IDAHO
DEPARTMENT OF LABOR

C.L. "BUTCH" OTTER, GOVERNOR
ROGER B. MADSEN, DIRECTOR

FAX

Date: April 28, 2009

To: DIVISION OF UC LEGISLATION

From: Idaho Department of Labor

CC: Richard Trigg, Region VI Administrator

Total pages: 11

X URGENT ____ REPLY ASAP ____ PLEASE COMMENT ____ PLEASE REVIEW ____ FYI

Comments: Attached is the State of Idaho's Application for UC Modernization Incentive Payments.

If you have questions or need additional information, please contact:

CRAIG BLEDSOE
Deputy Attorney General
Idaho Department of Labor
(208) 332-3570 ext. 3232
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IDAHO
DEPARTMENT OF LABOR
C.L. "BUTCH" OTTER, GOVERNOR
ROGER B. MADSEN, DIRECTOR

April 28, 2009

Cheryl Atkinson
Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

VIA FACSIMILE
(202-693-2874)

Re: Application for Base Period Provision Incentive Payment
Application for Benefit Eligibility Incentive Payment

Dear Ms. Atkinson:

I hereby apply for certification of changes made to Idaho's Employment Security Law that qualify for both the base period provision and benefit eligibility incentive payments.

Attached for your review is House Bill No. 248. This bill passed Idaho's Legislature and was signed into law by the Governor on April 24, 2009. Section 1 of the bill amends Idaho Code § 72-1306 to define the "base period" to include the most recently completed calendar quarter when a claimant has insufficient wages in the regular base period to establish eligibility for unemployment benefits. I certify that this change will be effective on and after October 1, 2009. Section 2 of the bill adds two new personal eligibility conditions for unemployment benefits. First, Idaho Code § 72-1366(4)(c) makes unemployment benefits payable to certain individuals seeking only part-time work. And second, Idaho Code § 72-1366(22) allows an additional 26 weeks of benefits to be paid to exhaustees who are enrolled in and making satisfactory progress in an approved training program. I certify that these last two changes to Idaho's Employment Security Law will be effective on and after January 1, 2010.

I further certify that all of the changes made by House Bill 248 to Idaho's Employment Security Law are permanent and are not subject to discontinuation under any circumstances other than repeal by the Legislature. Idaho will use the incentive payments it receives for modernizing Idaho's Employment Security Law to pay unemployment benefits to claimants.

Sincerely,

Roger B. Madsen

ROGER B. MADSEN
Director

Enclosure

cc: Richard Trigg, Region VI Administrator

State of Idaho

Office of the Secretary of State

CERTIFICATION

I, BEN YSURSA, Secretary of State of the State of Idaho and legal custodian of the Seal of said State and all Acts of the Legislature of the State of Idaho, do hereby certify that the annexed is a full, true and complete copy of **HOUSE BILL NO. 248 (Chapter 238),** adopted by the Sixtieth Legislature, First Regular Session, received and filed in this office on the twenty-fourth day of April, 2009, at 2:16 p.m., and that the same appears of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise, Idaho, this 28th day of April, 2009.

Ben Ysursa

BEN YSURSA
Secretary of State

by Miren E. Artiach

MIREN E. ARTIACH
Deputy Secretary of State

RS18853

LEGISLATURE OF THE STATE OF IDAHO
Sixtieth Legislature First Regular Session - 2009

ORIGINAL

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 248

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1306, IDAHO CODE, TO DEFINE "BASE PERIOD" AND "ALTERNATIVE BASE PERIOD" FOR CLAIMANTS WHO HAVE INSUFFICIENT WAGES IN THE BASE PERIOD TO ESTABLISH ELIGIBILITY FOR UNEMPLOYMENT BENEFITS; AMENDING SECTION 72-1366, IDAHO CODE, TO PROVIDE THAT CERTAIN CLAIMANTS SHALL NOT BE DENIED REGULAR UNEMPLOYMENT BENEFITS SOLELY BECAUSE THEY ARE SEEKING ONLY PART-TIME WORK, TO DEFINE A PHRASE, TO PROVIDE A SPECIFIC CODE REFERENCE, TO PROVIDE THAT CERTAIN JOB TRAINING MUST BE COMPLETED IN TWO YEARS, TO PROVIDE THAT CERTAIN CLAIMANTS SHALL BE ELIGIBLE FOR TRAINING EXTENSION BENEFITS, TO PROVIDE CRITERIA, TO PROVIDE FOR WEEKLY TRAINING BENEFIT EXTENSION AMOUNTS, TO PROVIDE THAT THE APPLICATION OF CERTAIN PROVISIONS SHALL NOT RESULT IN A DENIAL OF TRAINING EXTENSION BENEFITS AND TO PROVIDE THAT EMPLOYERS' ACCOUNTS SHALL NOT BE CHARGED FOR TRAINING EXTENSION BENEFITS PAID TO CLAIMANTS; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 72-1306, Idaho Code, be, and the same is hereby amended to read as follows:

72-1306. BASE PERIOD. (1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year. <u>If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "base period" shall be the last four (4) completed calendar quarters immediately preceding the beginning of a benefit year.</u>

(2) "Alternate base period" means the first four (4) of the last five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. <u>If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "alternate base period" shall be the last four (4) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred.</u> To use the alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

SECTION 2. That Section 72-1366, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(2) The claimant shall have registered for work and thereafter reported to a job service office or other agency in a manner prescribed by the director.

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

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

(i) Able to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection if:

1. Such failure is due to the claimant's illness or disability which occurs after he has filed a claim and during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or

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

(ii) Living in a state, territory, or country that is included in the interstate benefit payment plan or that is a party to an agreement with the United States or the director with respect to unemployment insurance.

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

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

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

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

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

(6) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. The longer a claimant has been unemployed, the more willing he must be to seek other types of work and accept work at a lower rate of pay.

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

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

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

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

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

(a) The claimant is a participant in a program sponsored by title I of the workforce investment act and attends a job training course under that program; or

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

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

(i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(ii) The job training can be completed within ~~one (1) year~~ two (2) years, except that this requirement may be waived pursuant to rules that the director may prescribe.

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

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course, or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment, and wages for such work are not less than eighty percent (80%) of the average weekly wage in the individual's past employment.

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

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

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

(11) A claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking benefits under an unemployment insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment insurance law of the United States.

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

(13) A claimant shall not be entitled to benefits if his principal occupation is self-employment.

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

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

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

(b) If the services performed during less than one-half (1/2) of any contract period by an individual for an educational institution are in an instructional, research, or principal administrative capacity, none of the service shall be deemed to be in such capacity.

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

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed

service and earned an amount equal to not less than six (6) times the weekly benefit amount established during the first benefit year.

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

(b) Benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week which commences during a period between two (2) successive school years or terms if the individual performs such services in the first school year or term, and there is a contract or reasonable assurance that the individual will perform such services in the second school year or term. If benefits are denied to any individual under this paragraph (b) and the individual was not offered an opportunity to perform such services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause.

(c) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week which commences during an established and customary vacation period or holiday recess if the individual performed the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection (17) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph the term "educational service agency" means a governmental entity which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

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

(19) (a) Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed (including an alien who was lawfully present in the United States as a result

of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the immigration and nationality act).

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

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

(20) An individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director must participate in those reemployment services unless:

(a) The individual has completed such services; or

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

(21) (a) A claimant:

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

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

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

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

2. Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or

3. Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

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

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

(i) The claimant is unemployed;

(ii) The claimant has exhausted all rights to regular unemployment benefits as defined in section 72-1367A(1)(e), Idaho Code, and all rights to extended benefits as defined in section 72-1367A(1)(f), Idaho Code, and all rights to benefits under section 2002 ("increase in unemployment compensation benefits") of division B, title II, the assistance for unemployed workers and struggling families act, of the

American recovery and reinvestment act of 2009, public law 111-5, as enacted on February 17, 2009;

(iii) The claimant is enrolled in a training program approved by the department or in a job training program authorized under the workforce investment act, as amended; except that the training program must prepare the claimant for entry into a high-demand occupation if the department determines that the claimant separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant's place of employment. For the purposes of this subsection, a "declining occupation" is one where there is a lack of sufficient current demand in the claimant's labor market area for the occupational skills for which the claimant is qualified by training and experience or current physical or mental capacity and the lack of employment opportunities is expected to continue for an extended period of time, or the claimant's occupation is one for which there is a seasonal variation in demand in the labor market and the claimant has no other skills for which there is current demand. For the purposes of this subsection, a "high-demand occupation" is an occupation in a labor market area where work opportunities are available and qualified applicants are lacking as determined by the use of available labor market information;

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

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

(b) The weekly training extension benefit amount shall equal the claimant's weekly benefit amount for the most recent benefit year less any deductible income as determined by the provisions of this chapter. The total amount of training extension benefits payable to a claimant shall be equal to twenty-six (26) times the claimant's average weekly benefit amount for the most recent benefit year. A claimant who is receiving training extension benefits shall not be denied training extension benefits due to the application of subsections (4)(a)(i) and (6) of this section and an employer's account shall not be charged for training extension benefits paid to the claimant.

SECTION 3. Section 1 of this act shall be in full force and effect on and after October 1, 2009; and Section 2 of this act shall be in full force and effect on and after January 1, 2010.

THIS HOUSE BILL PASSED THE HOUSE OF REPRESENTATIVES

ON THE 30th DAY OF March, 2009.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

THIS HOUSE BILL PASSED THE SENATE

ON THE 14th DAY OF April, 2009.

PRESIDENT OF THE SENATE

I HEREBY CERTIFY THAT THE WITHIN HOUSE BILL NO. 248 ORIGINATED IN THE HOUSE DURING THE FIRST REGULAR SESSION OF THE SIXTIETH LEGISLATURE OF THE STATE OF IDAHO.

Kathri T. Alvarado

CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

THIS HOUSE BILL RECEIVED BY THE GOVERNOR

ON THE 20th DAY OF April, 2009, AT 11:35 AM.

AND APPROVED

ON THE 24th DAY OF April 2009, AT 11:30 AM.

GOVERNOR

RECEIVED & FILED

April 24, 2009 2:16 p.m.

Chapter 238

CHAPTER NO.

BEN YSURSA

SECRETARY OF STATE

Effective Dates:

10-01-09 Section 1

01-01-10 Section 2