

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 396

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1368, IDAHO
2 CODE, TO EXPAND THE NOTICE PROVISION TO INCLUDE ALL DEPARTMENT COMMUNI-
3 CATIONS CONTAINING DEADLINES OR OTHER RESPONSE REQUIREMENTS.
4

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

6 SECTION 1. That Section 72-1368, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 72-1368. CLAIMS FOR BENEFITS -- APPELLATE PROCEDURE -- LIMITATION OF
9 ACTIONS. (1) Claims for benefits shall be made in accordance with such rules
10 as the director may prescribe.

11 (2) Each employer shall post and maintain in places readily accessi-
12 ble to individuals performing services for him printed statements concern-
13 ing benefit rights under this chapter which shall be provided by the depart-
14 ment without cost to the employer.

15 (3) (a) Following the filing of a claim pursuant to subsection (1) of
16 this section the department shall:

17 (i) Verify the claimant's monetary eligibility pursuant to the
18 requirements of section 72-1367, Idaho Code, and issue a determi-
19 nation. If monetarily eligible, the department shall establish
20 the date the claimant's benefit year begins, the weekly benefit
21 amount, the total benefit amount, the base period wages, and the
22 base period covered employers.

23 (ii) If a claimant is monetarily eligible, the department shall
24 verify, based on information provided by the claimant, whether the
25 week claimed is a compensable week as defined in section 72-1312,
26 Idaho Code. To receive benefits, a claimant must certify that each
27 week claimed is a compensable week. In the event the week claimed
28 is not a compensable week, the department shall issue a determina-
29 tion denying benefits and shall include the reasons for the ineli-
30 gibility.

31 (b) If the department has reason to believe at any time within five (5)
32 years from the week ending date for any week in which benefits were paid
33 that a claimant was not eligible for benefits, the department may in-
34 vestigate the claim and on the basis of facts found issue a determina-
35 tion denying or allowing benefits for the week(s) in question. If the
36 department determines a claimant was not entitled to benefits received,
37 the department shall issue a determination requiring repayment of the
38 overpaid benefits, and assess any applicable penalties and interest.

39 (c) Before a determination provided for in subsection (3) of this sec-
40 tion becomes final or an appeal is filed, the department, on its own mo-
41 tion, may issue a revised determination. The determination or revised
42 determination shall become final unless, within fourteen (14) days af-

1 ter notice, as provided in subsection (5) of this section, an appeal is
2 filed by an interested party with the department.

3 (4) (a) Upon appeal of a determination or revised determination, the
4 director shall transfer the appeal directly to an appeals examiner pur-
5 suant to subsection (6) of this section, unless the director finds, in
6 his sole discretion, that a redetermination should be issued affirming,
7 reversing or modifying the determination or revised determination. The
8 redetermination shall become final unless, within fourteen (14) days
9 after notice as provided in subsection (5) of this section, an appeal is
10 filed by an interested party with the department in accordance with the
11 department's rules.

12 (b) The director may, in his sole discretion, make a special redeter-
13 mination whenever he finds that a departmental error has occurred in
14 connection with a determination, revised determination or redetermi-
15 nation that has become final, or that additional wages of the claimant
16 or other facts pertinent to such final determination, revised deter-
17 mination or redetermination have become available or have been newly
18 discovered, or that benefits have been allowed or denied or the amount
19 of benefits fixed on the basis of nondisclosure or misrepresentation of
20 fact. The special redetermination must be made within one (1) year from
21 the date the determination, revised determination or redetermination
22 became final, except that a special redetermination involving a find-
23 ing that benefits have been allowed or denied or the amount of benefits
24 fixed on the basis of nondisclosures or misrepresentations of fact may
25 be made within two (2) years from the date the determination, revised
26 determination or redetermination became final.

27 (5) All interested parties shall be entitled to prompt service of no-
28 tice of written or digital communications from the department providing
29 notice of an administrative or other deadline including, but not limited
30 to, determinations, revised determinations, redeterminations, special re-
31 determinations, and decisions and letters from the department requiring a
32 response within a specified time. A notice shall be deemed served if de-
33 livered to the person being served, if mailed to his last known address or if
34 electronically transmitted to him at his request and with the department's
35 approval. Service by mail shall be deemed complete on the date of mailing.
36 Service by electronic transmission shall be deemed complete on the date no-
37 tice is electronically transmitted.

38 (6) To hear and decide appeals from determinations, revised determina-
39 tions, redeterminations, and special redeterminations, the director shall
40 appoint appeals examiners. Unless the appeal is withdrawn, the appeals ex-
41 aminer shall affirm, modify, set aside or reverse the determination, revised
42 determination, redetermination, or special redetermination involved, after
43 affording the interested parties reasonable opportunity for a fair hearing,
44 or may refer a matter back to the department for further action. The appeals
45 examiner shall notify the interested parties of his decision by serving no-
46 tice in the same manner as provided in subsection (5) of this section. The
47 decision shall set forth findings of fact and conclusions of law. The ap-
48 peals examiner may, either upon application for rehearing by an interested
49 party or on his own motion, rehear, affirm, modify, set aside or reverse any
50 prior decision on the basis of the evidence previously submitted or on the

1 basis of additional evidence; provided, that such application or motion be
2 made within ten (10) days after the date of service of the decision. A com-
3 plete record shall be kept of all proceedings in connection with an appealed
4 claim. All testimony at any hearing shall be recorded. If a claim for review
5 of the appeals examiner's decision is filed with the commission, the testi-
6 mony shall be transcribed if ordered by the commission. Witnesses subpoe-
7 naed by the appeals examiner shall be allowed fees at a rate prescribed by the
8 director. If any interested party to a hearing formally requests the appeals
9 examiner to issue a subpoena for a witness whose evidence is deemed neces-
10 sary, the appeals examiner shall promptly issue the subpoena, unless such
11 request is determined to be unreasonable. Unless an interested party shall
12 within fourteen (14) days after service of the decision of the appeals exam-
13 iner file with the commission a claim for review or unless an application or
14 motion is made for a rehearing of such decision, the decision of the appeals
15 examiner shall become final.

16 (7) The commission shall decide all claims for review filed by any in-
17 terested party in accordance with its own rules of procedure not in conflict
18 herewith. The record before the commission shall consist of the record of
19 proceedings before the appeals examiner, unless it appears to the commission
20 that the interests of justice require that the interested parties be permit-
21 ted to present additional evidence. In that event, the commission may, in
22 its sole discretion, conduct a hearing or may remand the matter back to the
23 appeals examiner for an additional hearing and decision. On the basis of the
24 record of proceedings before the appeals examiner as well as additional evi-
25 dence, if allowed, the commission shall affirm, reverse, modify, set aside
26 or revise the decision of the appeals examiner or may refer the matter back to
27 the appeals examiner for further proceedings. The commission shall file its
28 decision and shall promptly serve notice of its decision to all interested
29 parties. A decision of the commission shall be final and conclusive as to all
30 matters adjudicated by the commission upon filing the decision in the office
31 of the commission; provided, within twenty (20) days from the date of filing
32 the decision, any party may move for reconsideration of the decision or the
33 commission may rehear or reconsider its decision on its own initiative. The
34 decision shall be final upon denial of a motion for rehearing or reconsidera-
35 tion or the filing of the decision on reconsideration.

36 (8) No person acting on behalf of the director or any member of the com-
37 mission shall participate in any case in which he has a direct or indirect
38 personal interest.

39 (9) An appeal may be made to the Supreme Court from decisions and orders
40 of the commission within the times and in the manner prescribed by rule of the
41 Supreme Court.

42 (10) (a) Benefits shall be paid promptly in accordance with any decision
43 allowing benefits, regardless of:

44 (i) The pendency of a time period for filing an appeal or peti-
45 tioning for commission review; or

46 (ii) The pendency of an appeal or petition for review.

47 (b) Such payments shall not be withheld until a subsequent appeals ex-
48 aminer decision or commission decision modifies or reverses the previ-
49 ous decision, in which event benefits shall be paid or denied in accor-
50 dance with such decision.

1 (11) (a) Any right, fact, or matter in issue, directly based upon or nec-
2 essarily involved in a determination, redetermination, decision of the
3 appeals examiner or decision of the commission which has become final,
4 shall be conclusive for all the purposes of this chapter as between the
5 interested parties who had notice of such determination, redetermina-
6 tion or decision. Subject to appeal proceedings and judicial review by
7 the Supreme Court as set forth in this section, any determination, rede-
8 termination or decision as to rights to benefits shall be conclusive for
9 all purposes of this chapter and shall not be subject to collateral at-
10 tack irrespective of notice.

11 (b) No finding of fact or conclusion of law contained in a decision or
12 determination rendered pursuant to this chapter by an appeals examiner,
13 the industrial commission, a court, or any other person authorized to
14 make such determinations shall have preclusive effect in any other ac-
15 tion or proceeding, except proceedings that are brought (i) pursuant
16 to this chapter, (ii) to collect unemployment insurance contributions,
17 (iii) to recover overpayments of unemployment insurance benefits, or
18 (iv) to challenge the constitutionality of provisions of this chapter
19 or administrative proceedings under this chapter.

20 (12) The provisions of the Idaho administrative procedure act, chapter
21 52, title 67, Idaho Code, regarding contested cases and judicial review of
22 contested cases are inapplicable to proceedings involving claimants under
23 the provisions of this chapter.