unauthorized disclosure of employment security information, each act of unauthorized disclosure shall constitute a separate misdemeanor:

- 1) Any employee of the department;
- 2) Any employee or member of the commission;
- 3) Any third party or employee thereof who has obtained employment security information pertaining to a person with the written, informed consent of that person;
- 4) Any public official who has obtained employment security information for use in the performance of official duties; or
- 5) Any person who has obtained employment security information through means that violate the provisions of chapter 3, title 9, Idaho Code, or this chapter, or rules promulgated thereunder.

**72-1375. PROTECTION OF RIGHTS AND BENEFITS.**

- 1) Any agreement to waive, release, or commute any right to benefits or other rights under this chapter shall be void. Any agreement by any individual performing services for a covered employer to pay all or any portion of any contributions or penalties required under this chapter from such employer, shall be void. No covered employer shall directly or indirectly make or require or accept any deduction from wages to finance the contributions required from him, require or accept any waiver of any right under this chapter by any individual rendering service for him, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his claiming benefits under this chapter, or in any manner obstruct or impede the claiming of benefits. Any employer or officer or agent of an

employer who violates any provision of this subsection shall, for each offense, be guilty of a misdemeanor.

- 2) No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the commission, the director, any of its or his employees or representatives, or by any court or any officer thereof, except that a court may assess costs if the court determines that the proceedings have been instituted or continued without reasonable ground. Any individual claiming benefits in any proceeding before the department, the commission, or a court may be represented by counsel or other duly authorized agent. Any person who violates any provision of this subsection shall, for each such offense, be guilty of a misdemeanor.
- 3) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or an order for the payment of attorney's fees. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of debts. Any waiver of any exemption provided for in this subsection shall be void.
- 4) The provisions of this section shall not apply to any action taken pursuant to section 72-1365(2), Idaho Code.

**72-1376. REPRESENTATION IN COURT.**

- 1) In any civil action to enforce the provisions of this chapter the director, the commission, and the state shall be represented by the attorney general, or if the action is brought in the courts of any other state, by any attorneys qualified to appear in the courts of that state.
- 2) All criminal actions for violation of any provision of this chapter, or of any rules issued pursuant thereto, shall be prosecuted by the attorney general of the state, or, at his request and under his direction, by the prosecuting attorney of any county wherein the defendant resides or has a place of business.

**72-1377. SAVING CLAUSE.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

**72-1378. SEPARABILITY OF PROVISIONS.** If any provision of this chapter, or the application thereof to any person or circumstance, shall be declared by the courts to be unconstitutional, inoperative or void, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**72-1379. REFERENCES IN CHAPTER.** A reference in this chapter to any state or federal law means the law as it existed on the effective date of this chapter and any amendments or recodifications thereto.

**72-1381. DIRECTOR TO COOPERATE WITH GOVERNOR IN MEDIATION OF DISPUTES.** Upon the request of any interested party to an actual or potential labor dispute, the director shall have the power to mediate the dispute. The director or any interested party may apply to the governor for appointment of a mediator or a mediation panel of not less than three (3) citizens who are objective in matters involving labor disputes, and the governor shall, if the public interest will be served thereby; appoint such a mediator or mediation panel. Such mediator or mediation panel shall be paid actual expenses by the interested parties while engaged in such public business. Neither the director, the governor, nor any mediator or member of any mediation panel shall be authorized to arbitrate any labor dispute.

**72-1382. DUTIES OF DIRECTOR—DETERMINATION OF REPRESENTATIVES.** The director shall, when a question arises concerning the representation of employees in a collective bargaining unit, investigate such controversy and certify to the parties the name or names of the representatives who have been selected. In any such investigation the director shall provide for an appropriate hearing, and may take a secret ballot of employees to ascertain such representatives. In all cases where a secret ballot is taken, the ballot shall permit a vote against representation by anyone named on the ballot; provided, however, that nothing in this section shall be construed as authorizing the director to conduct an election on any matter which is within the exclusive jurisdiction of any federal official or board; and provided further that no election shall be directed in any bargaining unit or subdivision within which, in the preceding twelve (12) month period, a valid election was held.

**72-1385. PROVISIONS NOT TO APPLY TO AGRICULTURAL OR DOMESTIC LABOR.** The provisions of sections 72-1381 and 72-1382, Idaho Code, shall not apply to labor engaged in agricultural labor as that term is defined in section 72-1304, Idaho Code, nor to anyone engaged in domestic service in homes.

## **CHAPTER 14**

### **Firemen's Retirement Fund**

**72-1401. PURPOSE OF CHAPTER.** The retirement, with continuance of pay for themselves, provision for dependents, and pay during temporary disability, and the encouragement of long service in fire fighting service, of paid firefighters becoming aged or disabled in the service of the state or any of its cities or fire districts, is hereby declared to be a public purpose of joint concern to the state and each of its cities and fire districts in the protection and conservation of property and lives and essential to the maintenance of competent and efficient personnel in fire service. The provisions of chapter 14, title 72, Idaho Code, are applicable only to those paid firefighters who were employed as paid firefighters prior to October 1, 1980. If any person employed as a paid firefighter prior to October 1, 1980, should leave such employment prior to his establishing eligibility to benefits under any provision of chapter 14, title 72, Idaho Code, except as provided by sections 44-109(6) [44-1812], 72-1445 [72-1444], and 72-1444 [72-1443], Idaho Code,

and such firefighter is again employed as a paid firefighter, he shall not be eligible to participate in the retirement system authorized by chapter 14, title 72, Idaho Code, but shall be eligible to participate in the public employee retirement system, as provided in chapter 13, title 59, Idaho Code.

**72-1402. CONSTRUCTION.** The provisions of this chapter shall be liberally construed, with the object of promotion of justice and the welfare of the persons subject to its provisions.

**72-1403. DEFINITIONS.** The following are definitions of terms used in this chapter:

- 1) The words "paid fireman" are synonymous with "paid firefighter," and mean any individual, male or female, excluding office secretaries employed after July 1, 1967, who is on the payroll of any city or fire district in the state of Idaho prior to October 1, 1980, and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.
- 2) "Industrial commission" means the commission as authorized and created under the provisions of chapter 5, title 72, Idaho Code.
- 3) "Workers' compensation law" means the workers' compensation law as authorized and created under title 72, Idaho Code.
- 4) "Twenty-five (25) years active service": an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city or fire district in the state of Idaho in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for twenty-five (25) years or more.
- 5) "Five (5) years continuous service": an individual who has been employed by a regularly constituted fire department in a city or fire district in the state of Idaho for a period of five (5) years continuously, without having engaged in any other gainful occupation as his principal gainful occupation and has had "five (5) years continuous service" with a paid fire department of a city or fire district in the state of Idaho.
- 6) "Public employee retirement account" as used herein, means the public employee retirement account created by chapter 13, title 59, Idaho Code, and the "director" thereof, as used herein, means the executive director or manager of the public employee retirement system.
- 7) The meaning of the term "incapacitated in a degree which prohibits efficient service" means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid firefighter.
- 8) "Years active service": service rendered by an individual whose principal means of livelihood for the prescribed period of years has been through employment by a city or fire district in the state of Idaho, in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for the prescribed period of years. All years of active service as herein defined before the establishment of the firefighters' retirement fund may count only toward the prescribed period of years for retirement as set out in sections 72-1446, 72-1464, 72-1465 and 72-1435, Idaho Code. Before any year's service since February 28, 1945, may count toward the prescribed period of years, contributions must have

been deducted from his or her wage or salary and remitted as set out in sections 72-1431 and 72-1432, Idaho Code, for that year.

- 9) "Accumulated contributions" mean the sum of all amounts contributed by a firefighter to the retirement fund, pursuant to the provisions of chapter 14, title 72, Idaho Code, together with regular interest credited thereon.
- 10) "Regular interest" means interest at the rate set from time to time by the board pursuant to section 59-1302(26), Idaho Code.

**72-1404. AVERAGE FINAL COMPENSATION.** "Average final compensation" shall mean the average of the highest annual compensation received by the individual paid firefighter in this state, as defined in subsection (A) of section 72-1403, Idaho Code, during a period of five (5) consecutive years of service, as defined in subsection (H) of section 72-1403, Idaho Code, immediately preceding his or her retirement or leaving service. If said firefighter has less than five (5) years of service, then "average final compensation" shall mean the annual average compensation received by him or her during the total years of service.

**72-1405. POWERS AND DUTIES OF PUBLIC EMPLOYEE RETIREMENT BOARD.** The public employee retirement system board shall have power to make rules and regulations for the administration of this chapter, to prescribe forms and require registration, to delegate its authority to act in specific instances to its deputies and employees, and to incur expenses in connection with the management, administration and enforcement of this chapter, which expenses shall be paid out of the public employee retirement account.

**72-1406. ADMINISTRATION OF PROVISIONS OF CHAPTER.** The provisions of this chapter shall be administered by the public employee retirement system board without liability on the part of the state, or of any of its officers, beyond the moneys in the public employee retirement account for the purposes of chapter 14, title 72, Idaho Code, and the moneys accruing thereto. It shall be the duty of the board to administer the account and conduct the business thereof, and the board is hereby vested with full authority over the account, and may do any and all things which are necessary or convenient in the administration thereof as provided or as consistent with the provisions of this chapter and the general laws of the state.

**72-1407. POWER OF BOARD TO SUE AND BE SUED.** The public employee retirement system board shall, in its official name, have power to sue and be sued in all matters arising out of the administration, management and enforcement of this chapter. The venue of all actions in which the board is a party shall be Ada County, Idaho.

**72-1408. POWER OF BOARD TO ENGAGE EMPLOYEES.** The public employee retirement system board shall have power to engage all needful assistants, experts, accountants, clerks, and other employees which may be found necessary by it, in carrying out the provisions of this chapter, the same to be paid out of the public employee retirement account.



**72-1409. EMPLOYMENT OF ATTORNEYS AND AGENTS.** The public employee retirement system board and its director are hereby given power and authority to employ attorneys and agents in the administration of this chapter, its conservation and protection.

**72-1410. RISKS AUTHORIZED TO BE INSURED—PAYMENT OF PREMIUMS.**

In event the public employee retirement system board shall determine that there are risks arising under the terms of this chapter which may be made the subject of insurance against loss to the public employee retirement account, the board is hereby authorized, at its discretion, to insure such risks; in event of such insurance, the premiums therefore shall be paid from the public employee retirement account as other claims are paid: provided, that such insurance shall not in any event be insurance of any individual but exclusively insurance of the public employee retirement account itself against loss.

**72-1411. LIABILITY OF BOARD.** The public employee retirement system board shall not, nor shall any person employed by it, be personally liable in its private capacity for or on account of any act performed or entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the provisions of chapter 14, title 72, Idaho Code.

**72-1421. FUNDS—HOW USED.** All moneys coming into the public employee retirement account under the provisions of this chapter are hereby continuously appropriated for the objects and purposes of this chapter and the uses and purposes set forth in this chapter, and to pay all costs and expenses to be incurred and the costs of administration thereof by the public employee retirement system as herein provided.

**72-1422. BENEFITS EXEMPT FROM EXECUTION—NOT ASSIGNABLE.** No benefits or payments payable under the provisions of this chapter shall be subject to execution, nor assignable, nor shall the same be hypothecated or in any manner encumbered, except as ordered by a court to be transferred to an alternate payee in an approved domestic retirement order, as provided in sections 59-1319 and 59-1320, Idaho Code.

**72-1423. FILING OF CLAIMS—PROCEDURE—JURISDICTION OF INDUSTRIAL COMMISSION.**

All claims against the public employee retirement account shall be filed with the public employee retirement system board. Any appeal from a decision of the board shall be filed with the industrial commission in as nearly as practicable the same manner that claims under the Workers' Compensation Law of the state of Idaho are filed, and the said industrial commission is hereby given jurisdiction to entertain and pass upon said claims, allow or deny claims and make awards, and the provisions of the Workers' Compensation Law of the state of Idaho relative to process, hearings and appeals are hereby made applicable to the provisions of this chapter, and said industrial commission is hereby given power and authority to make rules and regulations governing procedure in relation to said claims appealed from the public employee retirement system board.

**72-1424. PRESENTATION OF FALSE CLAIM PENALIZED.** Any person making a false claim for allowance of benefits or payment of money under this chapter, knowing

the same to be false, shall be guilty of a misdemeanor and shall be punished as provided by law.

**72-1425. WORKERS' COMPENSATION LAW NOT REPEALED.** No provision contained in this chapter shall be deemed to operate as either a repeal or modification of any provision of the Workers' Compensation Law of this state, except as hereinafter specifically set forth.

**72-1426. RECORDS TO BE PUBLIC RECORDS.** The records of the industrial commission, insofar as they relate to the administration, management, and enforcement of this chapter, shall constitute public records.

**72-1429E. SURVIVING CHILD.** A person qualifies as a surviving child of a firefighter if he or she is dependent on the firefighter at the time of the firefighter's death and meets either of the following requirements:

- a) At the time of the firefighter's death, the person is under the age of eighteen (18) years and, had the firefighter been eligible for social security benefits, would be entitled to child insurance benefits under the federal social security act by the firefighter's death; or
- b) Qualifies and has been filed for as a dependent under the age of eighteen (18) years on the firefighter's most recent internal revenue service income tax forms.

**72-1431. CONTRIBUTION FROM FIREFIGHTERS—MANNER OF**

**COLLECTION.** Beginning October 1, 1978, there is hereby levied upon and shall be paid to the public employee retirement system board, in addition to other provisions of payment to the board, a contribution from each paid firefighter establishing the right to benefits under the provisions of chapter 14, title 72, Idaho Code, as follows:

- a) For a paid firefighter who selected Option I, as provided in section 72-1434, Idaho Code, the contribution shall be equal to eleven and forty-five one hundredths percent (11.45%) of the average paid firefighter's salary or wage in the state;
- b) For a paid firefighter who selected Option II, as provided in section 72-1434, Idaho Code, the contribution shall be equal to eleven and forty-five one hundredths percent (11.45%) of his individual salary or wage. The contribution shall be collected by the employer by deducting the amount of the contribution from the firefighter's wages or salary as and when paid. The contribution shall be remitted to the retirement board by the city or fire district employing the paid firefighter no later than five (5) days after each pay date. The average paid salary or wage or the individual firefighter's salary or wage, shall be calculated annually no later than the first day of September by the director, in the manner prescribed in section 72-1432, Idaho Code. The director shall notify each city and fire district of the amount of the contribution to be collected based on the average paid salary or wage or individual firefighter's salary or wage, as applicable, for all pay periods commencing on or after the first day of October.

**72-1432. PENSION FUND CONTRIBUTIONS BY CITIES AND FIRE DISTRICTS—REMITTANCES.** Beginning October 1, 1978, it shall also be the duty of the cities and fire districts of this state employing paid firefighters who are establishing the right to benefits under the provisions of chapter 14, title 72, Idaho Code, and of the boards and officers having authority therein, to cause to be remitted to the public employee retirement system board, as an incident to and part of the current expenses of such cities and fire districts, a sum equivalent to the total contribution rate and tax percentage paid into the Idaho public employee retirement system and the social security act on other public employees plus one percent (1%) thereafter of the average paid firefighter's salary or wage in the state of Idaho or the salary or wage of each individual firefighter, to be computed according to the classification of each firefighter under Option I or Option II as defined under section 72-1434, Idaho Code, for each paid firefighter employed by said cities or fire districts. The average paid salary or wage of individual firefighter's salary or wage shall be measured and determined by the actual salary or wage earned during the twelve (12) month period beginning July 1 and ending June 30 immediately preceding September 1. Sums shall be remitted no later than five (5) days after each pay date as provided for remittances for individual firefighters as set forth in section 72-1431, Idaho Code.

**72-1433. FAILURE OF CITY OR FIRE DISTRICT TO MAKE PAYMENT—EFFECT.** In event any city or fire district of this state shall fail to contribute to the public employee retirement system board for any cause whatever, the provisions of this chapter shall apply to and be available for the payment of benefits to firefighters employed by such municipality or subdivision if the contribution required of such city or fire district shall have been, in fact, paid from any source whatever. In the event that any city or fire district shall eliminate its paid fire department, the city or fire district shall continue to make its contribution prescribed by section 72-1432, Idaho Code, necessary to fund the payment of benefits vested in any paid firefighter, or then being paid to any retired firefighter or beneficiary, of such city or fire district.

**72-1434. OPTIONAL PENSION AMOUNTS—OPTION I AND OPTION II.** Prior to July 1, 1976, but not thereafter, any paid firefighter in this state, as defined in subsection (A) of section 72-1403, Idaho Code, may elect to receive his or her retirement benefits in accordance with the provisions of Option I or Option II as hereinafter set forth. Except as otherwise provided in this chapter, in the event a firefighter fails to elect an option prior to July 1, 1976, then his or her pension benefits shall be paid to him under the provisions as set forth in Option I. Selection of option shall be nominated by written designation duly executed and filed with the public employee retirement system board. Any paid firefighter employed in the state by a city or fire district, on or after July 1, 1976, shall be employed under the provisions as set forth in Option II; provided however, that any paid firefighter employed on or after July 1, 1976, who has consistently been treated as an Option I firefighter for contribution purposes may, prior to retirement, make an election to select either Option I or Option II; provided further, that any such paid firefighter who selects Option II shall, prior to retirement, pay any additional required employee contributions and the firefighter's employer shall pay any additional required employer contributions, as determined by the board.

- 1) **OPTION I**—On or after July 1, 1976, any employed paid firefighter, as defined in subsection (A) of section 72-1403, Idaho Code, electing this option or failing to nominate an option, after payment of the contribution, as set forth in section 72-1431, Idaho Code, and after completion of years active service, as defined in subsection (H) of section 72-1403, Idaho Code, may at his or her option retire, and in the event of such retirement said firefighter shall be paid from the public employee retirement account a monthly sum during the remainder of his life equal to the percentage of the average paid firefighter's salary or wage in this state, as defined in section 72-1431, Idaho Code, and that said firefighter is entitled to under the provisions of this chapter, which said monthly sum shall vary annually, according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.
- 2) **OPTION II**—On or after October 1, 1979, any paid firefighter, as defined in subsection (A) of section 72-1403, Idaho Code, who elected Option II, or who was employed after July 1, 1976, after payment of the contribution, as set forth in section 72-1431, Idaho Code, and after completion of years active service, as defined in section 72-1403(H), Idaho Code, may at his or her option retire, and in the event of such retirement he or she shall be paid from the public employee retirement account a monthly sum during the remainder of his or her life equal to the percentage of said firefighter's average monthly salary or wage, as defined in section 72-1431, Idaho Code, that said firefighter is entitled to under the provisions as set forth in this chapter, based on his or her "average final compensation," as defined in section 72-1404, Idaho Code, which said monthly sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

**72-1435. VOLUNTARY RETIREMENT—YEARS OF SERVICE DETERMINE PENSION BENEFIT.** (1) Any Option I firefighter, as provided in section 72-1434, Idaho Code, who has had the contributions remitted as provided in sections 72-1431 and 72-1432, Idaho Code, for the same number of years as he claims for service as a paid firefighter in Idaho, may at his option retire, and upon retirement shall be paid from the public employee retirement account a monthly sum during the remainder of his life equal to:

- a) after twenty (20) years of service and contributions, forty percent (40%) of the average paid firefighter's salary or wage; or
- b) after twenty-one (21) years of service and contributions, forty-five percent (45%) of the average paid firefighter's salary or wage; or
- c) after twenty-two (22) years of service and contributions, fifty percent (50%) of the average paid firefighter's salary or wage; or
- d) after twenty-three (23) years of service and contributions, fifty-five percent (55%) of the average paid firefighter's salary or wage; or
- e) after twenty-four (24) years of service and contributions, sixty percent (60%) of the average paid firefighter's salary or wage; or
- f) after twenty-five (25) years of service and contributions, sixty-five percent (65%) of the average paid firefighter's salary or wage.

All benefit payments to Option I firefighters shall be based on the average paid firefighter's salary or wage in this state as defined in section 72-1431, Idaho Code. Option

I monthly benefit payments shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

**72-1441. DATE OF PAYMENT.** All claims for benefits originating under Option II from and after October 1, 1979 shall be payable as provided in section 72-1434 through section 72-1451, Idaho Code. All claims for benefits being paid or originating prior to October 1, 1979 shall be payable as provided in section 72-1447, Idaho Code, so long as such claims or benefits are entitled to be paid, as that section existed prior to July 1, 1976; provided, however, that any firefighter incapacitated in the performance of duty prior to the effective date of any claims under this chapter shall be entitled to benefits under Option II, if said firefighter and his or her employer have been contributing the required contributions under sections 72-1431 and 72-1432, Idaho Code.

**72-1442. PENSION PAYMENT—MAXIMUM.**

- 1) No paid firefighter, retiring under the provisions of chapter 14, title 72, Idaho Code, shall receive more than one hundred percent (100%) of the firefighter's average compensation for the three (3) consecutive years which produce the greatest aggregate compensation, which said monthly sum shall vary annually according to the determination of the "cost of living adjustment" as set forth in section 72-1471, Idaho Code.
- 2) As the amount, terms and conditions of benefits under this chapter may be revised from time to time, the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by law.

**72-1443. ACCRUED PENSION PAYMENT—FIREFIGHTERS DISCONTINUING SERVICE PRIOR TO VOLUNTARY RETIREMENT.** A paid firefighter, irrespective of date of hire, who has at least five (5) years of continuous service as defined in section 72-1403, subsections (E) and (H), Idaho Code, and who discontinues service with the city or fire district prior to meeting voluntary retirement or disability requirements, and who has not withdrawn his contributions as provided in section 72-1445 [72-1444], Idaho Code, shall be eligible, only after reaching sixty (60) years of age, to receive a monthly service retirement benefit equal to two percent (2%) of his average monthly salary, as defined in section 72-1431, Idaho Code, for each year of credited service, adjusted by the cost of living adjustment as provided under section 72-1471, Idaho Code.

**72-1444. REFUND TO FIREFIGHTER TERMINATING EMPLOYMENT—REPAYMENT ON REEMPLOYMENT—CONVERSION OF CONTRIBUTIONS—PURCHASE OF SERVICE CREDITS.**

- 1) If the employment of a paid firefighter, irrespective of date of hire, as defined in this chapter, is terminated for any reason prior to the completion of twenty (20) years of service, and he cannot qualify for benefits under any other provision of this chapter, he shall be entitled to receive at the time of said termination one hundred percent (100%) of his accumulated contributions. If such firefighter is subsequently reemployed as a paid firefighter with duties which involve or are incidental to firefighting, he may reinstate his previous credited service by repaying to the

retirement fund the full amount of his accumulated contributions provided such repayment includes payment of interest as determined by the board.

- 2) In lieu of withdrawing his accumulated contributions as provided in subsection (1) of this section, a paid firefighter may elect to convert his accumulated contributions to an equivalent benefit entitlement under the provisions of chapter 13, title 59, Idaho Code, as if such contributions had been made by the firefighter at the contribution rate of a paid firefighter under the provisions of chapter 13, title 59, Idaho Code; this conversion will normally result in a higher "years of service" factor than the firefighter actually served under the provisions of chapter 14, title 72, Idaho Code. It is legislative intent that this is precisely the effect to be achieved.
- 3) No paid firefighter may elect to proceed under the provisions of subsection (2) until he has been personally interviewed and advised by the director of the public employee retirement system, or his designee, on the choices available. The firefighter may be accompanied during such interview by any person of his choice.
- 4) Paid firefighters who did not participate as a member of the system between January 1, 1978, and December 31, 1981, because of termination from employment due to reductions in work force may purchase service credits for all or part of that period. The cost of such service credit shall be the full actuarial cost as determined by the board and shall be paid in full prior to the effective date of retirement. The employer may elect, but is not required, to participate in purchasing service credit under this section. In no event shall the retirement system be liable for payment of any such costs. Terminations from employment due to a reduction in work force are limited to terminations that resulted from the elimination of a position due to budgetary constraints.

**72-1445. PENSION PAYMENT—RETIREMENT OF FIREFIGHTER INCAPACITATED IN THE PERFORMANCE OF DUTY.**

- 1) Any paid firefighter incapacitated by injury in the performance of duty, or by illness attributable wholly or partially to service as a paid firefighter, shall be retired so long as such disability shall continue in a degree which prevents efficient service, limited to a maximum of two (2) years, and during such disability shall be paid from the public employee retirement account the monthly retirement sum to which he would be entitled if he elected to retire, but in no event less than a monthly sum equal to: (a) sixty-five per cent (65%) of the average paid firefighter's salary or wage in this state if the incapacitated firefighter is an Option I firefighter; or, (b) sixty-five per cent (65%) of the said firefighter's average monthly salary or wage, based on his average final compensation, if the incapacitated firefighter is an Option II firefighter. The monthly sum shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.

Upon application of a firefighter or his or her department head for a service disability retirement, and prior to said retirement, a medical examination of said firefighter shall be given by a medical committee consisting of a physician named by the public employee retirement system board, a physician named by the firefighter claiming benefits, and a third physician designated by the first two (2) physicians so named. If the medical committee, by a majority opinion certifies in writing, that: (1) the firefighter is physically incapacitated for the efficient performance of the duties as a paid firefighter, as defined

under the provisions of subsection (G), section 72-1403, Idaho Code, in the service of the city or fire district, (2) such incapacity is likely to be permanent, (3) the member should be retired, and (4) there is medical evidence of probative value including reports of clinical findings (such as the individual's medical history, physical status examinations), laboratory findings, diagnosis and treatment prescribed and response to such treatment, the public employee retirement system board may approve such application for retirement as provided herein.

If the disabled firefighter is still retired at the conclusion of the two (2) year period, the public employee retirement system board shall determine whether the disability renders the disabled firefighter totally incapacitated. "Totally incapacitated" as used in this section means the inability to perform work in any remunerative employment. It is not necessary for a person to be absolutely helpless or entirely unable to do anything worthy of compensation to be considered totally incapacitated. If the person is so incapacitated that substantially all the avenues of gainful employment are reasonably closed to him, his condition is within the meaning of "totally incapacitated." In evaluating whether a person is totally incapacitated, the medical factor of permanent impairment and nonmedical factors such as age, sex, education, economic and social environment, and training and usable skills shall be considered. If the disabled firefighter is totally incapacitated, then payments shall continue at the rate prescribed in this section during the period of total incapacity. A medical committee may be summoned to determine total incapacity as provided above.

- 2) If the disabled firefighter is less than totally incapacitated at the end of the two (2) year period, but has a disability which reduces his presumed ability to engage in gainful activity, payments shall be made to the disabled firefighter during the period of his disability as hereinafter provided. The board shall determine the percentage of disability suffered by the disabled firefighter as compared to the whole man. A medical committee, comprised as prescribed in this section, may be summoned to determine the percentage of disability suffered by the disabled firefighter. The disabled firefighter shall receive a disability benefit equal to the percentage that his disability bears to a totally incapacitated person.
- 3) The public employee retirement system board shall provide and maintain disability benefits for all paid firefighters. Their benefits shall be as follows:
  - a) For those paid firefighters who were hired for the first time between October 1, 1980, and July 1, 1993, the benefits provided shall be at least equal to those provided to an Option II firefighter. The benefits shall be maintained only until a paid firefighter is eligible for disability retirement under the provisions of chapter 13, title 59, Idaho Code. The costs for such benefits shall be paid from the appropriation made in section 59-1394(1) (b), Idaho Code.
  - b) For those paid firefighters hired after July 1, 1993, the benefits and eligibility therefore shall be as provided in chapter 13, title 59, Idaho Code.

#### **72-1446. PENSION PAYMENT—RETIREMENT OF INCAPACITATED FIREFIGHTERS FOR NONSERVICE.**

- 1) Any paid firefighter with not less than five (5) years' active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter who shall become totally incapacitated by reason of a personal injury or disease occurring as the

result of causes arising outside the course of his employment by the city or fire district, shall, so long as he remains totally incapacitated be paid a monthly sum equal to: (a) two per cent (2%) of the average paid firefighter's salary or wage, as defined in section 72-1431, Idaho Code, in this state for each year's active service, if the incapacitated firefighter is an Option I firefighter; or, (b) a monthly sum equal to two percent (2%) of the said firefighter's average monthly salary or wage, as defined in section 72-1431, Idaho Code, for each year's active service based on his average final compensation, as defined in section 72-1404, Idaho Code, if the incapacitated firefighter is an Option II firefighter. "Totally incapacitated" as used in this section means the inability to perform work in any remunerative employment. It is not necessary for a person to be absolutely helpless or entirely unable to do anything worthy of compensation to be considered totally incapacitated. If the person is so incapacitated that substantially all the avenues of gainful employment are reasonably closed to him, his condition is within the meaning of "totally incapacitated." In evaluating whether a person is totally incapacitated, the medical factor of permanent impairment and nonmedical factors such as age, sex, education, economic and social environment, and training and usable skills shall be considered.

- 2) In the event said firefighter has twenty-one (21) or more years' service, and has otherwise met the requirements of section 72-1435, Idaho Code, if applicable, the monthly sum shall be the same amount as would be payable in the case of voluntary retirement.
- 3) The monthly benefits provided for in this section shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.
- 4) Upon application of a firefighter or his or her department head for a nonservice disability retirement, and prior to said retirement, a medical examination of said firefighter shall be given by a medical committee, consisting of a physician named by the public employee retirement system board, a physician named by the firefighter claiming benefits, and a third physician designated by the first two (2) physicians so named. If the medical committee, by a majority opinion certifies in writing, that the firefighter is mentally or physically totally incapacitated the board may approve such application for retirement as provided herein.
- 5) All paid firefighters who are receiving nonservice disability benefits shall be subject to the provisions of sections 72-1451 and 72-1452, Idaho Code.

**72-1447. PAYMENT OF PENSIONS –AMOUNT TO BE PAID—PARTIES**

**ENTITLED THERETO.** Any firefighter, spouse, child or children of a firefighter entitled to compensation under the Workers' Compensation Law, shall draw benefits under this chapter only to the extent that the benefits under this chapter exceed those to which he or she shall be entitled under the Workers' Compensation Law of Idaho. In no case, however, will a firefighter's regular retirement benefit be equal to more than one hundred per cent (100%) of the firefighter's average compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation. If the benefit is calculated to exceed one hundred per cent (100%) of the firefighter's average compensation, the firefighter shall be eligible for and may choose either:



- 1) An annual service retirement allowance equal to the firefighter's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or
- 2) separation benefit.

72-1451. DISABILITY—REEXAMINATION—RETURN TO SERVICE. Irrespective of the date of retirement, at least once each year during the first five (5) years following the retirement of a firefighter with a disability retirement pension and in any three (3) year period thereafter, the public employee retirement system board may, or upon the disabled firefighter's application shall, require the disabled firefighter to undergo a medical examination, to be made by or under the direction of a physician designated by the board, at the place of residence of said disabled firefighter or other place mutually agreed upon. Should any disabled firefighter refuse to submit to such medical examination in any period, his or her disability retirement may be discontinued by the board and should such refusal continue for one (1) year all his or her rights in and to his or her disability retirement pension shall be revoked by the board. If upon such medical examination of said disabled firefighter, the said physician reports to the board that said disabled firefighter is physically able and capable of resuming employment in the classification held by him or her at the time of his or her retirement, he or she shall be restored to active service in the employment of the city or fire district and payment of his or her disability retirement shall cease, provided the report of the physician is concurred in by the board. A disabled firefighter so restored to active service shall from the date of his or her return to service become a member of the retirement system, thereafter in the same manner as prior to his or her disability retirement. Any service credited to him or her at the time of his or her disability retirement shall be restored to full force and effect. He or she shall be given credit for the period he or she was receiving service disability pension, provided under section 72-1445, Idaho Code; he or she shall not be given service credit for the period he or she was receiving a nonservice disability pension, provided under section 72-1446, Idaho Code. When a disabled firefighter on a disability retirement engages in work activities commensurate with the physical demands that were required in his or her classification as a firefighter, the work performed may demonstrate that said firefighter has the ability to be restored as a firefighter in the employ of the city or fire district. However, the circumstances under which the work was performed generally must be considered. Where said disabled firefighter has to discontinue his or her work after a short time because of his or her impairment, his or her work activities would not demonstrate ability to resume his or her employment as a firefighter. The findings of the adequacy of the said firefighter's performance of work activities must be concurred in by the board. If said firefighter has a disability which is amenable to corrective treatment that could be expected to restore his or her efficient performance of duties of a paid firefighter, as defined in section 72-1403(G), Idaho Code, he or she would be considered disabled, provided he or she is undergoing the treatment prescribed by the medical committee, as set forth in section 72-1445, Idaho Code.

However, nothing in this section shall be construed to require a firefighter who in good faith relies on or is treated by prayer through spiritual means alone by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical

treatment, nor shall he or his dependents be deprived of any benefits hereunder to which he would have been entitled if medical or surgical treatment were employed.

**72-1452. REVIEW OF DISABILITY.** Upon application of a firefighter receiving a disability benefit, irrespective of the date of retirement, whether service or nonservice connected, or upon the board's own motion, the disability shall be reviewed by the board to determine whether a change of condition has occurred which would justify increasing or decreasing the disability benefit. The board may make such order as is appropriate. Such review shall only occur once every three (3) years after the date of the first disability payment.

**72-1461. DEATH BENEFITS—SPOUSE AND THE SURVIVING CHILD OR CHILDREN OF FIREFIGHTER KILLED IN PERFORMANCE OF DUTY.**

- 1) In the event a paid firefighter is killed or sustains injury from which death results, while in the performance of duty and leaves surviving a spouse or a spouse with the firefighter's surviving child or children, the spouse, during his or her lifetime, shall be paid from the public employee retirement account the same pension the deceased firefighter would have been entitled to had the deceased firefighter retired as of the date of death, but in no event less than a monthly sum equal to: (a) sixty-five percent (65%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) sixty-five percent (65%) of the deceased firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. If the surviving spouse should die, the full retirement pay shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to be paid from the public employee retirement account the same pension the deceased firefighter would have been entitled to had the deceased firefighter retired as of the date of death, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code, until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.
- 2) The monthly benefits provided for in this section shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.
- 3) Those benefits payable under the provisions of subsection (1), or under the provisions of section 72-1429G, Idaho Code, which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.
- 4) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence

prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

**72-1462. DEATH BENEFITS—SPOUSE OF RETIRED FIREFIGHTER.**

- 1) In the event a paid firefighter, retired on retirement pay, shall die and leave surviving a spouse, but no minor children, such surviving spouse shall receive for life the retirement benefits to which the deceased firefighter was entitled, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code.
- 2) Those benefits payable under the provisions of subsection (1) which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.
- 3) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

**72-1463. DEATH BENEFITS—SURVIVING SPOUSE AND SURVIVING CHILD OR CHILDREN OF RETIRED FIREFIGHTER.**

- 1) In the event a paid firefighter, retired on retirement pay, shall die and leave surviving a spouse, or a spouse and firefighter's surviving child or children, the spouse, during the spouse's lifetime shall be paid the retirement pay to which the deceased firefighter was eligible. If the surviving spouse dies the same retirement pay shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first. Should a paid firefighter, retired on retirement pay, die without leaving a surviving spouse, and leave surviving him or her a minor child or children, said child or children shall be entitled to receive the pension to which said firefighter was entitled until they marry or shall attain eighteen (18) years of age, whichever occurs first.
- 2) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

**72-1464. DEATH BENEFITS—SURVIVING SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER FIVE YEARS.**

- 1) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, leaves surviving a spouse or a spouse with firefighter's surviving child or children, and who shall have completed less than twenty (20) years, but more than five (5) years of active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid

firefighter, said spouse, during the spouse's lifetime shall be paid from the account a monthly sum equal to: (a) two percent (2%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, for each year's active service, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) two percent (2%) of said firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, for each year's active service, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. The monthly sum for Option I benefits shall vary annually, according to the determination of the average paid firefighter's salary or wage in this state as set forth in section 72-1431, Idaho Code. If said surviving spouse dies, said monthly sum shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to receive said monthly sum until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.

- 2) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, leaves surviving a spouse or a spouse with firefighter's surviving child or children, and who shall have completed less than twenty-five (25) years, but more than twenty (20) years of active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter, said spouse, during his or her lifetime shall be paid from the account a monthly sum equal to the sum the firefighter would have received under the provisions of section 72-1435, Idaho Code, had said firefighter retired as of the date of his or her death, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code, and for the purposes of this section, said firefighter shall be deemed to have retired as of the date of death. The monthly retirement sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code, and if said spouse dies said monthly sum shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first, provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to receive said monthly sum until they reach the age of eighteen (18) years or shall marry, whichever occurs first.
- 3) Those benefits payable under the provisions of subsections (1) and (2) of this section which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.
- 4) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

**72-1465. DEATH BENEFITS—SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER TWENTY-FIVE YEARS.**

- 1) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, and left surviving a spouse or a spouse with the firefighter's surviving child or children, and who shall have completed twenty-five (25) years' active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter, said spouse, during his or her lifetime shall be paid from the account a monthly sum equal to: (a) sixty-five percent (65%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) sixty-five percent (65%) of said firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. The monthly sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code, and if he or she dies said monthly sum shall be paid to the firefighter's surviving child or children until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving a child or children, said firefighter's surviving child or children shall be entitled to receive the pension which said firefighter was entitled until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.
- 2) Those benefits payable under the provisions of subsection (1) which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.
- 3) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

**72-1471. COST OF LIVING ADJUSTMENT.** In addition to the monthly sums provided for under this chapter, any retired firefighter or his or her surviving spouse, child, or children drawing benefits shall be entitled to receive adjustments to such benefits, calculated on the percentage of increase or decrease in the average paid firefighter's salary or wage, in this state, as computed under the terms of section 72-1431, Idaho Code.

**72-1472. SEPARABILITY.** If any clause, section or provision of this chapter be found to be unconstitutional, the remainder of this chapter shall remain in full force and effect, notwithstanding such invalidity.

# CHAPTER 15

## Commission for Reapportionment

### **72-1501. COMMISSION FOR REAPPORTIONMENT.**

- 1) A commission for reapportionment shall be organized, upon the order of the secretary of state, in the event that:
  - a) A court of competent jurisdiction orders a redistricting of an existing state legislative or congressional plan; or
  - b) In a year ending in one (1), a new federal census is available, in which case an order shall be issued no earlier than June 1.
- 2) A commission formed pursuant to paragraph (1) (b) of this section shall be reconvened if, prior to the next general election, a court of competent jurisdiction orders the plan adopted by that commission to be revised.

**72-1502. MEMBERS.** The president pro tempore of the senate, the speaker of the house of representatives, and the minority leaders of the senate and the house of representatives shall each designate one (1) member of the commission and the state chairmen of the two (2) largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one (1) member of the commission.

Appointing authorities should give consideration to achieving geographic representation in appointments to the commission. If an appointing authority does not select the members within fifteen (15) calendar days following the secretary of state's order to form the commission, such members shall be appointed by the Supreme Court.

Should a vacancy on the commission occur during the tenure of a commission, the secretary of state shall issue an order officially recognizing such vacancy. The vacancy shall be filled by the original appointing authority within fifteen (15) days of the order. Should the original appointing authority fail to make the appointment within fifteen (15) days, the vacancy shall be filled by the Supreme Court.

No person may serve on the commission who:

- i) Is not a registered voter of the state at the time of selection; or
- ii) Is or has been within one (1) year a registered lobbyist; or
- iii) Is or has been within two (2) years prior to selection an elected official or elected legislative district, county or state party officer. The provisions of this subsection do not apply to the office of precinct committeeperson.

A person who has served on a commission for reapportionment shall be precluded from serving in either house of the legislature for five (5) years following such service on the commission.

**72-1503. POLITICAL ACTIVITIES PROHIBITED.** No person may serve on the commission who is a candidate for political office as the term "candidate" is defined in section 67-6602, Idaho Code. In the event a person serving on the commission becomes a candidate, a vacancy on the commission shall be declared by the secretary of state, and filled as provided by law.

**72-1504. COMPENSATION.** Members of the commission shall be compensated at the rate established by the citizen's committee on compensation for members of the

legislature who are engaged in legislative business while the legislature is not in session. In addition, they shall be entitled to expense reimbursement for actual travel expense, including transportation, food and lodging, when necessary for officially authorized commission business at the same rate as expense reimbursements are made for other state offices and employees.

**72-1505. ORGANIZATION AND PROCEDURE.** The commissioners shall elect, by majority vote, a member or members to serve as chairman or cochairmen and other officers as they may determine. All proceedings of the commission shall be governed by the following procedure:

- 1) All meetings of the commission shall be subject to the provisions of the open meeting law.
- 2) The commission shall provide notice of all meetings to any citizen or organization requesting the same.
- 3) Copies of the validated census database, and all other databases available to the commission, will be provided in a form, as determined by the commission, to any person at cost.
- 4) The commission shall hold meetings in different locations in the state in order to maximize the opportunity for public participation.
- 5) A quorum of the commission shall consist of four (4) members. In the event there is a previously scheduled meeting, less than a quorum may take testimony and information, but no votes other than to set a future agenda, to prepare for future meetings, and to adjourn or recess, may be taken. Any final action of the commission shall be by a vote of two-thirds (2/3) of the full membership of the commission.
- 6) A member must be present to vote.
- 7) A redistricting plan may be presented to the commission by an individual citizen or organization. All such plans shall be public information. Any citizen or organization shall provide a current mailing address and telephone number to accompany any plan submitted.

**72-1506. CRITERIA GOVERNING PLANS.** Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

- 1) The total state population as reported by the U.S. census bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.
- 2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.
- 3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.
- 4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.
- 5) Division of counties should be avoided whenever possible. Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

- 6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.
- 7) District boundaries should retain, as far as practicable, the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code.
- 8) Counties shall not be divided to protect a particular political party or a particular incumbent.

**72-1507. STAFF.** The legislative council is directed to furnish such secretarial and other staff assistance as the commission may require in the performance of its duties. The council shall prepare and submit a budget for the expenses of the commission, including staff, equipment, meetings, salary and expense reimbursement of members, for consideration by the legislature not later than the session held in a year ending in nine (9) preceding the convening of a commission.

**72-1508. FINAL REPORT.** The final report of the commission shall be filed with the office of the secretary of state not more than ninety (90) days after the commission has been organized. At the next regular or special session of the legislature, the secretary of state shall transmit a copy of the report to the president of the senate and the speaker of the house, which shall be spread upon the journals.

## **CHAPTER 16**

### **State Directory of New Hires**

**72-1601. SHORT TITLE.** This chapter shall be known and may be cited as the "Directory of New Hires Act."

**72-1601. SHORT TITLE.** This chapter shall be known and may be cited as the "Directory of New Hires Act."

**72-1603. DEFINITIONS.** As used in this chapter:

- 1) "Date of hire" or "date of rehire" means the actual commencement of employment of an employee for wages or other remuneration.
- 2) "Department" means the Idaho department of labor.
- 3) "Director" means the director of the Idaho department of labor.
- 4) "Employee" means an individual who is an employee within the meaning of 26 U.S.C. 3401. "Employee" does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting information with respect to the employee pursuant to this chapter could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- 5) "Employer" has the meaning given such term in 26 U.S.C. 3401(d) and includes labor organizations and governmental entities, except for any department, agency or instrumentality of the United States. The term "employer" does not include a multistate employer who has notified the United States secretary of health and human



services in writing that it will transmit new hire reports magnetically or electronically to a state other than Idaho.

- 6) "Labor organization" shall have the meaning given such term in 29 U.S.C. 152(5), and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in 29 U.S.C. 158(f)(3) or an agreement between the organization and the employer.
- 7) "Rehire" means to re-employ an individual who was laid off, separated, furloughed, granted leave without pay or terminated from employment at least twelve (12) months prior to re-employment.

#### **72-1604. EMPLOYER REPORTING REQUIREMENTS.**

- 1) Effective October 1, 1997, an employer doing business in the state of Idaho shall report to the department the hiring or rehiring of an employee who works in the state. The report shall contain:
  - a) The employee's name, address and social security number;
  - b) The employer's name, address and the identifying number assigned to the employer under 26 U.S.C. 6109; and
  - c) The employer's Idaho unemployment insurance account number, if any, and the employee's date of hire or rehire.
  - d) Multistate employers that have notified the secretary of health and human services that they will transmit all new hire reports to Idaho shall indicate in the reports whether each employee will be included in the employer's Idaho quarterly wage report for unemployment insurance purposes.
- 2) An employer may report by submitting a copy of the employee's United States internal revenue service form W-4 (employee's withholding allowance certificate) with the information required in subsections (1)(c) and (d) of this section (if applicable) noted thereon, or by any other means authorized by the director. An employer may submit the report by mail, telefax, or any other means the director authorizes. If an employer submits a report by mail, the report shall be deemed submitted on the postmarked date. A report transmitted by any other means shall be deemed submitted on the date the department receives it.
- 3) An employer shall submit its report not later than twenty (20) calendar days after the date of hire or rehire. Employers transmitting reports electronically shall submit two (2) transmissions each month, if necessary, not less than twelve (12) days nor more than sixteen (16) days apart.
- 4) An employer is authorized and required by this chapter to disclose the information described in subsection (1) of this section and is not liable to the employee for the disclosure or subsequent use of the information pursuant to this chapter.
- 5) Entry of employer information shall be made into a database maintained by the state directory of hires within five (5) business days of receipt from employers.

#### **72-1605. USE OF NEW HIRE INFORMATION.**

- 1) The information collected pursuant to this chapter shall be used only for the following purposes:

- a) The department of health and welfare shall use the information to assist in its administration of any public assistance program and for child support enforcement purposes.
  - b) The department of labor shall transmit the information to the national directory of new hires and may use the information to administer programs under the employment security law and may provide the information to the state tax commission for the proper administration of income tax withholding under the Idaho income tax act.
  - c) The state insurance fund and the industrial commission may use the information to administer the worker's compensation program.
- 2) Agencies that obtain information collected pursuant to this chapter shall maintain the confidentiality of the information received, except as provided in this chapter. If any employee or agent of the state, in violation of the provisions of this chapter, discloses information collected pursuant to this chapter, he or she shall be guilty of a misdemeanor.

**72-1606. COSTS.** By written agreement, the department of health and welfare shall agree to pay the department of labor all costs incurred by the department of labor under this chapter that are attributable to the department of health and welfare, including the cost of establishing and maintaining the state directory of new hires. In the absence of such an agreement, the department of labor shall have no obligations or duties under this chapter except in its capacity as an employer that is required to report new hires. An agency that obtains information pursuant to subsection (1) (c) of section 72-1605, Idaho Code, shall reimburse the department for any costs it incurs to provide the information.

**72-1607. RULES.** The director may promulgate rules to administer this chapter, pursuant to chapter 52, title 67, Idaho Code.

## **CHAPTER 17**

### **Idaho Employer Alcohol and Drug-Free Workplace Act**

**72-1701. PURPOSE AND INTENT OF ACT.**

- 1) The purpose of this act is to promote alcohol and drug-free workplaces and otherwise support employers in their efforts to eliminate substance abuse in the workplace, and thereby enhance workplace safety and increase productivity. This act establishes voluntary drug and alcohol testing guidelines for employers that, when complied with, will find an employee who tests positive for drugs or alcohol at fault, and will constitute misconduct under the employment security law as provided in section 72-1366, Idaho Code, thus resulting in the denial of unemployment benefits.
- 2) It is the further purpose of this act to promote alcohol and drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the cost delays and tragedies associated with work-related accidents resulting from substance abuse by employees.

**72-1702. TESTING FOR DRUGS AND/OR ALCOHOL.**

- 1) It is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. section 12101.
- 2) Nothing herein prohibits an employer from using the results of a drug or alcohol test conducted by a third party including, but not limited to, law enforcement agencies, hospitals, etc., as the basis for determining whether an employee has committed misconduct.
- 3) This act does not change the at-will status of any employee.

**72-1703. COST OF TESTING OF CURRENT EMPLOYEES.**

- 1) Any drug or alcohol testing by an employer of current employees shall be deemed work time for purposes of compensation.
- 2) All costs of drug and alcohol testing for current employees conducted under the provisions of this act, unless otherwise specified in section 72-1706(2), Idaho Code, shall be paid by the employer.

**72-1704. REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING.** All sample collection and testing for drugs and alcohol under this act shall be performed in accordance with the following conditions:

- 1) The collection of samples shall be performed under reasonable and sanitary conditions;
- 2) The employer or employer's agent who is responsible for collecting the sample will be instructed as to the proper methods of collection;
- 3) Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
- 4) Sample collection shall be documented and the documentation procedures shall include:
  - a) Labeling of samples so as reasonably to preclude the possibility of misidentification of the person tested in relation to the test result provided; and
  - b) Handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures;
- 5) Sample collection, storage and transportation to the place of testing shall be performed so as reasonably to preclude the possibility of sample contamination and/or adulteration;
- 6) Sample testing shall conform to scientifically accepted analytical methods and procedures;
- 7) Drug testing shall include a confirmatory test before the result of any test can be used as a basis for action by an employer under sections 72-1707 and 72-1708, Idaho Code. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography-mass spectrometry or another comparable reliable analytical method;

- 8) Positive alcohol tests resulting from the use of an initial screen saliva test, must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of reliability;
- 9) Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability.

**72-1705. EMPLOYER'S WRITTEN TESTING POLICY—PURPOSES AND REQUIREMENTS FOR COLLECTION AND TESTING.**

- 1) An employer must have a written policy on drug and/or alcohol testing that is consistent with the requirements of this act, including a statement that violation of the policy may result in termination due to misconduct.
- 2) An employer will receive the full benefits of this act, even if its drug and alcohol testing policy does not conform to all of the statutory provisions, if it follows a drug or alcohol testing policy that was negotiated with its employees' collective bargaining representative or that is consistent with the terms of the collective bargaining agreement.
- 3) Testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been communicated to affected employees, and is available for review by prospective employees.
- 4) The employer must list the types of tests an employee may be subject to in their written policy, which may include, but are not limited to, the following:
  - a) Baseline;
  - b) Preemployment;
  - c) Post-accident;
  - d) Random;
  - e) Return to duty;
  - f) Follow-up;
  - g) Reasonable suspicion.

**72-1706. RIGHT OF EMPLOYEE OR PROSPECTIVE EMPLOYEE TO EXPLAIN POSITIVE TEST RESULT AND REQUEST FOR RETEST.**

- 1) Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the employer. The employee must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person.
- 2) Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay.

**72-1707. DISCHARGE FOR WORK-RELATED MISCONDUCT—FAILURE OR REFUSAL OF TESTING.** An employer establishes that an employee was discharged for work-related misconduct, as provided in section 72-1366, Idaho Code, upon a showing that the employer has complied with the requirements of this chapter and that the discharge was based on:

- 1) A confirmed positive drug test or a positive alcohol test, as indicated by a test result of not less than .02 blood alcohol content (BAC), but greater than the level specified in the employer's substance abuse policy;
- 2) The employee's refusal to provide a sample for testing; or
- 3) The employee's alteration or attempt to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze; or
- 4) The employee's submission of a sample that is not his or her own.

**72-1708. EMPLOYER'S DISCIPLINARY OR REHABILITATIVE ACTIONS BASED ON TESTING –CLAIMANT INELIGIBLE FOR BENEFITS.**

- 1) Unless otherwise prohibited, upon receipt of a confirmed positive drug or alcohol test result or other proof which indicates a violation of an employer's written policy, or upon the refusal of an employee to provide a test sample, or upon an employee's alteration of or attempt to alter a test sample, an employer may use that test result or the employee's conduct as the basis for disciplinary or refusal-to-hire action that will result in a claimant's ineligibility to receive benefits under the provisions of section 72-1366(4), (5), (6) or (7), Idaho Code. Actions by the employer may include, but are not limited to, the following:
  - a) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;
  - b) Suspension of the employee with or without pay for a period of time;
  - c) Termination of the employee;
  - d) Other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.
- 2) Action taken pursuant to this section shall not create any cause of action against the employer.

**72-1709. FAILURE OF CLAIMANT TO ACCEPT SUITABLE WORK.** If a claimant for unemployment benefits does not accept otherwise suitable work, as contemplated in section 72-1366(4), (6) or (7), Idaho Code, because he is required to take a preemployment drug or alcohol test, the claimant has failed to accept suitable work, unless the claimant is required to pay for costs associated with a negative drug or alcohol test result.

**72-1710. LIMITATIONS OF EMPLOYER LIABILITY.**

- 1) No cause of action arises in favor of any person based upon the absence of an employer established program or policy of drug or alcohol testing in accordance with this chapter.
- 2) No cause or action arises in favor of any person against an employer for any of the following:

- a) Failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;
- b) Failure to test for, or if tested, a failure to detect, any specific drug or other physical abnormality, problem or defect of any kind; or
- c) Termination or suspension of any drug or alcohol testing program or policy.

**72-1711. FALSE TEST RESULT—PRESUMPTION AND LIMITATION OF DAMAGES IN CLAIM AGAINST EMPLOYER.**

- 1) No cause of action arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, and who has taken any action based on its established substance abuse and/or disciplinary policies, unless the employer's action was based on a false test result, and the employer knew or clearly should have known that the result was in error.
- 2) In any claim where it is alleged that an employer's action was based on a false test result:
  - a) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of section 72-1704, Idaho Code;
  - b) The employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith; and
  - c) There is no employer liability for any action taken related to a "false negative" drug or alcohol test.

**72-1712. CONFIDENTIALITY OF INFORMATION.**

- 1) All information, interviews, reports, statements, memoranda or test results, written or otherwise, received through a substance abuse testing program shall be kept confidential, and are intended to be used only for an employer's internal business use; or in a proceeding related to any action taken by or against an employer under section 72-1707, 72-1708 or 72-1711, Idaho Code, or other dispute between the employer and the employee or applicant; or as required to be disclosed by the United States department of transportation law or regulation or other federal law; or as required by service of legal process.
- 2) The information described in subsection (1) of this section shall be the property of the employer.
- 3) An employer, laboratory, medical review officer, employee assistance program, drug or alcohol rehabilitation program and their agents, who receive or have access to information concerning test results shall keep the information confidential, except as provided in subsection (4) of this section.
- 4) Nothing in this chapter prohibits an employer from using information concerning an employee or job applicant's substance abuse test results in a lawful manner with respect to that employee or applicant as provided in chapter 2, title 44, Idaho Code.

**72-1713. EMPLOYEE NOT "DISABLED."** An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this act shall not, by virtue of those results alone, be defined as a person with a "disability" for purposes of chapter 59, title 67, Idaho Code.

**72-1714. NO PHYSICIAN-PATIENT RELATIONSHIP CREATED.** A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing a drug or alcohol test, solely by the establishment of a drug or alcohol testing program in the workplace.

**72-1715. PUBLIC ENTITIES MAY CONDUCT PROGRAMS.** The state of Idaho and any political subdivision thereof may conduct drug and alcohol testing of employees under the provisions of this chapter and as otherwise constitutionally permitted.

**72-1716. IMPLEMENTATION OF ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM—QUALIFICATION OF EMPLOYER PREMIUM REDUCTION.**

- 1) For each policy of worker's compensation insurance issued or renewed in the state on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol and drug-free workplace program that complies with the requirements of sections 72-1701 through 72-1715, Idaho Code.
- 2) The state of Idaho or any political subdivision thereof that conducts drug and alcohol testing of all those employees and prospective employees for whom such testing is not constitutionally prohibited shall qualify for, and may be granted, the employer premium reduction set forth in subsection (1) of this section.

**72-1717. STATE CONSTRUCTION CONTRACTS.**

- 1) In order to be eligible for the award of any state contract for the construction or improvement of any public property or publicly owned buildings, contractors shall meet the following requirements:
  - a) Provide a drug-free workplace program that complies with the provisions of this chapter and as otherwise constitutionally permitted for employees, including temporary employees, and maintain such program throughout the duration of the contract;
  - b) Subcontract work under state construction contracts only to those subcontractors meeting the requirements of subsection (1) (a) of this section.
- 2) Any contractor submitting a bid for a state construction contract, required to comply with the provisions of this section, shall submit an affidavit along with its bid on the project verifying its compliance with the provisions of this section.