

IN THE SENATE

SENATE BILL NO. 1262

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1333, IDAHO CODE,
2 TO REMOVE A PROVISION REGARDING AN IDAHO DEPARTMENT OF LABOR OFFICIAL
3 SEAL; AMENDING SECTION 72-1351, IDAHO CODE, TO ESTABLISH A PROVISION
4 REGARDING EXPERIENCE RATING AND TO MAKE TECHNICAL CORRECTIONS; AND
5 AMENDING SECTION 72-1352A, IDAHO CODE, TO REVISE PROVISIONS REGARDING
6 REGISTRATION OF EXEMPT CORPORATE OFFICERS AND TO MAKE TECHNICAL CORREC-
7 TIONS.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 72-1333, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 72-1333. DEPARTMENT OF LABOR -- AUTHORITY AND DUTIES OF THE DIREC-
13 TOR. (1) The director shall administer the employment security law, chapter
14 13, title 72, Idaho Code, the minimum wage law, chapter 15, title 44, Idaho
15 Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims
16 for wages, the provisions of section 44-1812, Idaho Code, relating to min-
17 imum medical and health standards for paid firefighters, the disability
18 determinations service established pursuant to 42 U.S.C. 421, and shall
19 perform such other duties relating to labor and workforce development as may
20 be imposed by law. The director shall be the successor in law to the office
21 enumerated in section 1, article XIII, of the constitution of the state of
22 Idaho. The director shall have the authority to employ individuals, make
23 expenditures, require reports, make investigations, perform travel and
24 take other actions deemed necessary. The director shall organize the de-
25 partment of labor, which is hereby created and which shall, for the purposes
26 of section 20, article IV, of the constitution of the state of Idaho, be an
27 executive department of the state government. ~~The director shall have an
28 official seal, which shall be judicially noticed.~~

29 (2) The director shall have the authority pursuant to chapter 52, title
30 67, Idaho Code, to adopt, amend, or rescind rules as deemed necessary for the
31 proper performance of all duties imposed by law.

32 (3) Subject to the provisions of chapter 53, title 67, Idaho Code, the
33 director is authorized and directed to provide for a merit system for the de-
34 partment covering all persons, except the director, the division adminis-
35 trators and two (2) exempt positions to serve at the pleasure of the direc-
36 tor.

37 (4) The director shall make recommendations for amendments to the em-
38 ployment security law and other laws the director is charged to implement as
39 deemed proper.

40 (5) The director shall have all the powers and duties as may have been
41 or could have been exercised by predecessors in law, except those powers and
42 duties granted and reserved to the director of the department of commerce

1 in titles 39, 49 and 67, Idaho Code, and shall be the successor in law to
 2 all contractual obligations entered into by predecessors in law, except for
 3 those contracts of the department of commerce, or contracts pertaining to
 4 any power or duty granted and reserved to the director of the department of
 5 commerce in titles 39, 49 and 67, Idaho Code.

6 (6) The director shall provide administrative support for the commis-
 7 sion on human rights pursuant to section 67-5905, Idaho Code.

8 SECTION 2. That Section 72-1351, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 72-1351. EXPERIENCE RATING AND VOLUNTARY TRANSFERS OF EXPERIENCE RAT-
 11 ING ACCOUNTS. (1) Subject to the other provisions of this chapter, each eli-
 12 gible and deficit employer's, except cost reimbursement employers, taxable
 13 wage rate shall be determined in the manner set forth ~~below~~ in this subsec-
 14 tion for each calendar year:

15 (a) (i) Each eligible employer shall be given an "experience factor"
 16 which shall be the ratio of excess of contributions over benefits
 17 paid on the employer's account since December 31, 1939, to his
 18 average annual taxable payroll rounded to the next lower dollar
 19 amount for the four (4) fiscal years immediately preceding the
 20 computation date, except that when an employer first becomes eli-
 21 gible, his "experience factor" will be computed on his average
 22 annual taxable payroll for the two (2) fiscal years or more, but
 23 not to exceed four (4) fiscal years, immediately preceding the
 24 computation date. The computation of such "experience factor"
 25 shall be to six (6) decimal places.

26 (ii) Each deficit employer shall be given a "deficit experience
 27 factor" which shall be the ratio of excess of benefits paid on the
 28 employer's account over contributions since December 31, 1939, to
 29 his average annual taxable payroll rounded to the next lower dol-
 30 lar amount for one (1) or more fiscal years, but not to exceed four
 31 (4) fiscal years, for which he had covered employment ending on the
 32 computation date; provided, however, that any employer who, on any
 33 computation date has a "deficit experience factor" for the period
 34 immediately preceding such computation date but who has filed all
 35 reports, paid all contributions and penalties due on or before the
 36 ~~cut-off~~ cutoff date, and has during the last four (4) fiscal years
 37 paid contributions at a rate of not less than the standard rate ap-
 38 plicable for each such year and in excess of benefits charged to
 39 his experience rating account during such years, shall have any
 40 balance of benefits charged to his account, which on the computa-
 41 tion date immediately preceding such four (4) fiscal years was in
 42 excess of contributions paid, deleted from his account, and the
 43 excess benefits so deleted shall not be considered in the compu-
 44 tation of his taxable wage rate for the rate years following such
 45 four (4) fiscal years. For the rate year following such computa-
 46 tion date, he shall be given the standard rate for that year.

47 (iii) In the event an employer's coverage has been terminated be-
 48 cause he has ceased to do business or because he has not had covered
 49 employment for a period of four (4) years, and if said employer

1 thereafter becomes a covered employer, he will be considered as
2 though he were a new employer, and he shall not be credited with his
3 previous experience under this chapter for the purpose of comput-
4 ing any future "experience factor."

5 (iv) Benefits paid to a claimant whose employment terminated be-
6 cause the claimant's employer was called to active military duty
7 shall not be used as a factor in determining the taxable wage rate
8 of that employer.

9 (b) Schedules shall be prepared listing all eligible employers in in-
10 verse numerical order of their experience factors, and all deficit em-
11 ployers in numerical order of their deficit experience factors. There
12 shall be listed on such schedules for each such employer in addition to
13 the experience factor: (i) the amount of his taxable payroll for the
14 fiscal year ending on the computation date, and (ii) a cumulative total
15 consisting of the sum of such employer's taxable payroll for the fiscal
16 year ending on the computation date and the corresponding taxable pay-
17 rolls for all other employers preceding him on such schedules.

18 (c) The cumulative taxable payroll amounts listed on the schedules pro-
19 vided for in paragraph (b) of this subsection shall be segregated into
20 groups whose limits shall be those set out in the table provided in sec-
21 tion 72-1350(7), Idaho Code. Each of such groups shall be identified
22 by the rate class number listed in the table which represents the per-
23 centage limits of each group. Each employer on the schedules shall be
24 assigned a taxable wage rate in accordance with section 72-1350, Idaho
25 Code.

26 (d) (i) If the grouping of rate classes requires the inclusion of
27 exactly one-half (1/2) of an employer's taxable payroll, the em-
28 ployer shall be assigned the lower of the two (2) rates designated
29 for the two (2) classes in which the halves of his taxable payroll
30 are so required.

31 (ii) If the group of rate classes requires the inclusion of a por-
32 tion other than exactly one-half (1/2) of an employer's taxable
33 payroll, the employer shall be assigned the rate designated for
34 the class in which the greater part of his taxable payroll is so re-
35 quired.

36 (iii) If one (1) or more employers on the schedules have experi-
37 ence factors identical to that of the last employer included in a
38 particular rate class, all such employers shall be included in and
39 assigned the taxable wage rate specified for such class, notwith-
40 standing the provisions of paragraph (c) of this subsection.

41 (e) If the taxable payroll amount or the experience factor or both
42 such taxable payroll amount and experience factor of any eligible or
43 deficit employer listed on the schedules is changed, the employer shall
44 be placed in that position on the schedules which he would have occu-
45 pied had his taxable payroll amount and/or experience factor as changed
46 been used in determining his position in the first instance, but such
47 change shall not affect the position or rate classification of any other
48 employer listed on the schedules and shall not affect the rate determi-
49 nation for previous years.

1 (2) For experience rating purposes, all previously accumulated benefit
2 charges to covered employers' accounts, except cost reimbursement employ-
3 ers, shall not be changed except as provided in this chapter. Benefits paid
4 prior to June 30 shall, as of June 30 of each year preceding the calendar year
5 for which a covered employer's taxable wage rate is effective, be charged to
6 the account of the covered employer, except cost reimbursement employers,
7 who paid the largest individual amount of base period wages as shown on the
8 determination used as the basis for the payment of such benefits, except that
9 no charge shall be made to the account of such covered employer with respect
10 to benefits paid under the following situations:

11 (a) If paid to a worker who terminated his services voluntarily without
12 good cause attributable to such covered employer, with good cause but
13 for reasons not attributable to such covered employer, or who had been
14 discharged for misconduct in connection with such services;

15 (b) If paid in accordance with the provisions of section 72-1368(10),
16 Idaho Code, and the decision to pay benefits is subsequently reversed;

17 (c) For that portion of benefits paid to multistate claimants pursuant
18 to section 72-1344, Idaho Code, which exceeds the amount of benefits
19 that would have been charged had only Idaho wages been used in paying the
20 claim;

21 (d) If paid in accordance with the extended benefit program triggered
22 by either national or state indicators;

23 (e) If paid to a worker who continues to perform services for such cov-
24 ered employer without a reduction in his customary work schedule, and
25 who is eligible to receive benefits due to layoff or a reduction in earn-
26 ings from another employer;

27 (f) If paid to a worker who turns down an offer of suitable work because
28 of participation in a job training program pursuant to the requirements
29 of section 72-1366(8), Idaho Code.

30 (3) A covered employer whose experience rating account is chargeable,
31 as prescribed by this section, is an interested party as defined in sec-
32 tion 72-1323, Idaho Code. A determination of chargeability shall become
33 final unless, within fourteen (14) days after notice as provided in section
34 72-1368(5), Idaho Code, an appeal is filed by an interested party with the
35 department in accordance with the department's rules. Appeal proceedings
36 shall be in accordance with the provisions of section 72-1361, Idaho Code.

37 (4) An experience rating record shall be maintained for each covered
38 employer. The record shall be credited with all contributions which the
39 covered employer has paid for covered employment prior to the ~~cut-off~~ cutoff
40 date, pursuant to the provisions of this and preceding acts, and which cov-
41 ered employment occurred prior to the computation date. The record shall
42 also be charged with the amount of benefits paid which are chargeable to the
43 covered employer's account as provided by the appropriate provisions of the
44 employment security law and regulations thereunder in effect at the time
45 such benefits were paid. Nothing in this section shall be construed to grant
46 any covered employer or individual in his service a priority with respect to
47 any claim or right because of amounts paid by such covered employer into the
48 employment security fund.

49 (5) (a) Whenever any individual or type of organization, whether or not
50 a covered employer within the meaning of section 72-1315, Idaho Code,

1 in any manner succeeds to, or acquires all or substantially all, of the
2 business of an employer who at the time of acquisition was a covered
3 employer, and in respect to whom the director finds that the business
4 of the predecessor is continued solely by the successor, the separate
5 experience rating account of the predecessor shall, upon the joint ap-
6 plication of the predecessor and the successor within the one hundred
7 eighty (180) days after such acquisition and approval by the director,
8 be transferred to the successor employer for the purpose of determining
9 such successor's liability and taxable wage rate, and any successor who
10 was not an employer on the date of acquisition shall, as of such date,
11 become a covered employer as defined in this chapter. Such one hundred
12 eighty (180) day period may be extended at the discretion of the direc-
13 tor.

14 (b) Whenever any individual or type of organization, whether or not a
15 covered employer within the meaning of section 72-1315, Idaho Code, in
16 any manner succeeds to, or acquires, part of the business of an employer
17 who at the time of acquisition was a covered employer, and such portion
18 of the business is continued by the successor, so much of the separate
19 experience rating account of the predecessor as is attributable to the
20 portion of the business transferred, as determined on a pro rata basis
21 in the same ratio that the wages of covered employees properly allocable
22 to the transferred portion of the business bears to the payroll of the
23 predecessor in the last four (4) completed calendar quarters immedi-
24 ately preceding the date of transfer, shall, upon the joint application
25 of the predecessor and the successor within one hundred eighty (180)
26 days after such acquisition and approval by the director, be trans-
27 ferred to the successor employer for the purpose of determining such
28 successor's liability and taxable wage rate, and any successor who was
29 not an employer on the date of acquisition shall, as of such date, become
30 a covered employer as defined in this chapter. Such one hundred eighty
31 (180) day period may be extended at the discretion of the director.

32 (c) (i) If the successor was a covered employer prior to the date of
33 the acquisition of all or a part of the predecessor's business, his
34 taxable wage rate, effective the first day of the calendar quarter
35 immediately following the date of acquisition, shall be a newly
36 computed rate based on the combined experience of the predecessor
37 and successor, the resulting rate remaining in effect the balance
38 of the rate year.

39 (ii) If the successor was not a covered employer prior to the date
40 of the acquisition of all or a part of the predecessor's business,
41 his rate shall be the rate applicable to the predecessor with re-
42 spect to the period immediately preceding the date of acquisition,
43 but if there were more than one (1) predecessor, the successor's
44 rate shall be a newly computed rate based on the combined expe-
45 rience of the predecessors, becoming effective immediately after
46 the date of acquisition, and shall remain in effect the balance of
47 the rate year.

48 (d) For purposes of this section, an employer's experience rating ac-
49 count shall consist of the actual contribution, benefit and taxable
50 payroll experience of the employer and any amounts due from the employer

1 under this chapter. When a transferred experience rating account
 2 includes amounts due from the employer under this chapter, both the
 3 predecessor employer and the successor employer shall be jointly and
 4 severally liable for those amounts.

5 SECTION 3. That Section 72-1352A, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 72-1352A. CORPORATE OFFICERS -- EXEMPTION FROM COVERAGE -- NOTIFICA-
 8 TION -- REINSTATEMENT. (1) A corporation that is a public company, other
 9 than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code,
 10 may elect to exempt from coverage pursuant to this chapter any bona fide cor-
 11 porate officer who is voluntarily elected or voluntarily appointed in accor-
 12 dance with the articles of incorporation or bylaws of the corporation, is a
 13 shareholder of the corporation, exercises substantial control in the daily
 14 management of the corporation and whose primary responsibilities do not in-
 15 clude the performance of manual labor.

16 (2) A corporation that is not a public company, other than those cov-
 17 ered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to
 18 exempt from coverage pursuant to this chapter any bona fide corporate offi-
 19 cer, without regard to the corporate officer's performance of manual labor,
 20 if the corporate officer is a shareholder of the corporation, voluntarily
 21 agrees to be exempted from coverage and exercises substantial control in the
 22 daily management of the corporation.

23 (3) For purposes of this section, a "public company" is a corpora-
 24 tion that has a class of shares registered with the federal securities and
 25 exchange commission pursuant to section 12 or 15 of the ~~S~~securities and
 26 ~~E~~exchange ~~A~~act of 1934 or section 8 of the ~~I~~investment ~~C~~ompany ~~A~~act of 1940,
 27 or any successor statute.

28 (4) To make the election, a corporation with qualifying corporate offi-
 29 cers pursuant to subsection (1) or (2) of this section must register with the
 30 department each qualifying corporate officer it elects to exempt from cover-
 31 age. The registration must be in a format prescribed by the department and
 32 be signed and dated by the corporate officer being exempted from coverage.
 33 Registration forms received and approved by the department ~~on or before De-~~
 34 ~~cember 15 shall become effective the first day of the next calendar year and~~
 35 ~~by March 31 of the first year of the election shall be effective January 1 of~~
 36 ~~that year and shall remain in effect for at least two (2) consecutive calen-~~
 37 ~~dar years. Registration forms received and approved by the department af-~~
 38 ~~ter December 15, 2011, and on or before July 31, 2012, shall become effective~~
 39 ~~January 1, 2012, and shall remain in effect for at least two (2) consecutive~~
 40 ~~calendar years. Except for elections made after December 15, 2011, and on or~~
 41 ~~before July 31, 2012, exemptions from coverage shall not be retroactive and~~
 42 ~~the corporation requesting the exemption shall not be eligible for a refund~~
 43 ~~or credit for contributions paid for corporate officers before the effective~~
 44 ~~date of the exemption.~~

45 (5) A newly formed corporation with qualifying corporate officers
 46 pursuant to subsections (1) and (2) of this section shall register with the
 47 department each corporate officer it elects to exempt within forty-five (45)
 48 calendar days after submitting its Idaho business registration form to the
 49 department as required by section 72-1337, Idaho Code. The registration

1 must be in a format prescribed by the department and be signed and dated by
2 the corporate officer being exempted from coverage. Registration forms re-
3 ceived and approved by the department shall become effective as of the date
4 the Idaho business registration form was submitted to the department and
5 shall remain in effect for at least two (2) consecutive calendar years.

6 (6) A corporation may elect to reinstate coverage for one (1) or more
7 corporate officers previously exempted pursuant to this section. Rein-
8 statement requires written notice from the corporation to the department
9 in a format prescribed by the department. Reinstatement requests received
10 by the department on or before December 15 shall become effective the first
11 day of the calendar year following the end of the exemption's two (2) year
12 effective date. Coverage shall not be reinstated retroactively.