

**IDAPA 09
TITLE 01
CHAPTER 35**

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

011. GENERAL PROVISIONS.

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

01. Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-22-07)

02. Contribution Due Date. Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Section 72-1349, Idaho Code. (3-19-99)

03. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-19-99)

04. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Section 72-1360, Idaho Code. (3-19-99)

05. Penalty and Interest During Controversy. Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. Confidential Information. Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sections 9-340 and 72-1342, Idaho Code. (3-19-99)

07. Filing of an Employer Appeal. (3-30-01)

a. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Labor local office or to the UI Compliance Bureau of the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Department of Labor local office or to the UI Compliance Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Section 72-1361, Idaho Code. (3-22-07)

b. An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

c. In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. Determinations. Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, of the determination in accordance with Sections 72-1361 and -1368(5), Idaho Code. (7-1-10)

09. Determination of Payment Date. Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. (3-19-99)

10. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-19-99)

11. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, ~~or~~ furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. ~~(4-11-06)~~(7-1-14)

a. Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-22-07)

(BREAK IN CONTINUITY OF SECTIONS)

112. DETERMINING STATUS OF WORKER.

01. Determining if Worker Is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-22-07)

a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)

- b. Statements made to the Department; (3-19-99)
- c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)
- d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

02. Determining if Worker Is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

03. Proving Worker Is Free from Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-22-07)

- a. Whether the alleged employer has control over: (3-19-99)
 - i. The details of the work; (3-19-99)
 - ii. The manner, method or mode of doing the work; and (3-19-99)
 - iii. The means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)
- b. The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (4-11-06)
- c. The employer must demonstrate that it lacked a right to control the worker. (4-11-06)

04. Proving Worker Is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors may are significant and shall be considered in making this determination, although no single factor is regarded as controlling: (~~3-22-07~~)(7-1-14)

- a. ~~Skills, qualifications, and training required for the job~~ The level of skill required to perform the work; (~~3-19-99~~)(7-1-14)
 - i. A worker who performs routine tasks requiring little or no training is indicative of the worker's status as an employee. (7-1-14)
 - ii. A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. (7-1-14)
 - iii. A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. (7-1-14)
 - iv. A worker who receives all or substantially all of the worker's job training from the alleged employer is indicative of the worker's status as an employee. (7-1-14)

b. ~~Method of payment, benefits, and tax withholding~~ The extent to which the worker's services are an integral part of the alleged employer's business; (3-19-99)(7-1-14)

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. (7-1-14)

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. (7-1-14)

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. (7-1-14)

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. (7-1-14)

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. (7-1-14)

c. ~~Right to negotiate agreements with other workers~~ The permanency of the relationship; (3-19-99)(7-1-14)

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. (7-1-14)

ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. (7-1-14)

iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. (7-1-14)

iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. (7-1-14)

v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. (7-1-14)

d. ~~Right to choose sales techniques or other business techniques~~ A worker's investment in facilities and equipment; (3-19-99)(7-1-14)

i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee. (7-1-14)

ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. (7-1-14)

iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. (7-1-14)

iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools is indicative of the worker's status as an independent contractor. (7-1-14)

v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. (7-1-14)

vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. (7-1-14)

~~e. Right to determine hours~~ Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; (3-19-99) (7-1-14)

i. A worker who provides one type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. (7-1-14)

ii. A worker who provides one type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. (7-1-14)

iii. A worker who advertises independently via yellow pages, business cards, web pages or other types of media is indicative of the worker's status as an independent contractor. (7-1-14)

~~f. Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the business engaging his services~~ A worker's opportunities for profit and loss; (4-4-13) (7-1-14)

i. A worker required to carry business related expenses such as insurance, bonding or workers compensation coverage is indicative of the worker's status as an independent contractor. (7-1-14)

ii. A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. (7-1-14)

iii. A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. (7-1-14)

~~g. Special licensing or regulatory requirements for performance of work~~ Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession or business. These factors may include control of the premises, right to determine hours or who sets the rate of pay. (3-19-99) (7-1-14)

~~h.~~ Whether the work is part of the employer's general business; (3-19-99)

~~i.~~ The nature and extent of the work; (3-19-99)

~~j.~~ The term and duration of the relationship; (3-19-99)

~~k.~~ The control of the premises; (3-19-99)

~~l.~~ Whether the worker has the authority to hire subordinates; (3-19-99)

~~m.~~ Whether the worker owns or leases major items of equipment or incurs substantial unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer; (3-19-99)

- i. ~~The terms of the lease; and~~ (3-19-99)
- ii. ~~The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards.~~ (3-19-99)
- n. ~~Whether either party would be liable to the other party upon preemptory or unilateral termination of the business relationship; and,~~ (3-19-99)
- o. ~~Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business.~~ (3-19-99)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-19-99)