

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 76

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1304, IDAHO CODE,
2 TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 72-1319, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL COR-
4 RECTIONS; AMENDING SECTION 72-1328, IDAHO CODE, TO CLARIFY LANGUAGE
5 REGARDING CERTAIN PLANS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
6 SECTION 72-1366, IDAHO CODE, TO REVISE A PROVISION REGARDING PERSONAL
7 ELIGIBILITY CONDITIONS OF A BENEFIT CLAIMANT, TO REMOVE A PROVISION RE-
8 GARDING PART-TIME WORK, AND TO MAKE A TECHNICAL CORRECTION; AND AMEND-
9 ING SECTION 72-1369, IDAHO CODE, TO REVISE A PROVISION REGARDING THE
10 DIRECTOR'S DISCRETION TO COMPROMISE AND TO MAKE TECHNICAL CORRECTIONS.
11

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

13 SECTION 1. That Section 72-1304, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 72-1304. AGRICULTURAL LABOR. (1) "Agricultural labor" means all ser-
16 vices performed:

17 (a) On a farm, in the employ of any person in connection with culti-
18 vating the soil, or raising or harvesting any agricultural, aquacul-
19 tural or horticultural commodities, including the raising, shearing,
20 feeding, caring for, training, and management of livestock, bees, fish,
21 poultry, and ~~fur-bearing animals~~ furbearers, and wildlife;

22 (b) In the employ of the owner or tenant or other operator of a farm in
23 connection with the operation, management, conservation, improvement,
24 or maintenance of such farm and its tools and equipment, or in salvaging
25 timber or clearing land of brush and other debris left by a hurricane if
26 the major part of such service is performed on a farm;

27 (c) In connection with the operation or maintenance of ditches, canals,
28 reservoirs, or waterways not owned or operated for profit and used
29 exclusively for supplying and storing water, at least ninety percent
30 (90%) of which was ultimately delivered for agricultural purposes dur-
31 ing the preceding calendar year; and

32 (d) In the employ of any farm operator or group of operators, organized
33 or unorganized, in handling, planting, drying, packing, packaging,
34 eviscerating, processing, freezing, grading, storing, or delivering
35 to storage or to market or to a carrier for transportation to market in
36 its unmanufactured state any agricultural, aquacultural or horticul-
37 tural commodities, if such operator or group, in both the current and
38 preceding calendar years, produced more than one-half (1/2) of the com-
39 modities with respect to which such service is performed.

40 This subsection is not applicable to services performed in commercial can-
41 ning, freezing, or dehydrating, or in connection with any agricultural,

1 aquacultural or horticultural commodity after its delivery to a terminal
2 market for distribution for consumption.

3 (2) "Custom farming" means "agricultural labor" for the purposes of
4 this chapter.

5 (3) "Farm" includes stock, dairy, fish, poultry, fruit, fur-bearing
6 animal furbearer and truck farms, plantations, ranches, nurseries, hatcher-
7 ies, ranges, greenhouses or other similar structures used primarily for the
8 raising of agricultural, aquacultural or horticultural commodities, and or-
9 chards.

10 (34) "Unmanufactured state" means retention of its original form and
11 substance.

12 (45) "Terminal market" means a place of business to which products are
13 shipped in a sorted, graded, packaged condition, ready for immediate sale.

14 SECTION 2. That Section 72-1319, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 72-1319. ELIGIBLE EMPLOYER. (1) "Eligible employer" means a covered
17 employer who has completed a qualifying period as defined in subsection (2)
18 of this section, and who has filed all payroll reports required, has paid, on
19 or before the ~~cut-off~~ cutoff date, all contributions and penalties due, and
20 has established a record of accumulated contributions in excess of benefits
21 charged to his account. For the purposes of this section, delinquencies of
22 a minor nature may be disregarded if the director is satisfied that such cov-
23 ered employer has acted in good faith and that forfeiture of a reduced tax-
24 able wage rate because of such minor delinquency would be inequitable.

25 (2) "Qualifying period" shall be the period of three (3) consecutive
26 years ending on the computation date in which, during all of said years, the
27 employer shall be ~~chargeable for benefits under this state law~~ subject to the
28 requirements of this chapter, except, that a new employer shall have a qual-
29 ifying period of one (1) year ending on the computation date in which, during
30 all of said year, the employer shall be ~~chargeable for benefits under this~~
31 ~~state law~~ subject to the requirements of this chapter.

32 SECTION 3. That Section 72-1328, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 72-1328. WAGES. (1) "Wages" shall include:

35 (a) All remuneration for personal services from whatever source, in-
36 cluding commissions and bonuses and the cash value of all remuneration
37 in any medium other than cash;

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

41 (c) Any employer contribution under a qualified cash or deferred agree-
42 ment as defined in 26 U.S.C. 401(k) to the extent such contribution is
43 not included in gross income by reason of 26 U.S.C. 402(a) (8).

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

45 (a) Payments (including any amount paid by an employer for insurance or
46 annuities, or into a fund, to provide for any such payment), made to,
47 or on behalf of, an individual or any of his dependents under a plan es-

1 established by an employer ~~which that~~ makes provision generally for indi-
 2 viduals performing service for him (or for such individuals generally
 3 and their dependents) or for a class or classes of such individuals (or
 4 for a class or classes of such individuals and their dependents) ~~7~~ on ac-
 5 count of: (i) sickness or accident disability (but, in the case of pay-
 6 ments made to an employee or any of his dependents, this subparagraph
 7 shall exclude from the term "wages" only payments ~~which are~~ received un-
 8 der a worker's compensation law), or (ii) medical or hospitalization
 9 expenses in connection with sickness or accident disability, or (iii)
 10 death;

11 (b) Payments on account of sickness or accident disability, or medical
 12 or hospitalization expenses in connection with sickness or accident
 13 disability, made by an employer ~~to7~~ or on behalf of ~~7~~ an individual per-
 14 forming services for him after the expiration of six (6) calendar months
 15 following the last calendar month in which the individual performed
 16 services for such employer;

17 (c) Payments made by an employer ~~to7~~ or on behalf of ~~7~~ an individual
 18 performing services for him or his beneficiary: (i) from or to a trust
 19 described in section 401(a) of the ~~Federal~~ Internal Revenue Code ~~which~~
 20 ~~that~~ is exempt from tax under section 501(a) of the ~~Federal~~ Internal
 21 Revenue Code at the time of such payment unless such payment is made to
 22 an individual performing services for the trust as remuneration for
 23 such services and not as a beneficiary of the trust, or (ii) under or to
 24 an annuity plan ~~which that~~, at the time of such payments, is a plan de-
 25 scribed in section 403(a) of the ~~Federal~~ Internal Revenue Code, or (iii)
 26 under a cafeteria plan within the meaning of section 125 of the ~~Federal~~
 27 Internal Revenue Code;

28 (d) Payments made by an employer (without deduction from the remuner-
 29 ation of the individual in its employ) of the tax imposed upon an indi-
 30 vidual in his employ under section 3101 of the ~~Federal~~ Internal Revenue
 31 Code; or

32 (e) Noncash payments for farm work.

33 (3) Any third party ~~which makes~~ making a sickness or accident disabil-
 34 ity payment, ~~which is~~ not excluded from wages under subsection (2) (a) (i) of
 35 this section ~~7~~ shall be treated as the employer with respect to such payment
 36 of wages for the purposes of this chapter.

37 SECTION 4. That Section 72-1366, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 72-1366. PERSONAL ELIGIBILITY CONDITIONS. The personal eligibility
 40 conditions of a benefit claimant are that:

41 (1) The claimant shall have made a claim for benefits and provided all
 42 necessary information pertinent to eligibility.

43 (2) The claimant shall have registered for work and thereafter reported
 44 to a job service office or other agency in a manner prescribed by the direc-
 45 tor.

46 (3) The claimant shall have met the minimum wage requirements in his
 47 base period as provided in section 72-1367, Idaho Code.

48 (4) (a) During the whole of any week with respect to which he claims ben-
 49 efits or credit to his waiting period, the claimant was:

1 (i) Able to work, available for suitable work, and seeking work;
 2 provided, however, that no claimant shall be considered ineligi-
 3 ble for failure to comply with the provisions of this subsection
 4 if:

5 1. Such failure is due to ~~the~~ a claimant's illness or dis-
 6 ~~ability that occurs after he has filed a claim and of not more~~
 7 ~~than two (2) weeks that arises after filing a claim, provided~~
 8 ~~that~~ during such illness or disability, the claimant does
 9 not refuse or miss suitable work that would have provided
 10 wages greater than one-half (1/2) of the claimant's weekly
 11 benefit amount; or

12 2. Such failure is due to compelling personal circum-
 13 stances, provided that such failure does not exceed a minor
 14 portion of the claimant's workweek and during which time
 15 the claimant does not refuse or miss suitable work that
 16 would have provided wages greater than one-half (1/2) of the
 17 claimant's weekly benefit amount; and

18 (ii) Living in a state, territory, or country that is included in
 19 the interstate benefit payment plan or that is a party to an agree-
 20 ment with the United States or the director with respect to unem-
 21 ployment insurance.

22 (b) If a claimant who is enrolled in an approved job training course
 23 pursuant to subsection (8) of this section fails to attend or otherwise
 24 participate in the job training course during any week with respect to
 25 which he claims benefits or credit to his waiting period, the claimant
 26 shall be ineligible for that week if he was not able to work nor avail-
 27 able for suitable work, to be determined as follows: The claimant shall
 28 be ineligible unless he is making satisfactory progress in the training
 29 and his failure to attend or otherwise participate was due to:

30 (i) The claimant's illness or disability that occurred after he
 31 had filed a claim and the claimant missed fewer than one-half (1/2)
 32 of the classes available to him that week; or

33 (ii) Compelling personal circumstances, provided that the
 34 claimant missed fewer than one-half (1/2) of the classes available
 35 to him that week.

36 ~~(c) A claimant shall not be denied regular unemployment benefits under~~
 37 ~~any provision of this chapter relating to availability for work, active~~
 38 ~~search for work or refusal to accept work, solely because the claimant~~
 39 ~~is seeking only part-time work, if the department determines that a ma-~~
 40 ~~ajority of the weeks of work in the claimant's base period were for less~~
 41 ~~than full-time work. For the purpose of this subsection, "seeking only~~
 42 ~~part-time work" is defined as seeking work that has comparable hours~~
 43 ~~to the claimant's part-time work experience in the base period, except~~
 44 ~~that a claimant must be available for at least twenty (20) hours of work~~
 45 ~~per week.~~

46 (5) The claimant's unemployment is not due to the fact that he left his
 47 employment voluntarily without good cause connected with his employment, or
 48 that he was discharged for misconduct in connection with his employment.

49 (6) The claimant's unemployment is not due to his failure without good
 50 cause to apply for available suitable work or to accept suitable work when

1 offered to him. The longer a claimant has been unemployed, the more willing
2 he must be to seek other types of work and accept work at a lower rate of pay.

3 (7) In determining whether or not work is suitable for an individual,
4 the degree of risk involved to his health, safety, morals, physical fitness,
5 experience, training, past earnings, length of unemployment and prospects
6 for obtaining local employment in his customary occupation, the distance of
7 the work from his residence, and other pertinent factors shall be consid-
8 ered. No employment shall be deemed suitable and benefits shall not be de-
9 nied to any otherwise eligible individual for refusing to accept new work or
10 to hold himself available for work under any of the following conditions:

11 (a) If the vacancy of the position offered is due directly to a strike,
12 lockout, or other labor dispute;

13 (b) If the wages, hours, or other conditions of the work offered are
14 below those prevailing for similar work in the locality of the work of-
15 ferred;

16 (c) If, as a condition of being employed, the individual would be re-
17 quired to join a company union or to resign from or refrain from joining
18 any bona fide labor organization.

19 (8) No claimant who is otherwise eligible shall be denied benefits for
20 any week due to an inability to comply with the requirements contained in
21 subsections (4) (a) (i) and (6) of this section if:

22 (a) The claimant is a participant in a program sponsored by title I of
23 the workforce innovation and opportunity act (29 U.S.C. 3101 et seq., as
24 amended) and attends a job training course under that program; or

25 (b) The claimant attends a job training course authorized pursuant to
26 the provisions of section 236(a) (1) of the trade act of 1974 or the North
27 American free trade agreement implementation act.

28 (c) The claimant lacks skills to compete in the labor market and attends
29 a job training course with the approval of the director. The director
30 may approve job training courses that meet the following criteria:

31 (i) The purpose of the job training is to teach the claimant
32 skills that will enhance the claimant's opportunities for employ-
33 ment; and

34 (ii) The job training can be completed within two (2) years, ex-
35 cept that this requirement may be waived pursuant to rules that the
36 director may prescribe.

37 ~~This subsection shall apply only if the claimant submits with each claim~~
38 ~~report a written certification from the training facility that the claimant~~
39 ~~is attending and satisfactorily completing the job training course. If~~
40 ~~the claimant fails to attend or otherwise participate in the job training~~
41 ~~course, it must be determined whether the claimant is able to work and avail-~~
42 ~~able for suitable work as provided in subsection (4) (b) of this section.~~

43 (9) No claimant who is otherwise eligible shall be denied benefits
44 under subsection (5) of this section for leaving employment to attend job
45 training pursuant to subsection (8) of this section, provided that the
46 claimant obtained the employment after enrollment in or during scheduled
47 breaks in the job training course, or that the employment was not suitable.
48 For purposes of this subsection, the term "suitable employment" means work
49 of a substantially equal or higher skill level than the individual's past

1 employment, and wages for such work are not less than eighty percent (80%) of
2 the average weekly wage in the individual's past employment.

3 (10) A claimant shall not be eligible to receive benefits for any week
4 with respect to which it is found that his unemployment is due to a labor dis-
5 pute; provided, that this subsection shall not apply if it is shown that:

6 (a) The claimant is not participating, financing, aiding, abetting, or
7 directly interested in the labor dispute; and

8 (b) The claimant does not belong to a grade or class of workers with mem-
9 bers employed at the premises at which the labor dispute occurs, who are
10 participating in or directly interested in the dispute.

11 (11) A claimant shall not be entitled to benefits for any week with re-
12 spect to which or a part of which he has received or is seeking benefits un-
13 der an unemployment insurance law of another state or of the United States;
14 provided, that if the appropriate agency of such other state or of the United
15 States shall finally determine that he is not entitled to such unemployment
16 compensation or insurance benefits, he shall not by the provisions of this
17 subsection be denied benefits. For purposes of this section, a law of the
18 United States providing any payments of any type and in any amounts for pe-
19 riods of unemployment due to involuntary unemployment shall be considered an
20 unemployment insurance law of the United States.

21 (12) A claimant shall not be entitled to benefits for a period of
22 fifty-two (52) weeks if it is determined that he has willfully made a false
23 statement or willfully failed to report a material fact in order to obtain
24 benefits. The period of disqualification shall commence the week the deter-
25 mination is issued. The claimant shall also be ineligible for waiting week
26 credit and shall repay any sums received for any week for which the claimant
27 received waiting week credit or benefits as a result of having willfully
28 made a false statement or willfully failed to report a material fact. The
29 claimant shall also be ineligible for waiting week credit or benefits for any
30 week in which he owes the department an overpayment, civil penalty, or inter-
31 est resulting from a determination that he willfully made a false statement
32 or willfully failed to report a material fact.

33 (13) A claimant shall not be entitled to benefits if his principal occu-
34 pation is self-employment.

35 (14) A claimant who has been found ineligible for benefits under the
36 provisions of subsection (5), (6), (7) or (9) of this section shall reestab-
37 lish his eligibility by having obtained bona fide work and received wages
38 therefor in an amount of at least fourteen (14) times his weekly benefit
39 amount.

40 (15) Benefits based on service in employment defined in sections
41 72-1349A and 72-1352(3), Idaho Code, shall be payable in the same amount, on
42 the same terms and subject to the same conditions as benefits payable on the
43 basis of other service subject to this act.

44 (a) If the services performed during one-half (1/2) or more of any con-
45 tract period by an individual for an educational institution as defined
46 in section 72-1322B, Idaho Code, are in an instructional, research, or
47 principal administrative capacity, all the services shall be deemed to
48 be in such capacity.

49 (b) If the services performed during less than one-half (1/2) of any
50 contract period by an individual for an educational institution are in

1 an instructional, research, or principal administrative capacity, none
2 of the service shall be deemed to be in such capacity.

3 (c) As used in this section, "contract period" means the entire period
4 for which the individual contracts to perform services, pursuant to the
5 terms of the contract.

6 (16) No claimant is eligible to receive benefits in two (2) successive
7 benefit years unless, after the beginning of the first benefit year during
8 which he received benefits, he performed service and earned an amount equal
9 to not less than six (6) times the weekly benefit amount established during
10 the first benefit year.

11 (17) (a) Benefits based on wages earned for services performed in an
12 instructional, research, or principal administrative capacity for an
13 educational institution shall not be paid for any week of unemployment
14 commencing during the period between two (2) successive academic years,
15 or during a similar period between two (2) terms, whether or not succes-
16 sive, or during a period of paid sabbatical leave provided for in the
17 individual's contract, to any individual who performs such services in
18 the first academic year (or term) and has a contract to perform services
19 in any such capacity for any educational institution in the second aca-
20 demic year or term, or has been given reasonable assurance that such a
21 contract will be offered.

22 (b) Benefits based on wages earned for services performed in any other
23 capacity for an educational institution shall not be paid to any indi-
24 vidual for any week that commences during a period between two (2) suc-
25 cessive school years or terms if the individual performs such services
26 in the first school year or term, and there is a contract or reasonable
27 assurance that the individual will perform such services in the second
28 school year or term. If benefits are denied to any individual under this
29 paragraph and the individual was not offered an opportunity to perform
30 such services for the educational institution for the second academic
31 year or term, the individual shall be entitled to a retroactive payment
32 of benefits for each week for which the individual filed a timely claim
33 for benefits and for which benefits were denied solely by reason of this
34 elause paragraph.

35 (c) With respect to any services described in paragraphs (a) and (b) of
36 this subsection, benefits shall not be paid nor "waiting week" credit
37 given to an individual for wages earned for services for any week that
38 commences during an established and customary vacation period or hol-
39 iday recess if the individual performed the services in the period im-
40 mediately before the vacation period or holiday recess, and there is a
41 reasonable assurance the individual will perform such services in the
42 period immediately following such vacation period or holiday recess.

43 (d) With respect to any services described in paragraphs (a) and (b) of
44 this subsection, benefits shall not be payable on the basis of services
45 in any capacities specified in paragraphs (a), (b) and (c) of this sub-
46 section to any individual who performed such services in an educational
47 institution while in the employ of an educational service agency. For
48 purposes of this paragraph, the term "educational service agency" means
49 a governmental entity that is established and operated exclusively for

1 the purpose of providing such services to one (1) or more educational
2 institutions.

3 (18) Benefits shall not be payable on the basis of services that sub-
4 stantially consist of participating in sports or athletic events or training
5 or preparing to participate for any week which commences during the period
6 between two (2) successive sport seasons (or similar periods) if the indi-
7 vidual performed services in the first season (or similar period) and there
8 is a reasonable assurance that the individual will perform such services in
9 the later of such season (or similar period).

10 (19) (a) Benefits shall not be payable on the basis of services per-
11 formed by an alien unless the alien was lawfully admitted for permanent
12 residence at the time such services were performed, was lawfully
13 present for purposes of performing such services, or was permanently
14 residing in the United States under color of law at the time the ser-
15 vices were performed (including an alien who was lawfully present in
16 the United States as a result of the application of the provisions of
17 sections 207 and 208 or section 212(d) (5) of the immigration and nation-
18 ality act).

19 (b) Any data or information required of individuals applying for bene-
20 fits to determine eligibility under this subsection shall be uniformly
21 required from all applicants for benefits.

22 (c) A decision to deny benefits under this subsection must be based on a
23 preponderance of the evidence.

24 (20) An individual who has been determined to be likely to exhaust regu-
25 lar benefits and to need reemployment services pursuant to a profiling sys-
26 tem established by the director must participate in those reemployment ser-
27 vices unless:

28 (a) The individual has completed such services; or

29 (b) There is justifiable cause, as determined by the director, for the
30 claimant's failure to participate in such services.

31 (21) (a) A claimant:

32 (i) Who has been assigned to work for one (1) or more customers of
33 a staffing service; and

34 (ii) Who, at the time of hire by the staffing service, signed a
35 written notice informing him that completion or termination of an
36 assignment for a customer would not, of itself, terminate the em-
37 ployment relationship with the staffing service;

38 will not be considered unemployed upon completion or termination of an
39 assignment until such time as he contacts the staffing service to deter-
40 mine if further suitable work is available. If the claimant:

41 1. Contacts the staffing service and refuses a suitable work
42 assignment that is offered to him at that time, he will be
43 considered to have voluntarily quit that employment; or

44 2. Contacts the staffing service and the service does not
45 have a suitable work assignment for him, he will be consid-
46 ered unemployed due to a lack of work; or

47 3. Accepts new employment without first contacting the
48 staffing service for additional work, he will be considered
49 to have voluntarily quit employment with the staffing ser-
50 vice.

1 (b) For the purposes of this subsection, the term "staffing service"
2 means any person who assigns individuals to work for its customers and
3 includes, but is not limited to, professional employers as defined in
4 chapter 24, title 44, Idaho Code, and the employers of temporary employ-
5 ees as defined in section 44-2403 (7), Idaho Code.

6 (22) (a) A claimant who is otherwise eligible for regular benefits as
7 defined in section 72-1367A(1) (e), Idaho Code, shall be eligible for
8 training extension benefits if the department determines that all of
9 the following criteria are met:

10 (i) The claimant is unemployed;

11 (ii) The claimant has exhausted all rights to regular unem-
12 ployment benefits as defined in section 72-1367A(1) (e), Idaho
13 Code, and all rights to extended benefits as defined in section
14 72-1367A(1) (f), Idaho Code, and all rights to benefits under sec-
15 tion 2002 ("increase in unemployment compensation benefits") of
16 division B, title II, the assistance for unemployed workers and
17 struggling families act, of the American recovery and reinvest-
18 ment act of 2009, public law 111-5, as enacted on February 17,
19 2009;

20 (iii) The claimant is enrolled in a training program approved by
21 the department or in a job training program authorized under the
22 workforce innovation and opportunity act; except that the train-
23 ing program must prepare the claimant for entry into a high-demand
24 occupation if the department determines that the claimant separ-
25 ated from a declining occupation or has been involuntarily and
26 indefinitely separated from employment as a result of a permanent
27 reduction of operations at the claimant's place of employment.
28 For the purposes of this subsection, a "declining occupation"
29 is one where there is a lack of sufficient current demand in the
30 claimant's labor market area for the occupational skills for which
31 the claimant is qualified by training and experience or current
32 physical or mental capacity and the lack of employment opportuni-
33 ties is expected to continue for an extended period of time, or the
34 claimant's occupation is one for which there is a seasonal vari-
35 ation in demand in the labor market and the claimant has no other
36 skills for which there is current demand. For the purposes of this
37 subsection, a "high-demand occupation" is an occupation in a labor
38 market area where work opportunities are available and qualified
39 applicants are lacking as determined by the use of available labor
40 market information;

41 (iv) The claimant is making satisfactory progress to complete the
42 training as determined by the department; and

43 (v) The claimant is not receiving similar stipends or other train-
44 ing allowances for nontraining costs. For the purposes of this
45 subsection, "similar stipend" means an amount provided under a
46 program with similar aims, such as providing training to increase
47 employability, and in approximately the same amounts.

48 (b) The weekly training extension benefit amount shall equal the
49 claimant's weekly benefit amount for the most recent benefit year less
50 any deductible income as determined by the provisions of this chapter.

1 The total amount of training extension benefits payable to a claimant
2 shall be equal to twenty-six (26) times the claimant's average weekly
3 benefit amount for the most recent benefit year. A claimant who is
4 receiving training extension benefits shall not be denied training ex-
5 tension benefits due to the application of subsections (4) (a) (i) and
6 (6) of this section and an employer's account shall not be charged for
7 training extension benefits paid to the claimant.

8 SECTION 5. That Section 72-1369, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND
11 WAIVER. (1) Any person who received benefits to which he was not entitled un-
12 der the provisions of this chapter or under an unemployment insurance law of
13 any state or of the federal government shall be liable to repay the benefits,
14 and the benefits shall, for the purpose of this chapter, be considered to be
15 overpayments.

16 (2) Civil penalties. The director shall assess the following monetary
17 penalties for each determination in which the claimant is found to have made
18 a false statement, misrepresentation, or failed to report a material fact to
19 the department:

20 (a) Twenty-five percent (25%) of any resulting overpayment for the
21 first determination;

22 (b) Fifty percent (50%) of any resulting overpayment for the second de-
23 termination; and

24 (c) One hundred percent (100%) of any resulting overpayment for the
25 third and any subsequent determination.

26 (3) Any overpayment, civil penalty and/or interest ~~which that~~ has not
27 been repaid may, in addition to or alternatively to any other method of col-
28 lection prescribed in this chapter, including the creation of a lien as pro-
29 vided by section 72-1360, Idaho Code, be collected with interest thereon at
30 the rate prescribed in section 72-1360 (2), Idaho Code. The director may also
31 file a civil action in the name of the state of Idaho. In bringing such civil
32 actions for the collection of overpayments, penalties and interest, the di-
33 rector shall have all the rights and remedies provided by the laws of this
34 state, and any person adjudged liable in such civil action for any overpay-
35 ments shall pay the costs of such action. A civil action filed pursuant to
36 this subsection shall be commenced within five (5) years from the date of
37 the final determination establishing liability to repay. Any judgment ob-
38 tained pursuant to this section shall, upon compliance with the requirements
39 of chapter 19, title 45, Idaho Code, become a lien of the same type, duration
40 and priority as if it were created pursuant to section 72-1360, Idaho Code.

41 (4) Collection of overpayments and civil penalties.

42 (a) Overpayments, other than those resulting from a false state-
43 ment, misrepresentation, or failure to report a material fact by the
44 claimant, ~~which that~~ have not been repaid or collected, may, at the dis-
45 cretion of the director, be deducted from any future benefits payable to
46 the claimant under the provisions of this chapter. Such overpayments
47 not recovered within five (5) years from the date of the final determi-
48 nation establishing liability to repay may be deemed uncollectible.

1 (b) Overpayments resulting from a false statement, misrepresentation,
2 or failure to report a material fact by the claimant ~~which~~ that have not
3 been recovered within eight (8) years from the date of the final deter-
4 mination establishing liability to repay may be deemed uncollectible.

5 (c) The civil penalty assessed pursuant to subsection (2) of this sec-
6 tion shall be paid as follows:

7 (i) An amount totaling fifteen percent (15%) of the overpayment
8 shall be paid into the employment security fund created in section
9 72-1346, Idaho Code; and

10 (ii) Any additional amounts collected shall be paid into the em-
11 ployment security administrative and reimbursement fund created
12 in section 72-1348, Idaho Code.

13 (5) The director may waive the requirement to repay an overpayment,
14 other than one resulting from a false statement, misrepresentation, or fail-
15 ure to report a material fact by the claimant, and interest thereon, if:

16 (a) The benefit payments were made solely as a result of department er-
17 ror or inadvertence and made to a claimant who could not reasonably have
18 been expected to recognize the error; or

19 (b) Such payments were made solely as a result of an employer misre-
20 porting wages earned in a claimant's base period and made to a claimant
21 who could not reasonably have been expected to recognize an error in the
22 wages reported.

23 (6) Neither the director nor any of his agents or employees shall be li-
24 able for benefits paid to persons not entitled to the same under the provi-
25 sions of this chapter if it appears that such payments have been made in good
26 faith and that ordinary care and diligence have been used in the determina-
27 tion of the validity of the claim or claims under which such benefits have
28 been paid.

29 (7) The director ~~may, in his sole~~ shall have discretion, ~~to~~ to compromise
30 any or all of an overpayment, civil penalty ~~in excess of the amount required~~
31 ~~to be paid into the employment security fund pursuant to subsection (4) (c)~~
32 ~~of this section,~~ interest, or fifty-two (52) week disqualification assessed
33 under subsections (1) and (2) of this section and section 72-1366(12), Idaho
34 Code, when the director finds it is in the best interest of the department.