

## **IDAPA Rules added to I.C. § 72-1366**

### **BURDEN OF PROOF.**

#### **09.01.30.150.**

**02. BURDEN OF PROOF.** Claimant has the burden of proving eligibility under this provision with competent evidence.

#### **09.01.275.**

**01. BURDEN OF PROOF.** The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer.

#### **09.01.30.375.**

**04. CORPORATE OFFICER.** a. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation.

#### **09.01.30.400.**

**01. BURDEN OF PROVING NONPARTICIPATION.** The burden of proving non-participation, lack of financing and similar factors is upon the claimant.

#### **09.01.30.450.**

**01. BURDEN OF PROOF.** The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits.

#### **09.01.30.525.**

**08 a. Pension Contributions.** The burden is on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan.

#### **09.01.30.575. SEEKING WORK.**

**01. ATTITUDE AND BEHAVIOR.** A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search.

**02. EFFORT TO SECURE EMPLOYMENT.** A claimant will be expected to do what is normally done by unemployed persons that are seeking work.

**03. EMPLOYER'S HIRING PRACTICES.** An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility.

**04. JOB ATTACHMENT CLASSIFICATIONS.** For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows:

a. Code R-Recall, U-Union Or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code.

b. Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability.

c. Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code.

**05. JOBS AVAILABILITY.** A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors.

**06. LICENSE OR PERMITS.** A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work.

**07. NO EMPLOYMENT PROSPECTS.** A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality.

**08. SEASONAL AVAILABILITY.** A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits.

**09. WORK-SEEKING REQUIREMENT CATEGORIES.** A claimant must seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Failure to comply with work-seeking requirements will result in a denial of benefits.

a. Code O claimant must maintain regular contact with his employer(s) or union.

b. Code I claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:

i. Make at least one (1) employer contact each week in the manner prescribed by the Central Claims Office;

ii. Attend a Job Search Workshop;

- iii. Expand work search efforts to surrounding areas or states;
  - iv. Send resumes to firms/businesses that hire people with his skills;
  - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
  - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.
- c. Code 2 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:
- i. Make at least two (2) employer contacts per week in the manner prescribed by the Central Claims Office;
  - ii. Attend a Job Search Workshop;
  - iii. Expand work search efforts to surrounding areas or states;
  - iv. Send resumes to firms/businesses that hire people with their skills;
  - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
  - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.
- d. Code 3 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment:
- i. Make at least three (3) employer contacts per week in the manner prescribed by the Central Claim Office;
  - ii. Attend a Job Search Workshop;
  - iii. Expand work search efforts to surrounding areas or states;
  - iv. Send resumes to firms/businesses that hire people with their skills;
  - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or
  - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative.

## **275. DISCHARGE.**

**01. BURDEN OF PROOF.** The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer.

**02. DISQUALIFYING MISCONDUCT.** To disqualify a claimant for benefits, misconduct must be connected with the claimant's employment and involve one of the following:

a. Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest.

b. Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules.

c. Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows:

i. Whether the claimant's conduct fell below the standard of behavior expected by the employer; and

ii. Whether the employer's expectation was objectively reasonable in the particular case.

**03. INABILITY TO PERFORM OR ORDINARY NEGLIGENCE.** Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment.

**04. NON-JOB RELATED CONDUCT.** If the claimant was discharged for conduct involving personal, nonjob related behavior, the discharge is not for misconduct connected with employment.

**05. WHEN NOTICE OF DISCHARGE PROMPTS A RESIGNATION.** If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility:

a. The employee was given notice by the employer of a specific separation date;

b. The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and

c. The voluntary quit occurred a short time prior to the effective date of the termination.

**06. Indefinite Suspension.** A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged.

#### **09.01.30.450. QUIT.**

**01. BURDEN OF PROOF.** The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits.

**02. CAUSE CONNECTED WITH EMPLOYMENT.** To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment.

**03. GOOD CAUSE.** The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling.

**04. MORAL OR ETHICAL QUIT.** A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits.

**05. QUIT DUE TO HEALTH OR PHYSICAL CONDITION.** A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment.

**06. QUIT FOR PERMANENT WORK OR QUIT PART-TIME WORK FOR INCREASE IN WORK HOURS.** A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work will be deemed to have quit work with good cause connected with employment.

**07. QUIT OR RETIREMENT DURING EMPLOYER DOWNSIZING.** An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons.

**08. UNRELATED DISCHARGE PRIOR TO PENDING RESIGNATION.** The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge.

**09. WHEN NOTICE OF RESIGNATION PROMPTS A DISCHARGE.** If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility:

- a. The employee gave notice to the employer of a specific separation date;

b. The employer's decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and

c. The discharge occurred a short time prior to the effective date of the resignation.

**10. QUIT DUE TO HARASSMENT.** Good cause for quitting employment may be established by showing the party was subjected to any form of harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code.

**09.01.30.475. REFUSAL OF WORK/FAILURE TO APPLY.**

**01. CITIZENSHIP OR RESIDENCY REQUIREMENTS.** An employer's restrictions on citizenship or residency is deemed good cause for a claimant's failure to apply for available work if he does not meet the requirements.

**02. CLAIMANT CONDUCT.** A claimant who, by his conduct, causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it is ineligible.

**03. CLAIMANT RESPONSIBILITY.** A claimant has the responsibility to apply for and accept suitable work.

**04. CONSCIENTIOUS OBJECTION.** A claimant may refuse employment that requires him to work on his Sabbath if his religious convictions do not permit him to work on that day.

**05. EMPLOYER REQUIREMENTS.** Claimants are expected to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded. Unreasonable requirements by employers will not be used as a basis to deny benefits. However, a claimant must have good cause to refuse or fail to meet an employer's reasonable, lawful employment requirements to be eligible for benefits.

**06. FAILURE TO REPORT.** A claimant who fails to report to the Department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause, is ineligible. Ref. Sec. 72-1366(2), (6), Idaho Code.

**07. FAILURE TO RETURN TO WORK AFTER LAYOFF.** A claimant who has been laid off, but fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff, will be considered to have refused an offer of work if the ongoing employment relationship is severed as a result. If the claimant declines work with the employer but the ongoing employment relationship is not severed as a result, the claimant's availability for work will be examined, but the claimant will not be considered to have refused an offer of work under Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code.

**08. GOVERNMENT REQUIREMENTS.** A claimant who cannot meet government requirements within a reasonable period of time has good cause for refusing that opportunity to work.

**09. MORAL OBJECTIONS.** A claimant is not ineligible for failing to apply for or accept employment if the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds.

**10. OFFER OF WORK.** A claimant whose unemployment is due to his failure without good cause to accept available, suitable work is ineligible. The job offer must have been genuine and known to the claimant.

**11. PART-TIME WORK.** A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work.

**12. PERSONAL CIRCUMSTANCES.** To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances.

**13. PROSPECT OF MORE SUITABLE WORK.** A claimant is not ineligible for failing to accept employment if he has excellent prospects for more suitable work with his former employer or in his regular occupation.

**14. SUITABLE WORK.** Every claimant has the right to restrict his availability to suitable work.

**15. TRAVEL DISTANCE.** A claimant is not ineligible if the travel distance to available work is excessive or unreasonable. A claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other workers in his area and occupation.

#### **09.01.30.400. LABOR DISPUTE/UNION RULES.**

A "labor dispute" is a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties. Ref. Sec. 72-1366(7), (10), Idaho Code.

**01. BURDEN OF PROVING NONPARTICIPATION.** The burden of proving non-participation, lack of financing and similar factors is upon the claimant.

**02. INVOLVEMENT OF WORK SITE IN LABOR DISPUTE.** A claimant will not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed.

**03. LACK OF WORK.** A claimant's unemployment will be deemed due to lack work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business.

**04. LAID OFF BEFORE LABOR DISPUTE.** A claimant laid off because of lack of work from

an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute.

**05. PERIOD OF INELIGIBILITY.** The period of ineligibility applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute.

**06. PICKETING WORK SITE.** The act of picketing the work site of a labor dispute constitutes participation in the labor dispute, whether or not payment is made for such services.

**07. REFUSAL TO CROSS PICKET LINE.** Voluntary refusal to cross a peaceable picket line to work constitutes participation in the labor dispute.

**08. SUBSEQUENT EMPLOYMENT.** Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment.

**09. TERMINATION OF LABOR DISPUTE.** The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits.

**10. UNION MEMBER.** The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute.

#### **09.01.30.600. SELF-EMPLOYMENT.**

A claimant is ineligible when his self-employment is of such size and nature that the operation of it is his principal duty and working for an employer is merely incidental. Ref. Sec. 72-1366(13), Idaho Code.

**01. OCCUPATIONAL CONFLICTS.** Agricultural activities, commercial enterprises, family enterprises, and commission sales work are examples of self-employment which may render a claimant ineligible unless he can show he is seeking employment and is available for suitable work.

**02. POTENTIAL EMPLOYABILITY.** A claimant is eligible if his self-employment in no way interferes with his potential employability and work schedule.

#### **09.01.30.325. EMPLOYEES OF EDUCATIONAL INSTITUTIONS.**

**01. POSSIBILITY OF EMPLOYMENT.** An offer of employment by an educational institution



or service agency is not “bona fide” if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when:

- a. The circumstances under which the claimant would be employed are not within the control of the educational institution; and
- b. The educational institution does not provide evidence that such an individual normally would perform services the following academic year.

**02. REASONABLE ASSURANCE.** “Reasonable assurance” of continuing employment exists when an educational institution or service agency provides an oral or written statement to the Department indicating that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such “reasonable assurance” to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period.

**03. REASONABLE ASSURANCE LATER GIVEN.** A claimant who initially was determined not to have a reasonable assurance of continuing employment, will subsequently become disqualified for benefits under Sections 72-1366(17)(a), (b), or (c), Idaho Code, when an educational institution or service agency gives the claimant such reasonable assurance.

**04. RETROACTIVE PAYMENTS.** A claimant seeking retroactive payments pursuant to 72-1366(17)(b), Idaho Code, must make a request for the retroactive payment with the Department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made. In addition, the claimant must provide written evidence from the employer who previously provided reasonable assurance of continuing work, that the claimant was not offered an opportunity to return to work in the second of two (2) successive school years or terms.

**05. UNDER CONTRACT, BUT BETWEEN SCHOOL TERMS.** Employees of educational institutions who are hired under contract for the school term, are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments.

#### **09.01.30.460. PROFESSIONAL ATHLETES BETWEEN SEASONS.**

**01. BASE PERIOD WAGES.** No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods).

**02. REASONABLE ASSURANCE.** Reasonable assurance requires the following:

- a. The claimant has a contract, either written or oral;

b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or

c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment.

**03. SUBSTANTIALLY ALL SERVICES.** An individual is deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services.