

# TITLE 45

## LIENS, MORTGAGES AND PLEDGES

### CHAPTER 6

#### CLAIMS FOR WAGES

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 division of the district court.

(2) The contested case provisions of the Idaho administrative procedure 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 (~~58~~) 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 his own motion, issue a ~~revised determination~~ revised determination.

~~(5) The department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses from claimants are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the department subject to limitation periods provided in section 45-614, Idaho Code.~~

~~(6) The determinations and revised determinations shall include findings of fact and conclusions of law and contain provisions advising the claimant and employer of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the department.~~

~~(7) The timely filing of an appeal is mandatory and jurisdictional and t~~The determination or

revised determination shall become a final determination unless, within fourteen (14) days after notice, as provided in subsection (58) of this section, an appeal is filed by the claimant or the employer in accordance with this chapter and the department's rules; provided, however, if a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the department, a determination or revised determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the department, within fourteen (14) days of the date of mailing or service indicated on the determination or revised determination, the period for filing a timely appeal to the department or the commission extends to fourteen (14) days from the date of receipt of notice. If an appeal is not timely filed, the amount awarded by a ~~final~~ determination or revised determination shall become immediately due and payable to the department and. ~~A final determination~~ may be enforced by the department in accordance with section 45-618, Idaho Code.

(58) The claimant and the employer shall be entitled to prompt service of notice of determinations and ~~decisions~~ revised determinations. Notice shall be deemed served if delivered to the person being served, if mailed to the person's last known address, or if electronically transmitted to the claimant at the claimant's request and with the department's approval. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted. The date indicated on determinations or ~~decisions~~ revised determinations as the "date of service" or "date of mailing" shall be presumed to be the date of service unless otherwise shown by a preponderance of competent evidence.

(6) An appeal from a wage claim determination or revised 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, by electronic transmission, 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 or electronically transmitted appeal shall be deemed filed on the date received by the wage and hour section. A faxed or electronically transmitted appeal received by the wage and hour section on a weekend or holiday 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 (58) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, 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 that 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.

**IDAPA Rules added to I.C. § 45-617**

**IDAPA 09.01.01.026**

**026. DISMISSAL OF WAGE CLAIMS FOR LACK OF PROSECUTION.**

Wage claimants have a responsibility to seek prompt adjudication of their claims. The Department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the Department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the Department subject to limitations of Sections 45-614 and 45-617(1), Idaho Code. (3-23-22)

**IDAPA 09.01.01.035**

**035. APPEALS TO APPEALS EXAMINER -- FORM AND MANNER OF FILING OF NOTICES OF APPEAL.**

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02. Filing of Notices of Appeal. To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on the determination or other decision being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. (3-23-22)

**IDAPA 09.01.01.037**

**037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.**

01. Department Determinations. If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. (3-23-22)

02. Decisions of the Appeals Examiner. If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: (3-23-22)

**IDAPA 09.01.01.038****038. DISMISSAL IF FILING IS LATE.**

Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. (3-23-22)