

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1328.WAGES.

(1) "Wages" shall include: ~~(a) A~~ all remuneration, or the cash value of all remuneration in a medium other than cash, for personal services; performed or to be performed, from whatever source, including, without limitation: commissions and bonuses and the cash value of all remuneration in any medium other than cash;

(a) Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments if paid in exchange for services;

(b) Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production;

(c) Commissions for past services in covered employment;

(d) Remuneration paid to corporate officers in exchange for services performed or to be performed for or on behalf of the corporation;

(e) Salary advances against commissions;

(f) All forms of profit sharing for services rendered unless specifically exempt under this chapter;

(g) Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer;

(h) Vacation or idle-time pay, no matter when paid;

(i) Personal expense reimbursement, such as clothing, family expenses, and rent;

~~(b)~~ All tips received while performing services in covered employment totaling twenty dollars (\$20.00) or more in a month, which are reported in writing to the employer as required under federal law; and

~~(e)~~ Any employer contribution under a qualified cash or deferred agreement as defined in 26 U.S.C. 401(k) to the extent such contribution is not included in gross income by reason of 26 U.S.C. 402(a)(8).

(2) The term "wages" shall not include:

(a) Payments (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to or on behalf of an individual or any of his dependents under a plan established by an employer that makes provision generally for individuals performing service for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (i) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments received under a worker's compensation law), or (ii) medical or hospitalization expenses in connection with sickness or accident disability, or (iii) death;

- (b) Payments on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an individual performing services for him after the expiration of six (6) calendar months following the last calendar month in which the individual performed services for such employer;
- (c) Payments made by an employer to or on behalf of an individual performing services for him or his beneficiary: (i) from or to a trust described in section 401(a) of the Internal Revenue Code that is exempt from tax under section 501(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of such payments, is a plan described in section 403(a) of the Internal Revenue Code, or (iii) under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code;
- (d) Payments made by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in his employ under section 3101 of the Internal Revenue Code; ~~or~~
- (e) Noncash payments for farm work. Noncash payments for farm work will be excluded from wages if they are “de minimis” in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages;
- (f) Prizes or gifts for special occasions that are expressions of good will;
- (g) Bonuses paid for signing a contract;
- (h) Fees paid to participate periodically in meetings of boards of directors unless exceedingly high as compared to other employers in the same industry, of relatively the same size;
- (i) Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship;
- (j) Charges pursuant to a rental agreement for personal equipment provided by the employee on the job if the employee has received a reasonable wage for services performed and the fees are held separately on the employer’s records;
- (k) Stock or membership interests issued for purposes other than services performed or to be performed;
- (l) Reimbursement for actual employee expenses, or business allowance arrangements with employees that requires them to have paid or incurred reasonable job-related expenses while performing services as employees, to account adequately to the employer for these expenses, and to return any excess reimbursement or allowance;
- (m) Payments for employee travel expenses, provided payments are job-related expenses incurred while performing services, payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel, and records for days of travel pertaining to per diem payments are verifiable;
- (n) Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee’s gross income and which are not subject to federal unemployment taxes; and

(o) Payments of any kind by a partnership to its partner, or by a sole proprietorship to its owner.

(3) Any third party making a sickness or accident disability payment not excluded from wages under subsection (2)(a)(i) of this section shall be treated as the employer with respect to such payment of wages for the purposes of this chapter.

(4) The department shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services, taking into account factors such as the prevailing wage for similar services and wages specified in any contract of hire. Any wages so determined by the department shall be reported to the employer.

IDAPA 09.01.35

061.DEFINITIONS.

The definitions listed in IDAPA 09.01.35, “Unemployment Insurance Tax Administration Rules,” Section 011, and the following are applicable to the UI Compliance Bureau.

02.Wages. The term “wages” includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. “Wages” in covered employment, and subject to unemployment insurance reporting, include, but are not limited to:

- a.Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services;
- b.Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production;
- c.Commissions for past services in covered employment;
- d.Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation;
- e.Salary advances against commissions;
- f.All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code;
- g.Excess travel or employer business allowances over actual expense, or over the federal

allowance per diem rate for the area of travel, unless returned to the employer;

h. Vacation or “idle-time” pay, no matter when paid;

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent.

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72- 1328, Idaho Code.

03. Exclusions From Wages. The term “wages” described in Section 72-1328, Idaho Code, does not include the following:

a. Prizes or gifts for special occasions which are expressions of good will;

b. Bonuses paid for signing a contract;

c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size;

d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship;

e. Rental charge for personal equipment provided by the employee on the job: if

i. There is a rental agreement; and

ii. The worker has received a reasonable wage for services performed; and

iii. The fees are held separately on the employer’s records.

f. Stock or membership interests issued for purposes other than services performed or to be performed

g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them:

i. To have paid or incurred reasonable job related expenses while performing services employees; and

ii. To account adequately to the employer for these expenses; and

- iii. To return any excess reimbursement or allowance.
- h. Payments for employee travel expenses, provided:
 - i. Payments are job related expenses while performing services; and
 - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and
 - iii. Records for days of travel pertaining to per diem payments are verifiable.
- i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes.
- j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code.
- k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner.