

CHAPTER 15 MINIMUM WAGE LAW

44-1501. Short title. This act shall be known and may be cited as the "Minimum Wage Law."

44-1502. Minimum wages. (1) Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than four dollars and seventy-five cents (\$4.75) commencing April 1, 1997, and five dollars and fifteen cents (\$5.15) commencing September 1, 1997, per hour for employment.

(2) In determining the wage of a tipped employee, the amount paid such employee by an employer shall be deemed to be increased on account of tips actually received by the employee but not by an amount in excess of thirty-three percent (33%) of the applicable minimum wage, beginning April 1, 1997, and until August 31, 1997, and thirty-five percent (35%) on and after September 1, 1997, as set forth in subsection (1) of this section. In the event a dispute arises between the employee and the employer with respect to the amount of tips actually received by the employee, it shall be the employer's burden to demonstrate the amount of tips actually received by the employee. Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) In lieu of the rate prescribed by subsection (1) of this section, an employer may pay an employee who has not attained twenty (20) years of age a wage which is not less than four dollars and twenty-five cents (\$4.25) an hour during the first ninety (90) consecutive calendar days after such employee is initially employed. No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

44-1503. Definitions. "Agriculture" includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Wages" paid to any employee includes compensation paid to such employee in the form of legal tender of the United States, checks on banks convertible into cash on demand, and also includes the reasonable cost as determined by the employment security agency to the employer of furnishing such employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employee and used by employees, and commissions of every kind, and tips or gratuities as provided by section 44-1502, Idaho Code.

"Employ" includes to suffer or permit to work. "Employee" includes any individual employed by an employer. "Employer" includes any person employing an employee or acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any state or political subdivision of a state, or any labor organization

(other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

"Person" means any individual, partnership, association, corporation, business, trust, legal representative, or any organized group of persons.

"Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

44-1504. Employees excepted from provisions of act. The provisions of this act shall not apply to:

(1) Any employee employed in a bona fide executive, administrative or professional capacity; or

(2) Anyone engaged in domestic service; or

(3) Any individual employed as an outside salesman; or

(4) Seasonal employees of a nonprofit camping program; or

(5) Any child under the age of sixteen (16) years working part time or at odd jobs not exceeding a total of four (4) hours per day with any one (1) employer; or

(6) Any individual employed in agriculture if:

(a) Such employee is the parent, spouse, child or other member of his employer's immediate family; or

(b) Such employee is older than sixteen (16) years of age and:

(i) Is employed as a harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and

(ii) Commutes daily from his permanent residence to the farm on which he is so employed, and

(iii) Has been employed in agriculture less than thirteen (13) weeks during the preceding calendar year; or

(c) Such employee is sixteen (16) years of age or under and:

(i) Is employed as a harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and

(ii) Is employed on the same farm as his parent or person standing in the place of his parent, and

(iii) Is paid at the same piece-rate basis as employees over the age of sixteen (16) years are paid on the same farm; or

(d) Such employee is principally engaged in the range production of livestock.

44-1505. Employment of workers with disabilities for subminimum wages. The payment of the minimum wage under this act shall not apply to a worker with disabilities, if the employer is issued a special certificate, as provided now or hereafter under the federal fair labor standards act.

44-1506. Apprentice. For any employment in which the minimum wage is applicable, the director of the department of labor may issue to an apprentice or learner a special license authorizing the employment of such apprentice or learner for the time and under the conditions which he determines and at a wage less than the minimum wage established by this act.

Apprentice or learner shall include a student or students enrolled in a bona fide secondary school program administered by an accredited school district which includes work training experience. The director may hold such hearings and conduct such investigations as he shall deem necessary before fixing a special wage for such apprentice or learner.

44-1507. Posting of summary of the act. Every employer subject to this act shall keep a summary of this act, furnished by the director of the department of labor, without charge, posted in a conspicuous place, in or about the premises wherein any person subject to the act is employed, or in a place accessible to his employees.

44-1508. Enforcement. (1) When the director of the department of labor has reason to believe that an employer is engaged in an act or practice which violates or will violate a provision of chapter 15, title 44, Idaho Code, he may bring an action in a court of competent jurisdiction to enjoin the act or practice, and to enforce compliance with the provisions of chapter 15, title 44, Idaho Code. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(2) A claim for unpaid minimum wages as set forth in section 44-1502, Idaho Code, may be treated as a claim for wages due and owing under chapter 6, title 45, Idaho Code. Such claim shall not be subject to the limitation contained in section 45-617(1), Idaho Code. Any action for such wages must be commenced in a court of competent jurisdiction within two (2) years after the cause of action shall have accrued.

44-1509. Discharging or discriminating against employee's asserting rights under minimum wage law prohibited. No employer shall discharge or in any other manner discriminate against any employee:

(1) Because the employee has made complaint that he has not been paid wages in accordance with chapter 15, title 44, Idaho Code.

(2) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or related to chapter 15, title 44, Idaho Code.

(3) Because the employee has testified or is about to testify in any proceedings under or related to chapter 15, title 44, Idaho Code.

CHAPTER 16

FARM LABOR CONTRACTOR LICENSING

44-1601. Definitions. As used in this chapter:

(1) "Agricultural association" means any nonprofit or cooperative association of farmers, growers or ranchers, incorporated or qualified under applicable state law.

(2) "Agricultural employer" means any person engaged in any activity included within the definition of "agriculture" in subsection (3) of this section.

(3) "Agriculture" includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market,

delivery to storage or to market or to carriers for transportation to market. This definition shall not include forestry, lumbering operations or logging contractors.

(4) "Department" means the department of labor of the state of Idaho.

(5) "Director" means the director of the department of labor.

(6) "Farm labor contracting activity" means recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker.

(7) "Farm labor contractor" means any person who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(8) "Immediate family member" means the spouse, children, brother, sister, mother or father.

(9) "Migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or temporary nature, and who is required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

(10) "Person" means an individual, association, partnership, limited liability company, corporation or other business entity.

(11) "Seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or temporary nature and is not required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

44-1602. Exemptions. The provisions of this chapter shall not apply to the following:

(1) An agricultural association engaged in farm labor contracting activities exclusively for members of that association.

(2) Any individual engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(3) Agricultural employers exchanging agricultural labor or services with each other, provided the work is performed on land owned or leased by the agricultural employers.

(4) Any common carrier that would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one that holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and holds a valid certificate or authorization for such purpose from an appropriate local, state or federal agency.

(5) Any nonprofit charitable organization, public entity or private nonprofit educational institution.

(6) Any employee of a person described in subsections (1) through (5) of this section when performing farm labor contracting activities exclusively for such person, unless the employee receives a commission or fee based upon the number of workers recruited.

44-1603. License -- Application -- Contents. (1) Except as otherwise provided, no person shall act as a farm labor contractor unless such person holds a valid license issued by the department.

(2) An application for a farm labor contractor's license shall be sworn to by the applicant and shall be submitted on a form prescribed by the department that shall require, but not be limited to, the following information and documentation:

- (a) The applicant's name, Idaho address and all other temporary and permanent addresses the applicant uses or knows will be used in the future;
- (b) Two (2) recent, passport sized, color photographs of the applicant, or the applicant's authorized agent when the applicant is not a natural person;
- (c) A statement by the applicant of all facts required by the department concerning the applicant's fitness, competency, and qualifications to engage in the business of farm labor contracting;
- (d) A statement by the applicant of all facts required by the department concerning the manner and method by which the applicant proposes to conduct operations as a farm labor contractor;
- (e) A certificate of insurance issued by the applicant's auto insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice for all vehicles used in the operation of the farm labor contracting business;
- (f) A certificate of workers' compensation insurance issued by the applicant's workers' compensation insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice;
- (g) Whether the applicant has or was ever granted a farm labor contractor's license in any other jurisdiction;
- (h) Whether the applicant was ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any other jurisdiction;
- (i) The names and addresses of all persons financially interested, whether as partners, limited liability company members, shareholders, associates, or profit sharers in the applicant's proposed operation as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any such persons were ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any jurisdiction; and
- (j) The following declaration by the applicant, or the applicant's authorized agent when the applicant is not a natural person: "With regards to any action filed against the applicant concerning the applicant's activities as a farm labor contractor, the applicant appoints the director of the Idaho Department of Labor as the applicant's lawful agent to accept service of summons when the applicant is not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service."

44-1604. Applicant -- Proof of financial responsibility -- Payment of claims. (1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of employees' wages pursuant to chapter 6, title 45, Idaho Code, and the payment of any claims awarded pursuant to section 44-1613, Idaho Code.

(2) Proof of financial responsibility shall be in the form of a surety bond from a company licensed to do business in the state of Idaho. The surety bond shall be in the amount of ten thousand dollars (\$10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars (\$30,000) if the contractor employs more than twenty (20) employees.

(3) The surety bond shall be for the benefit of the farm labor contractor's employees and shall be conditioned upon the payment of all sums legally owing to them.

(4) The surety bond shall be executed to cover the farm labor contractor's liability for the period for which the license is issued, during which time the bond cannot be canceled or otherwise terminated.

(5) All claims against the bond shall be unenforceable unless request for payment of a court judgment, or lien pursuant to section 45-620, Idaho Code, has been sent by certified mail to the surety. The surety company shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total amount of the bond.

(6) In lieu of the surety bond required by this section, an applicant or farm labor contractor may deposit with the department cash or other security acceptable to the director. The deposit shall not be less than ten thousand dollars (\$10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars (\$30,000) if the farm labor contractor employs more than twenty (20) employees. The security deposited with the director in lieu of the surety bond shall be returned to the farm labor contractor at the expiration of two (2) years after the farm labor contractor's license has expired or been otherwise terminated, unless the director has received written notice that a legal or administrative action has been instituted against the farm labor contractor for failing to comply with the requirements of this chapter.

44-1605. Application fee -- Appropriation. Each application shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250). All fees collected shall be continuously appropriated to the department and used for the administration of this chapter.

44-1606. Department -- Licensing duties -- License -- Term -- Renewal fee. (1) The department shall issue licenses to persons who are at least eighteen (18) years of age and who have shown themselves to be fit, competent and qualified to engage in the business of farm labor contracting. Factors to be considered by the department in making this determination shall include, but not be limited to, the following:

- (a) Whether an applicant has unsatisfied judgments or administrative decisions requiring the payment of unpaid wages;
- (b) Whether an applicant has worker's compensation coverage for each employee;
- (c) Whether an applicant has paid unemployment insurance contributions when due;
- (d) Whether an applicant has violated any provision of this chapter or the rules adopted hereunder;
- (e) Whether an applicant was ever denied a license or had a license revoked, suspended or not renewed under the farm labor contractor laws of any jurisdiction;
- (f) Whether an applicant has employed an agent who has had a farm labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of this chapter or the rules adopted hereunder; and
- (g) Whether an applicant, when required by law, has failed or refused to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of the applicant's employees.

(2) The industrial commission shall make records available to the department, including records that are otherwise exempt from disclosure under section 9-340B, Idaho Code, for the purpose of determining an applicant's qualifications under subsection (1)(b) of this section. Records disclosed under this subsection shall not be further disclosed by the department.

(3) The department shall issue a license within fifteen (15) business days of receipt of a completed application if the department determines the applicant to be fit, competent and qualified to engage in the business of farm labor contracting. An application shall be deemed completed when all required information and documentation has been submitted to the department.

(4) The license shall not be transferable or assignable.

(5) The first year of licensing shall run from April 1st to the following March 31st and each license shall expire on March 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department. Beginning January 1, 2004, the licensing year shall run from January 1st to the following December 31st and each license shall expire on December 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department.

(6) A license may be renewed annually upon payment of a nonrefundable fee of two hundred fifty dollars (\$250) and by providing the following:

(a) Proof of financial responsibility as required by section 44-1604, Idaho Code;

(b) A certificate of insurance as required by section 44-1603(2)(e), Idaho Code; and

(c) A certificate of insurance as required by section 44-1603(2)(f), Idaho Code.

The department may require any person seeking renewal to file a new application showing the person to be fit, competent and qualified to continue to engage in the business of farm labor contracting.

(7) The department shall maintain a central public registry of all persons issued a farm labor contractor's license.

44-1607. Farm labor contractor -- Duties. A farm labor contractor shall:

(1) Carry his farm labor contractor license at all times and exhibit such license upon request to anyone with whom the farm labor contractor intends to deal in his capacity as a farm labor contractor.

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made.

(3) Pay or distribute promptly when due to the persons entitled all money or other things of value entrusted to the farm labor contractor for that purpose.

(4) Comply with the terms and provisions of all agreements or contracts entered into by the farm labor contractor.

(5) Comply with all applicable state laws and rules.

(6) Provide to the department certified copies of payroll records for any payment period requested by the department.

(7) Provide to each employee at the time of hiring, recruiting, soliciting or supplying such employee, whichever occurs first, a written statement in English or, as necessary and reasonable, in Spanish or other language common to agricultural workers who are not fluent or literate in English, that contains a description of:

(a) The rate of compensation and the method of computing the rate of compensation;

(b) The terms and conditions of employment, including the name and address of the farm labor contractor, the place of employment, the approximate length of the period of employment and the approximate starting and ending dates;

- (c) The terms and conditions of any bonus offered and the manner of determining when the bonus is earned;
- (d) The terms and conditions of any loan made to the employee;
- (e) The terms and conditions of any housing, transportation, equipment, health care, day care or any other employee benefit to be provided by the farm labor contractor or the farm labor contractor's agent, and the costs to be charged for each item;
- (f) The name and address of the surety on the farm labor contractor's bond;
- (g) The employee's rights and remedies, including an employee's right to make a claim against the farm labor contractor's surety bond.

(8) Provide to the employee each time the employee receives a compensation payment from the farm labor contractor a written statement itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked and, if the work was done on a piece basis, the number of pieces completed.

(9) For each employee make, keep and preserve for three (3) years the following information:

- (a) The basis on which wages were paid;
- (b) The number of piecework units earned, if paid on a piecework basis;
- (c) The number of hours worked;
- (d) The total pay period earnings;
- (e) The specific sums withheld and the reason for withholding each sum;
- (f) The net pay; and
- (g) The name and address of the owner of all operations, or the owner's agent, where the employee worked.

44-1608. Farm labor contractor -- Applicant for license -- Prohibited acts. A farm labor contractor or an applicant for a farm labor contractor's license shall not:

- (1) Make misrepresentations or false statements on the application for a license.
- (2) Make or cause to be made, to any person, any false, fraudulent or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent or misleading information concerning the terms, conditions or existence of any employment.
- (3) Solicit, induce or cause to be solicited or induced the violation of an existing contract of employment.
- (4) Violate, or assist another person to violate the requirements of this chapter.
- (5) By any force, intimidation, or threat, including threat of deportation, induce any employee of the farm labor contractor to give up any part of the compensation to which the employee is entitled under federal or state wage payment laws.

44-1609. License -- Denial, revocation, suspension, refusal to renew. (1) The department may deny, revoke, suspend or refuse to renew a farm labor contractor license when:

- (a) The applicant or licensee, or the agent of the applicant or licensee, has had his farm labor contractor's license denied or revoked in any jurisdiction within three (3) years of the date of application;
- (b) The licensee or his agent has violated or failed to comply with any provision of this chapter or the rules promulgated hereunder;
- (c) The applicant or licensee has an unsatisfied court judgment or final administrative decision against him for unpaid wages;

- (d) The applicant or licensee made false or misleading statements on, or provided false or misleading information with, his application for a license;
- (e) The applicant or licensee fails to maintain proof of financial responsibility as required by section 44-1604, Idaho Code;
- (f) The applicant or licensee fails to provide, or the department receives notice of cancellation of any certificates of insurance required by section 44-1603, Idaho Code;
- (g) The applicant or licensee fails to pay unemployment insurance contributions when due; or
- (h) The applicant or licensee, when required by law, fails or refuses to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of his employees.

(2) Before the department denies, revokes, suspends or refuses to renew a license, the applicant or licensee shall be given written notice of the reasons for the licensing action and an opportunity for a hearing.

44-1610. Action against license -- Hearing. (1) The contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall not apply to licensing actions under this chapter.

(2) When it appears, pursuant to section 44-1609, Idaho Code, that sufficient cause exists for the denial of any application for, the revocation or suspension of, or refusal to renew any license required by this chapter, the department shall serve notice, in the manner provided for in subsection (7) of this section, to the applicant or license holder stating the proposed adverse action to be taken, the grounds on which such action is based, and that the department's proposed action shall become final unless, within ten (10) calendar days of the date of mailing of the notice, the aggrieved party files with the department a written request for a hearing.

(3) A written request for a hearing may be filed by personal delivery, by mail, or by fax to the wage and hour section of the department at the address indicated on the notice. The date of personal delivery shall be noted on the request and shall be deemed the date of filing. If mailed, the hearing request shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed request that is received by the wage and hour section by 5:00 p.m. on a business day shall be deemed filed on that date. A faxed request that is received by the wage and hour section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

(4) Reasonable notice of the hearing, containing the date, time, place and purpose of the hearing, shall be served on all parties to the hearing in the manner provided for in subsection (7) of this section.

(5) The hearing shall be conducted by an employee of the department designated by the director to be the hearing officer, who shall not be bound by statutory rules of evidence or by technical or formal rules of procedure. A record shall be made of the sworn testimony. Every party to the proceeding shall have the right to counsel at their own expense and a full opportunity to be heard, including such cross-examination as may be appropriate. The hearing officer, as soon after the conclusion of the hearing as possible, on the basis of the record made at the hearing, shall issue a decision and serve it on all parties to the hearing in the manner provided for in subsection (7) of this section.

(6) The decision of the hearing officer shall be a final agency order and shall be effective on the date it is issued, subject only to the judicial review provisions of chapter 52, title 67, Idaho Code.

(7) Any notice or decision required by this section 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 completed on the date of mailing. The date indicated on the notice or decision as the "date of mailing" shall be presumed to be the date the document was deposited in the United States mail, unless otherwise shown by a preponderance of competent evidence.

44-1611. Joint liability. (1) If an agricultural employer uses a farm labor contractor who is properly licensed and bonded under the provisions of this chapter, that agricultural employer shall not be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the farm labor contractor who performed work for that agricultural employer.

(2) An agricultural employer who knowingly uses the services of an unlicensed farm labor contractor shall be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the unlicensed farm labor contractor who performed work for that agricultural employer. In making determinations under this section, any user of a farm labor contractor may rely upon either the license issued by the department to the farm labor contractor under section 44-1603, Idaho Code, or the department's representation that such contractor is licensed as required by this chapter.

44-1612. Claim for wages -- Exclusive remedy. A claim for unpaid wages by an employee of a farm labor contractor shall be treated as a claim for wages under chapter 6, title 45, Idaho Code.

44-1613. Private right of action. Except as provided for in section 44-1612, Idaho Code, any person aggrieved by a violation of this chapter may bring a civil action in a court of competent jurisdiction for injunctive relief, damages or both. If the court finds that any person violated any of the provisions of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages, or one thousand dollars (\$1,000) per violation, whichever is greater. The court shall also award a prevailing plaintiff reasonable attorney's fees and costs. No action under this section may be commenced later than two (2) years after the date of the violation giving rise to the right of action.

44-1614. Service of process when unlicensed contractor is unavailable. In any action arising out of the activities of an unlicensed farm labor contractor within this state who is not in the state or is otherwise unavailable for service of process in this state, the unlicensed farm labor contractor may be served by mailing a certified true copy of the summons and complaint to the director; the last-known address, if any, of the unlicensed farm labor contractor; and any other address the use of which the plaintiff knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

44-1615. Retaliation prohibited. No farm labor contractor may discharge or in any other manner discriminate against an employee because that employee made a claim against the farm labor contractor pursuant to this chapter, testified or is about to testify in any proceedings

brought pursuant to this chapter, or discussed or consulted with anyone concerning the employee's rights under this chapter.

44-1616. Violations -- Penalty. (1) Any person who intentionally defaces, alters or changes a farm labor contractor license, or who uses the license of another, or who knowingly permits another person to use his license or acts as a farm labor contractor without a license shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000), or up to sixty (60) days in jail or both. Each violation shall constitute a separate offense.

(2) Any person who violates any other provision of this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed three hundred dollars (\$300), or up to thirty (30) days in jail or both. Each violation shall constitute a separate offense.

44-1617. Department -- Administrative rules. The department may adopt rules reasonably necessary for the administration of this chapter.

44-1618. Severability. The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

CHAPTER 18 EMPLOYMENT OF FIREFIGHTERS

44-1801. Definitions. As used in this act the following terms shall have the following meanings:

(1) "Firefighter" shall mean the paid members, except supervisors, of any regularly constituted fire department in any city, county, fire district or political subdivision within the state. The term "supervisor" means any individual having authority in the interest of an employer to hire, direct, assign, promote, reward, transfer, lay off, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to effectively recommend such action if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; provided, the term "supervisor" shall include only those individuals who perform a preponderance of the above specified acts of authority on a day-to-day basis; and provided further, a supervisor's administrative responsibilities must include demonstrated involvement in policy and budget formulation for the department. Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either state or local, related to collective bargaining.

(2) "Corporate authority" shall mean the council, commission, trustees, or any other governing body of any city, county, fire district or political subdivision whose duty it is to establish wages, working conditions, and other conditions of employment of firefighters.

44-1802. Collective bargaining rights of firefighters -- Representation by bargaining agent. The firefighters in any city, county, fire district or other political subdivision in the state of Idaho shall have the right to bargain collectively with their respective cities, counties, fire

districts or political subdivisions and to be represented by a bargaining agent in such collective bargaining process as to wages, rates of pay, working conditions and all other terms and conditions of employment.

44-1803. Recognition of exclusive bargaining agent. The organization selected by the majority of the firefighters in any city, county, fire district or political subdivision shall be recognized as the sole and exclusive bargaining agent for all of the firefighters in the fire department, unless and until recognition of such bargaining agent is withdrawn by vote of the majority of the firefighters of such department.

44-1804. Obligation of corporate authorities to bargain in good faith -- Entering into written contract. It shall be the obligation of the city, county, fire district or other political subdivision through its proper corporate authorities or their designees, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from said bargaining agent of the request by the firefighters for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations between the bargaining agent and the proper corporate authorities to be reduced to a written contract.

44-1805. Submission of issues to fact finding commission. In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to a fact finding commission.

44-1806. Appointment of fact-finding commission -- Public officials and employees ineligible -- Payment of expenses. Within five (5) days from the expiration of the thirty (30) day period referred to in section 44-1805, Idaho Code, the bargaining agent and the corporate authorities shall each select and name one (1) member of a fact-finding commission respectively and shall immediately thereafter notify each other in writing of the names and addresses of the person so selected. The two (2) members so selected and named shall within ten (10) days from and after the expiration of the five (5) day period mentioned above, agree upon and appoint and name a third member. If on the expiration of the ten (10) day period the two (2) members are unable to agree upon the appointment of a third member, the director of the department of labor shall appoint such third member upon request in writing from either the bargaining agent or the corporate authorities. The third member of the fact-finding commission, whether appointed as result of agreement between the two (2) members selected by the bargaining agent and the corporate authorities, or appointed by the director, shall act as chairman of the fact-finding commission. No member of the fact-finding commission shall be an elected official, or employee of the city, county, fire district, or political subdivision affected. Any expenses incurred by the fact-finding commission shall be equally shared by the bargaining agent and the corporate authorities.

44-1807. Negotiated agreements constitute contract. Any agreements actually negotiated between the bargaining agent and the corporate authorities either before or within thirty (30) days after the fact finding commission's recommendation shall constitute the collective

bargaining contract governing the fire fighters [firefighters] and said city, county, fire district, or political subdivision for the period stated therein.

44-1808. Notice of request for bargaining on matters requiring appropriation. Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city, county, fire district or political subdivision are included as a matter of collective bargaining conducted under the provisions of this act, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities at least ninety (90) days before the last day on which money can be appropriated by the city, county, fire district or political subdivision to cover the contract period which is the subject of the collective bargaining procedure.

44-1809. Notice of hearing before fact finding commission -- Presentation of evidence -- Determination by majority. (a) The fact finding commission shall appoint a time and place for hearing and cause notification to the parties consisting of the bargaining agent and the corporate authorities to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice requirement. The fact finding commission may adjourn the hearing from time to time as necessary, and on request of a party for good cause, or upon their own motion, may postpone the hearing. The fact finding commission may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(b) All interested parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the members of the fact finding commission but a majority may determine any question and render a recommendation. If, during the course of the hearing a member of the fact finding commission for any reason ceases to act or serve on said commission, the remaining members appointed to act may continue with the hearing and determination of the controversy.

44-1810. Written recommendation of commission -- Copies to parties. The recommendation of the fact finding commission shall be in writing and signed by the members joining in the recommendation. The fact finding commission shall deliver a copy of the recommendation to the bargaining agent, corporate authorities, and any other party requesting such recommendation.

44-1811. Strikes prohibited during contract. Upon consummation and during the term of the written contract or agreement, no firefighter shall strike or recognize a picket line of any labor organization while in the performance of his official duties.

44-1812. Minimum standards for employing paid firefighters. (1) No person may be employed as a paid firefighter as defined in sections 44-1801(1) and 59-1391(f), Idaho Code, until that person:

(a) Has met and has been certified by the examining physician selected by the corporate authority as having met the minimum medical and health standards set forth in subsection (4) of this section;

(b) Is at least eighteen (18) years of age at the time of appointment; and

(c) Has met prescribed physical performance standards as adopted by the corporate authority.

(2) A true copy of the medical history of the applicant, completed and signed by the examining physician shall be sent to the corporate authority. Such records shall be furnished prior to the date of active employment of the applicant. If an applicant fails to meet the requirements of subsection (1) of this section, the applicant shall not be eligible for employment and the corporate authority shall provide notice of ineligibility to the applicant.

(3) Physical examination records shall be a part of the permanent file of the corporate authority.

(4) For purposes of this section, the phrase "minimum medical and health standards" shall mean the replacement medical evaluation provisions of chapter 2-3 of the 1997 edition of NFPA 1582, the standard on medical requirements for firefighters published by the national fire protection association. The cost of the medical examination contemplated by this section is to be paid by the corporate authority, which shall make copies of NFPA 1582 available upon request.

(5) Nothing in this section shall apply to paid firefighters who are employed as such before October 1, 1980, as long as they continue in such employment; nor to promotional appointments after becoming a member of a fire department of any corporate authority; nor to the reemployment of a paid firefighter by the same or a different corporate authority within two (2) years after the termination of his employment; nor to the reinstatement of a paid firefighter who has been on military or disability leave, disability retirement status, or who was terminated because of a reduction in force or leave of absence status.

CHAPTER 6 CLAIMS FOR WAGES

45-601. Definitions. Whenever used in this chapter:

(1) "Claimant" means an employee who filed a wage claim with the department in accordance with this chapter and as the director may prescribe.

(2) "Department" means the department of labor.

(3) "Director" means the director of the department of labor.

(4) "Employee" means any person suffered or permitted to work by an employer.

(5) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person.

(6) "Wage claim" means an employee's claim against an employer for compensation for the employee's own personal services, and includes any wages, penalties, or damages provided by law to employees with a claim for unpaid wages.

(7) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece or commission basis.

45-602. Wages of employees preferred. In all assignments of property made by any person to trustees or assignees, or in proceedings in insolvency, an employee's wages for services rendered within sixty (60) days preceding such assignment, not exceeding five hundred dollars (\$500), is a preferred claim, and must be paid by such trustees or assignees before any creditor or creditors of the assignor or insolvent debtor; provided, that whenever any such employee has

filed a notice of lien against any property of the assignor, the employee may elect between the provisions of this section and the employee's lien.

45-603. Preference of wages -- Death of employer. In case of the death of any employer, the wages of each employee for services rendered within the sixty (60) days preceding the death of the employer, not exceeding five hundred dollars (\$500), rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering the estate, and the allowance of the surviving spouse and minor children, and must be paid before any other claims against the estate of the deceased person.

45-604. Preference of wages on execution and attachment. In cases of executions, attachments and writs of similar nature, issued against any person or his property, except for claims for labor done, any employee who has claims against the defendant for labor done upon the property levied on, may give notice of their claim and the amount thereof, sworn to by the person making the claim, to the creditor or the creditor's agent or attorney and to the officer executing any of such writs, at any time before the actual sale of the property levied upon; and, unless such claim is disputed by the debtor or creditor, such officer must pay to such person out of the proceeds of the sale of any property on which such person has bestowed labor, the amount such person is entitled to receive for his services rendered within the sixty (60) days preceding the levy of the writ. If any or all other claims so presented and claiming preference under this section are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten (10) days for the recovery thereof, and must prosecute the action with due diligence or be forever barred from any claim of priority of payment thereof, and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action, and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

45-605. Debtor or creditor may dispute claim. The debtor or creditor intending to dispute a claim presented under the provisions of section 45-604, Idaho Code, shall, within ten (10) days after receiving notice of such claim, serve upon the claimant and the officer executing the writ, a statement in writing, verified by the oath of the debtor, or his agent or attorney, or the oath of the person disputing such claim, or his agent or attorney, setting forth that no part of said claim, or not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the sixty (60) days preceding the levy of the writ. If the claimant brings suit on a claim which is disputed in part only, and fails to recover a sum exceeding that which was admitted to be due, the claimant shall not recover costs, but costs shall be adjudged against the claimant.

45-606. Payment of wages upon separation from employment. (1) Upon layoff, or upon termination of employment by either the employer or employee, the employer shall pay or make available at the usual place of payment all wages then due the employee by the earlier of the next regularly scheduled payday or within ten (10) days of such layoff or termination, weekends and holidays excluded. However, if the employee makes written request upon the employer for earlier payment of wages, all wages then due the employee shall be paid within forty-eight (48) hours of the receipt of such request, weekends and holidays excluded.

(2) Unless exempt from the minimum wage requirements of chapter 15, title 44, Idaho Code, employees who are not being paid on an hourly or salary basis must be paid at least the applicable minimum wage for all hours worked in the pay period immediately preceding layoff or termination from employment. The minimum wage payment shall be made within the same time limitations provided for in subsection (1) of this section. Any additional wages owed to employees shall be paid by the next regularly schedule payday.

(3) The director may, upon application showing good and sufficient reasons, grant an employer a temporary extension to any time limitation provided in this section.

45-607. Penalty for failure to pay. Whenever an employer fails to pay all wages then due an employee at the times due under section 45-606, Idaho Code, then the employee's wages shall continue at the same rate as if services had been rendered in the manner as last employed until paid in full or for fifteen (15) days, whichever is less. However, in no event can the maximum penalty exceed seven hundred fifty dollars (\$750), and if the full amount of the wages are paid prior to the filing of a lien pursuant to section 45-620, Idaho Code, the maximum penalty shall not exceed five hundred dollars (\$500).

Any employee who secretes or absents himself to avoid payment, or refuses to receive payment when made available as provided for in section 45-606, Idaho Code, shall not be entitled to any penalty under this chapter.

45-608. Pay periods -- Penalty. (1) Employers shall pay all wages due to their employees at least once during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks without charge to the employee. Nothing contained herein shall prohibit an employer from depositing wages due or to become due or an advance of wages to be earned in an account in a bank, savings and loan association or credit union of the employee's choice, provided that the employee has voluntarily authorized such deposit. If the employee revokes such authorization for deposit, it shall be deemed terminated and the provisions herein relating to the payment of wages shall apply.

(2) The end of the pay period for which payment is made on a regular payday shall be not more than fifteen (15) days before such regular payday; provided that if the regular payday falls on a nonworkday payment shall be made on a preceding workday.

(3) The director may, upon application showing good and sufficient reasons, permit an employer to withhold payment of wages more than the fifteen (15) day period as specified in subsection (2) of this section.

(4) The director may, pursuant to his authority, levy a civil penalty upon any employer who has failed to obtain the exemption provided in subsection (3) of this section and who has been determined to have undertaken a consistent pattern of untimely payment of wages to his employees. Such penalty shall not exceed five hundred dollars (\$500) for such employer per pay period.

45-609. Withholding of wages. (1) No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law; or
- (b) The employer has a written authorization from the employee for deductions for a lawful purpose.

(2) An employer shall furnish each employee with a statement of deductions made from the employee's wages for each pay period such deductions are made. The willful failure of any employer to comply with the provisions of this subsection shall constitute a misdemeanor.

45-610. Records to be kept by employer -- Notice to employees. (1) Employment records must be maintained for a minimum period of three (3) years from the last date of the employee's service.

(2) Every employer shall give notice to its employees at the time of hiring of the rate of pay and the usual day of payment, and shall provide such information in writing to the employee upon the employee's request.

(3) Every employer shall give notice to its employees of any reduction in wages prior to the work being performed and shall provide such information in writing to the employee upon the employee's request.

45-611. Wages that are in dispute. (1) In case of a dispute as to the amount of wages due an employee, the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed. Whenever an employer pays all wages not in dispute within the time limits set forth in section 45-606, Idaho Code, no penalties may be assessed under this chapter, unless it can be shown that the remaining balance of wages due were withheld willfully, arbitrarily and without just cause.

(2) The acceptance by an employee of a check with any restrictive endorsement as payment under this section shall not constitute a release or accord and satisfaction with respect to the disputed amount.

45-612. Filing false claim -- Penalty. (1) Any person making a false claim for wages or other compensation under this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punishable by confinement in the county jail for a period not to exceed six (6) months, or by a fine, not to exceed one thousand dollars (\$1,000), or both.

(2) Any employee initiating a civil proceeding to collect unpaid wages or other compensation, which is based in whole or in part on a false claim which the employee knew to be false at the time the employee brought the action, shall be liable for attorney's fees and costs incurred by the employer in defending against the false claim. Proof of a criminal conviction under subsection (1) of this section shall not be required for recovery of the fees and costs provided for in this subsection.

45-613. Discharging or retaliating against employees asserting rights under this chapter. No employer shall discharge or in any other manner retaliate against any employee because that employee has made a complaint to the employer, or to the department, or filed suit alleging that the employee has not been paid in accordance with the provisions of this chapter, or because the employee has testified or may be about to testify in an investigation or hearing undertaken by the department. The provisions of this section shall not be construed to otherwise restrict the discipline or termination of an employee.

45-614. Collection of wages -- Limitations. Any person shall have the right to collect wages, penalties and liquidated damages provided by any law or pursuant to a contract of employment, but any action thereon shall be filed either with the department or commenced in a court of competent jurisdiction within two (2) years after the cause of action accrued, provided, however, that in the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within six (6) months from the accrual of the cause of action. It is further provided that if any such cause of action has accrued prior to the effective date of this act, and is not barred by existing law, action thereon may be commenced within six (6) months from the effective date of this act. In the event an action is not commenced as herein provided, any remedy on the cause of action shall be forever barred.

45-615. Collection of wage claims by suit -- Attorney's fees and costs. (1) As an alternative to filing a wage claim with the department, any person may assert a wage claim arising under this chapter in any court of competent jurisdiction or pursue any other remedy provided by law.

(2) Any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include all costs and attorney's fees reasonably incurred in connection with the proceedings and the plaintiff shall be entitled to recover from the defendant either the unpaid wages plus the penalties provided for in section 45-607, Idaho Code; or damages in the amount of three (3) times the unpaid wages found due and owing, whichever is greater.

45-616. Enforcement. (1) The director shall enforce and administer the provisions of this chapter. The director is empowered to hold hearings and otherwise investigate violations or alleged violations of this chapter and any rules promulgated pursuant thereto, and to issue orders for administrative remedies as authorized.

(2) The director is empowered to enter and inspect places, question employees, and investigate facts, conditions, or matters as the director may deem appropriate to determine whether any person has violated any provision of this chapter or any rule promulgated thereunder or which may aid in the enforcement of the provisions of this chapter.

(3) The director shall have the power to administer oaths and examine witnesses under oath or otherwise, and issue subpoenas to compel the attendance of witnesses and the production of any evidence deemed necessary in the administration of this chapter.

(4) If any person fails to comply with any subpoena lawfully issued, it shall be the duty of the district court, on application by the director, to compel compliance by citation for contempt.

(5) An employer shall furnish to the department the information the department is authorized to acquire under this section when the request is submitted in writing.

(6) The department shall attempt for a period of not less than two (2) years from the date of collection, to make payment of wages collected under this chapter to the person entitled thereto. Wage claims collected by the department that remain unclaimed for a period of more than two (2) years from the date collected shall on June 30th of each year be forfeited and retained in the department's account and used for the administration of this chapter.

45-617. Administrative proceedings for wage claims. (1) Wage claims filed with the department, excluding potential penalties, are limited by the same dollar amount that limits actions before the small claims department of the magistrate's division of the district court.

(2) The contested case provisions of the Idaho administrative procedures act, chapter 52, title 67, Idaho Code, are inapplicable to proceedings involving wage claims under this chapter.

(3) Once a wage claim has been properly filed with the department, the provisions of this section shall provide the exclusive remedy for resolving the wage claim. If at any time after the filing of the wage claim the department determines that it lacks jurisdiction over the wage claim, the department shall provide written notification of its determination to the claimant and the employer. The claimant may then assert the wage claim in any court of competent jurisdiction. In the event the department determines that it lacks jurisdiction over the wage claim, the limitation periods provided for in section 45-614, Idaho Code, shall be tolled from the date the wage claim was filed with the department until the date notice that the department lacks jurisdiction is mailed to the claimant, as provided in subsection (5) of this section.

(4) A department compliance officer shall examine wage claims filed with the department and, on the basis of the facts found, shall determine whether the wage claimant is entitled to an award for unpaid wages and penalties. If the compliance officer is unable to determine whether wages and penalties are owed, the claim may be referred to a hearing officer for a determination. The department may adjust the amount of penalties awarded for an employer's failure to comply with the requirements of section 45-606, Idaho Code. The department may award no penalty, or may award a penalty in any amount up to the maximum amount allowed under section 45-607, Idaho Code. No penalty shall be awarded by the department unless a specific finding is made that wages were withheld willfully, arbitrarily and without just cause. The department's determination shall include findings of fact and conclusions of law. Before the determination becomes final or an appeal is filed, the compliance or hearing officer that issued the determination may, on their own motion, issue a revised determination. The determination or revised determination shall become a final determination unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by the claimant or the employer with the department. If an appeal is not timely filed, the amount awarded by a final determination shall become immediately due and payable to the department. A final determination may be enforced by the department in accordance with section 45-618, Idaho Code.

(5) The claimant and the employer 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. The date indicated on department determinations or decisions as the "date of mailing" shall be presumed to be the date the document was deposited in the United States mail, unless otherwise shown by a preponderance of competent evidence.

(6) An appeal from a wage claim determination shall be in writing, signed by the appellant or the appellant's representative and shall contain words that, by fair interpretation, request the appeal process for a specific determination of the department. The appeal may be filed by personal delivery, by mail, or by fax to the wage and hour section of the department at the address indicated on the wage claim determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the wage and hour section by 5:00 p.m. on a business day shall be deemed filed on that date.

A faxed appeal that is received by the wage and hour section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

(7) To hear and decide appeals from determinations, the director shall appoint appeals examiners who have been specifically trained to hear wage claims. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination involved, after affording the claimant and the employer reasonable opportunity for a fair hearing, or may refer a matter back to the compliance or hearing officer for further action. The appeals examiner shall notify the claimant and the employer 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 the claimant, the employer, 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 wage claim. All testimony at any hearing shall be recorded. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If the claimant or the employer 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 the claimant or the employer, within fourteen (14) days after service of the decision of the appeals examiner, seeks judicial review pursuant to section 45-619, Idaho Code, or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final and the amount awarded by the decision shall become immediately due and payable to the department. A decision that has become final may be enforced by the department according to section 45-618, Idaho Code.

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

(9) (a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination or decision of the appeals examiner which has become final, shall be conclusive for all the purposes of this chapter as between the claimant and the employer who had notice of such determination or decision. Subject to judicial review as set forth in this chapter, any determination or decision 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 determination or decision rendered pursuant to this chapter by an appeals examiner, 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 wage claims; or

(iii) To challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

45-618. Administrative enforcement and collection of wage claims. (1) A department determination, if not appealed to an appeals examiner; or a decision of the appeals examiner, if judicial review is not sought; or a court order following judicial review, may be enforced by the department according to section 45-620, Idaho Code.

(2) If at any time the department determines, in its sole discretion, that a wage claim upon which a lien was filed pursuant to section 45-620, Idaho Code, is no longer collectable, the department shall:

(a) Transfer the state lien from the central lien filing system of the secretary of state to the district court in the county of the debtor's last known address. A lien transferred pursuant to this subsection shall be entered in the judgment docket of the district court and recorded as a transferred lien with the effective date of the lien being the date it was initially filed with the secretary of state.

(b) Notify the claimant in writing, at the claimant's last known address, that the lien has been transferred and advise the claimant that no further action will be maintained by the department on the wage claim, and that from the date of the transfer, it shall be the claimant's sole responsibility to maintain and enforce the lien.

(3) A lien transferred pursuant to this section shall be enforceable by the claimant in the same manner and with the same effect as if the lien had been a judgment of the district court.

45-619. Judicial review. (1) A claimant or employer aggrieved by a final decision of the appeals examiner may obtain judicial review of the decision pursuant to the provisions of chapter 52, title 67, Idaho Code, and the provisions of this section.

(2) If the employer files a petition for judicial review in a court of competent jurisdiction contesting the appeals examiner's decision, the employer, not later than the twenty-eighth day after the date the appeals examiner's decision became final, shall either:

(a) Deposit the full amount awarded to the claimant with the department, to be placed by the department in an interest-bearing escrow account of a fully insured financial institution; or

(b) Post a bond, written by a fidelity, surety, guaranty, title or trust company authorized to do business in the state of Idaho. The bond must be in the full amount of the appeals examiner's decision and shall state that the company issuing or executing the bond agrees to pay to the department on behalf of the employer all sums found to be due and owing by the employer by reason of the outcome of the appeal, within thirty (30) days of the filing of the court's decision. A copy of the bond shall be served upon the department and the claimant; or

(c) File an affidavit of inability to either post a bond or send to the department the amount awarded to the claimant.

(3) The employer's failure to timely post a bond or send the amount required by subsection (2) of this section shall constitute a waiver of the right to judicial review.

(4) If, after judicial review, it is determined that some or all of the wages are not owed or the penalty is reduced or is not assessed, the department shall remit the appropriate amount to the employer, plus the interest accrued on the escrowed amount, or collect from the bond only the amount awarded by the court on appeal, up to the maximum amount of the bond.

45-620. Liens. (1) Upon the failure of any person to pay any amount when due pursuant to section 45-617, Idaho Code, the department 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 the state statutory legal limit on judgments. The foregoing remedy shall be in addition to all other remedies provided by law.

(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.

45-621. 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 that is exempt from execution as otherwise allowed by law.

(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.

(7) Upon the filing of a state lien pursuant to section 45-620, Idaho Code, the department may collect on the lien in the same manner and to the same extent as the department collects tax liabilities and overpayment of benefits as provided by section 63-3077A, Idaho Code.