

IDAPA Rule added to I.C. §72-1342 and I.C. §72-1374

IDAPA 09.01.08

010. DEFINITIONS.

01. Agent. One who acts for or in the place of an individual or employer by the authority of that individual or employer.

02. Employment Security Law. The act codified at Title 72, Chapter 13, Idaho Code.

03. Payment in Advance. Full payment of all costs before or at the time that employment security information is disclosed to a recipient.

04. Public Official. In accordance with Section 72-1342, Idaho Code, a “public official” is an official, elected official, or a contractor thereof in or for a federal, state, or local government, agency, or public entity within the executive branch of federal, state, or local government, who has responsibility for administering or enforcing a law, including research related to administration of a law.

05. Public Records Act. The act codified at Title 74, Chapter 1, Idaho Code.

011. ACCESS BY PERSONS TO INFORMATION PERTAINING TO THEM.

01. Individual or Employer. Individuals or employers may access employment security information pertaining to them, subject to the procedures and restrictions contained in the Idaho Public Records Act and reimbursement provisions in Section 020 of these rules. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an individual or employer on an ongoing basis, and only existing records in the Department’s custody as of the date of receipt of the request will be disclosed, not records that may be created in the future.

02. Attorney. An attorney representing a party for the purposes of the Employment Security Law need only submit a letter on letterhead to the Department confirming the attorney’s representation of the party, for an Employment Security Law purpose, to access any employment security information that would be available to the attorney’s client. If the attorney is not representing the client for the purposes of the Employment Security Law, the attorney must provide an informed consent release, in the same manner and with the same restrictions as an agent in Subsection 011.04 of these rules, in order to access any employment security information that would be available to the client.

03. Elected Official. An elected official performing constituent services who requests employment security information on behalf of an individual or employer may access any

employment security information related to the inquiry and available to the constituent if the elected official presents reasonable evidence the constituent authorized the disclosure. Such reasonable evidence may include a letter or written record of a telephone request for assistance from the constituent.

04. Agent. In order to access any employment security information available to the individual or employer, an agent of an individual or employer must provide an informed consent release that meets the requirements of Subsection 013.01 of these rules. If the disclosure is for the purposes of Employment Security Law and it is impossible or impracticable to obtain an informed consent release, the agent must provide clear and convincing evidence, as determined by the Department, that the agent is authorized to act on behalf of the individual or employer in order to access any employment security information available to the individual or employer. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an agent on an ongoing basis, and only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future.

012. DISCLOSURE TO PUBLIC OFFICIALS.

Employment security information may be disclosed by the director or the director's authorized representative to the following public officials or to an agent or contractor of the following public officials, for use in the performance of official duties:

01. Required by Federal Law. Any public agency to whom the Department is required by federal law to disclose information, under the terms and restrictions required by federal law;

02. Reciprocal Disclosures. Any public agency where reciprocal disclosures from such agency to the Department will reasonably assist in the collection of contributions and payments in lieu of contributions.

03. Benefit to Department. Any public agency to whom disclosure of Department information would be consistent with the mission of the Department or of benefit to the Department, as determined by the director.

04. Written Agreement. Any release of information to public officials under Subsections 012.02 and 012.03 of these rules must be pursuant to a written agreement signed by the requesting agency director or their authorized representative and the director of the Department. If an agent or contractor is to obtain or access information on behalf of a requesting agency, the requesting agency director or the director's authorized representative must sign the agreement. The requesting agency will be responsible for ensuring the agent or contractor complies with all security requirements of the agreement.

05. Terms and Conditions of Written Agreement. The interagency agreement must contain the following provisions:

a. A description of the specific information to be furnished by the Department and the purpose(s)

for which the information is sought and will be used;

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name or job title, or both, with a need to access for purpose(s) specified in the agreement;

c. Methods and timing, if the disclosure is to be made more than once, including the format to be used;

d. Provisions for timely payment of the Department's billed costs as required by Subsection 020.02 of these rules, including the Department's costs of performing on-site inspections to ensure compliance with State and Federal law and agreement requirements;

e. Provisions for safeguarding the information disclosed, including the following requirements:

i. Recipient will use the information only for purposes authorized by law and specified in the agreement;

ii. Recipient will store the information in a place physically secure from access by unauthorized persons;

iii. Recipient will store and process the information maintained in electronic format in a way that unauthorized persons cannot obtain the information by any means;

iv. Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems;

v. Recipient will instruct and have all personnel with access to the information sign an acknowledgment they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements;

vi. Except for any information possessed by any court, Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and

vii. Recipient will redisclose the information only as provided in the agreement or as required by State or Federal law.

f. Provisions for on-site inspections of the requesting agency and/or its agent or contractor by the Department to ensure compliance with State and Federal law and the requirements of the agreement;

g. Provisions that stipulate the Department determines the requesting agency or its agent or contractor is not adhering to the requirements of the agreement, including timely payment of the Department's billed costs, any and all further disclosures will immediately be suspended until the

Department is satisfied corrective action has been taken and there will be no further breach;

h. Provisions for terminating this agreement if, after a breach of the agreement, prompt and satisfactory corrective action is not taken, and for the immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the requesting agency and/or its agent or contactor; and

i. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, attorneys fees and costs incurred by the Department for pursuit of any breaches of the agreement and required enforcement.

06. Exception for Certain Federal Agencies. These requirements do not apply to disclosures of employment security information to a Federal agency which the U.S. Department of Labor has determined, by notice in the Federal Register, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act, and an appropriate method of paying or reimbursing the Department for any costs involved in such disclosures.

07. Safety Concerns. Employment security information may be disclosed to a public official contacted for assistance when the safety of Department staff or property may be at risk. Such disclosures are considered necessary for the proper administration of programs under the Employment Security Law and may be made without a written agreement or a subpoena from the public official.

013. DISCLOSURE TO THIRD PARTIES WITH WRITTEN, INFORMED CONSENT.

A person may agree, through written, informed consent, to allow a third party to obtain employment security information pertaining to the person from the Department, subject to the following terms and conditions:

01. Informed Consent Release.

a. An informed consent release must be signed by the person providing informed consent and dated within one (1) year of the date of the request for access to the records.

b. In the document, the person providing informed consent must:

i. Identify the specific records to be disclosed;

ii. Acknowledge Department files will be accessed to obtain the records;

iii. List all third parties authorized to access the person's information; and

iv. Indicate specific purpose(s) of the disclosure and state the records will be used only for the specified purpose(s). If the disclosure is not for purposes of the Employment Security Law, the purpose(s) specified must provide a service or benefit to the person providing informed

consent or to administer or evaluate a public program to which informed consent release pertains.

c. Unless disclosure is for the purposes of the Employment Security Law, the Department will not comply with disclosure requests to a third party on an ongoing basis. Only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future.

02. Agreement by Third Party. Before the Department will disclose employment security information to a third party pursuant to an informed consent release, the third party must sign an agreement containing the following provisions:

a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used, as specified in the informed consent release;

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name, with a need to access it for the purpose(s) specified in the informed consent release;

c. The method for the disclosure, including format;

d. Provisions for payment of the Department's costs of disclosure as required by Subsection 020.02 of these rules, including the Department's costs of performing audits to ensure compliance with State and Federal law and the requirements of the agreement;

e. Provisions for safeguarding the information disclosed, including the following requirements:

i. Recipient will use the information only for purposes authorized by law and specified in the informed consent release;

ii. Recipient will store the information in a place physically secure from access by unauthorized persons;

iii. Recipient will store and process the information maintained in electronic format in such a way unauthorized persons cannot obtain the information by any means;

iv. Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems;

v. Recipient will instruct and have all personnel with access to the information sign an acknowledgment that they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements.

vi. Except for any information possessed by any court, Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal

identifiers for any longer period of time than the Department deems appropriate; and

vii. Recipient will redisclose the information only as authorized under informed consent release and for purpose(s) specified in the release or as required by State or Federal law.

f. Provisions for on-site audits of the recipient by the Department as the Department may deem necessary to ensure compliance with State and Federal law and agreement requirements;

g. Provisions for the immediate suspension of the agreement if the Department determines that the recipient is not adhering to the requirements of the agreement;

h. Provisions for termination of the agreement if, after a breach of the agreement prompt and satisfactory corrective action is not taken, and for immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the recipient;

i. Acknowledgment by recipient the agreement is governed by the laws of the State of Idaho, and civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, apply to any unauthorized disclosure of information no matter where the unauthorized disclosure may occur; and

j. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, and attorneys fees and costs incurred by the Department for any breaches of the agreement and required enforcement.

03. Department's Right to Audit. After a third party receives employment security information pursuant to an informed consent release, the Department may perform an on-site audit of the third party to ensure the information is used for authorized purposes only.

020. COSTS OF DISCLOSURE.

Unless the disclosure of employment security information is for the purposes of the Employment Security Law, the party requesting the disclosure must reimburse the Department's costs of disclosure, including staff time and processing costs, as follows:

01. Private Party. If the requestor is not a public official, reimbursement must be in advance to the Department unless the disclosure involves an incidental amount of staff time and nominal processing costs.

02. Public Official. If the requestor is a public official, payment to reimburse the Department may be made in advance or by way of billing invoice, as determined by the director, unless the disclosure involves only an incidental amount of staff time and nominal processing costs or there is a reciprocal cost arrangement with the public official. The Department may enter into a reciprocal cost arrangement with a public official when the relative benefits received by each agency through information sharing are approximately equal.

021. SUBPOENAS OF EMPLOYMENT SECURITY INFORMATION.

01. Subpoena from Public Official. Employment security information may be supplied to a public official with subpoena authority after the Department receives a subpoena that is reasonable in nature and scope from the public official. This provision does not apply to subpoenas served on behalf of private parties to civil or criminal proceedings to which the Department is not a party.

02. Subpoena from Private Party. If the Department is served with a subpoena on behalf of a private party to a civil or criminal proceeding to which the Department is not a party and the private party is not entitled to access the information pursuant to Section 011 of these rules, the Department will move to quash the subpoena and attempt to recover costs if other means of avoiding unauthorized disclosure of the information have been unsuccessful or the court has not already ruled on the disclosure.

022. RECORDS REQUESTS SUBMITTED BY ELECTRONIC MAIL.

The Department will only accept records requests sent via e-mail to records_requests@labor.idaho.gov, unless an alternate method of transmittal is necessary to comply with applicable law or the request is for employment security information. Records requests sent to any other Department electronic mail address will not be accepted. A person making a records request must include the requestor's name, mailing address, and telephone number. If the request is for employment security information, the person may be required to provide identification to the Department. For security reasons, the Department will not disclose employment security information via electronic mail.