



DHR Autumn Forum

Tuesday, November 15th, 2016

East Wing 42, Idaho State Capitol

9:00 a.m. – 9:05 a.m. **Welcome**

Susan Buxton, Esq., DHR Administrator

9:05 a.m. – 9:35 a.m. **Due Diligence and the Hunt for Reliable Information**

Kim Toryanski, Esq., DHR Deputy Administrator

Colleen Zahn, Esq., Deputy Attorney General

9:35 a.m. – 9:45 a.m. **CPM Overview**

Amanda Howes, MPA, CPM Program Manager

9:45 a.m. – 10:00 a.m. **Break**

10:00 a.m. – 11:30 a.m. **Workplace Investigations**

Bobbi Dominick, Esq., with the law firm Gjording Fouser

11:30 a.m. – 11:45 a.m. **Proposed Legislation and Rule Changes**

Susan Buxton, Esq., DHR Administrator

Watch it LIVE at: <http://idahoptv.org/INSESSION/>

DUE DILIGENCE AND THE HUNT FOR RELIABLE INFORMATION

Kim Toryanski, Esq., *DHR Deputy Administrator*
Colleen Zahn, Esq., *Deputy Attorney General*




What is meant by due diligence in the hiring process for state employment?

Our training segment will cover –

- Who is involved in handling due diligence for the appointing authority?
- What laws are relevant?
- What DHR Rules are relevant?
- What documents do applicants submit when applying for a classified position?
- If an applicant is a current or previous state employee, how much information is appropriately available for the appointing authority?




Who handles due diligence for an agency?

- Human resources personnel – roles and responsibilities
- Hiring supervisor – level of involvement
- Agency senior executive/s – might be necessary in situations.





What laws are relevant?



Do they include...

- Idaho Public Records Act – provision pertaining to personnel records; exemptions
- Idaho Code 67-5309(o) – “appropriate information relating to performance of all employees... state shall be considered one employer”
- Scope and statutory definition of personnel records
- EEOC and guidance on timing of questions regarding criminal history and job application.




Are laws on discrimination relevant?

- Federal anti-discrimination laws, including Title VII of the Civil Rights Act
- Idaho Human Rights Act
- More information on this area coming up from Colleen




What DHR Rules are relevant?

- DHR Rule 086.06. **Disclosure of Information for Hiring Purposes.** “deemed to authorize disclosure of confidential information to state agencies...”
- DHR Rules 087. **Denial of Applications.** “If the applicant has already received appointment, the administrator may take appropriate action to have the employee removed from the position.”
- DHR Rule 220. **Records.** “appointing authority...entitled to examine the employee’s service record and performance information...”




What documents do applicants submit when applying for a classified position?

- Creation of online profile in the Applicant Tracking System
- Completion of application and written examination for position
- Attachment of resume as part of written examination



What it means for applicants who are current or previous state employees.

How much information is appropriately available to appointing authority in hiring process?

- Performance evaluations?
- Letters of commendation?
- Disciplinary documents?
- Conversations with HR department?
- Conversations with current/previous supervisor?



IS ALL INFORMATION FAIR GAME?



Should you research candidates on social media?

- There are several legal concerns with relying on social media as part of the hiring process
- Relying on the information may violate:
 - Federal anti-discrimination laws
 - The Idaho Human Rights Act
 - The First Amendment
- Other litigation about requiring applicants to log in to social media as part of interview or disclose passwords so employer can log in to accounts



How can federal and state anti-discrimination laws be implicated?

- Federal and state anti-discrimination laws prohibit employers from making hiring decisions based on protected status
- People post significant details about personal lives
- Birthdays and sometimes age are posted on social media
- People identify themselves as members of advocacy groups or falling within a demographic covered by an advocacy group
- Postings are also made without context, so it can be easy to assume something about an applicant that is not true



But just seeing the information is not the same as relying on it, right?



- Case law states if an employer receives information during the hiring process, an inference arises that the employer relied on it
- Employer then must prove it did not rely on it
- The existence of the inference means the case is going to trial
 - The employer's case will be presented before a jury and the jury will decide who to believe



Case in Point : *Shelley v. Geren*

- Not a social media case, but instructive about consequences when gathering outside information as part of hiring process
- Plaintiff, 54 years old, sought promotion within Army Corps of Engineers
- Corps did not interview Plaintiff, but instead hired a 42 year old
- 2 members of a 5 member hiring panel requested retirement matrix while hiring process was occurring
 - Panel members denied relying on it for hiring, or that they requested it as part of hiring process
- Court held an inference was created that 2 members of the hiring panel relied on retirement information in making hiring decision



How can the First Amendment be implicated?

- First Amendment protects public employees from retaliation (including failure to hire or promote, suspension, and termination) for engaging in speech on a matter of public concern that is outside of their job duties
- Examples:
 - Board of Education could not fire teacher for letter to editor criticizing way the Board and District Superintendent handled past school bond measures
 - County constable could not terminate clerical employee for comment made to co-worker about assassinating President Reagan
 - Department of Juvenile Corrections did not have unfettered right to revoke volunteer status of longtime volunteer who wrote memo to juvenile judges detailing numerous problems at Department and with Director's conduct



How does this relate to social media?

- Individuals applying for jobs, transfers, and contractor positions have a First Amendment right to free speech
 - They also have a First Amendment right to freedom of association
 - These protections may also apply to applicants for volunteer positions
- Many people post or like posts that reveal personal beliefs or memberships in groups
- Receiving that information during the hiring process creates an inference that you relied on it when making your decision
 - A complex test exists to determine whether relying on that information violates the First Amendment
- The safest bet is to avoid social media altogether
 - Consult with your legal counsel before making decisions based on social media posts



What about reviewing criminal records?

- The same inference arises that you relied on the information
- The EEOC has cautioned employers not to rely on arrests that did not result in conviction
- The EEOC has cautioned employers that a blanket policy prohibiting employment of individuals with convictions would violate Title VII
- If you have concerns about an applicant's criminal convictions, you need to meet with the applicant to collect more information and get the applicant's side of the story



So what can you rely on?

- As a State employer, you have the right to review personnel files for existing State employees
- Personnel Evaluations can be helpful, as can NOCAs and LODAs
- You should not agree to remove NOCAs or LODAs from a resigning employee's file except in unusual circumstances
 - If the situation was concerning enough for you to issue a NOCA, wouldn't you want another employer to know about that?
 - If, however, it turns out you were mistaken or legitimate explanations existed for the employee's conduct, be careful about processes to remove it. DHR Rule 87
- Legal settlements should involve informing the DHR administrator



QUESTIONS?

Thank you!



NAVIGATING POTENTIALLY STORMY SEAS: INVESTIGATING WORKPLACE COMPLAINTS



Idaho Division of Human Resources
November 15, 2016

Bobbi K. Dominick, JD, SPHR, SHRM-SCP



The “Why, When, Who & How” of Navigating Investigations in the Workplace

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“The most significant immediate measure an employer can take in response to a sexual harassment complaint is to launch a prompt investigation to determine whether the complaint is justified. An investigation is a key step in the employer’s response and can itself be a powerful factor in deterring future harassment. By opening a sexual harassment investigation, the employer puts all employees on notice that it takes such allegations seriously and will not tolerate harassment in the workplace. An investigation is a warning, not by words but by action.” *Swenson v. Potter* 271 F.3d 1184 (9th Cir. 2001)



What we will cover

- What constitutes a complaint?
- Does the employer have a duty to investigate?
- Who should conduct the investigation?
- How should the investigation be done?
- Are there common mistakes to avoid?
- How much coffee have you had?

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The Big Picture



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Biggest Issue: Harassment EEOC Task Force on Harassment

- Issued June, 2016
- Based on 18 month study of harassment prevention
- Establishes that harassment is still an issue that needs to be addressed by employers
- Outlines the business case for stopping harassment
- Includes a wealth of information and research on what works and what doesn’t
- Focuses on culture, leadership, accountability
- Policies and training must be part of comprehensive prevention effort, and training must change

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Mission and Values!

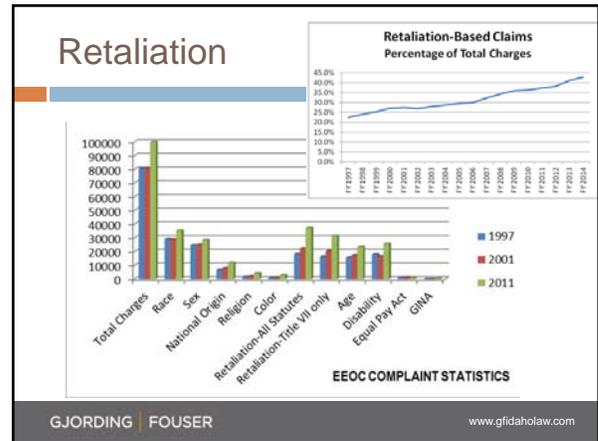
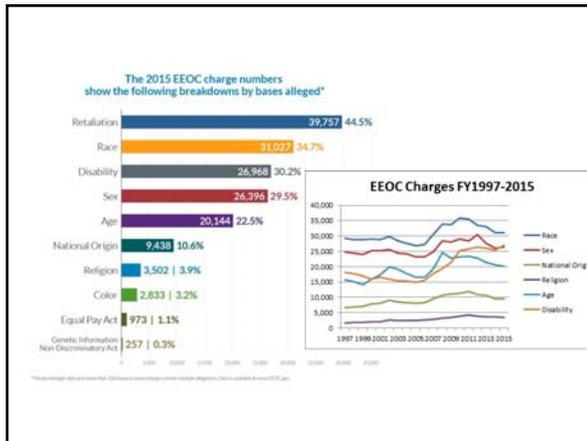
EEOC 2016: "...workplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment. ...leadership and commitment to a diverse, inclusive and respectful workplace in which harassment is simply not acceptable is paramount. ...Second, ...an organization must have systems in place that hold employees accountable for this expectation... An organization's culture is set by the values of the organization..."

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WHY



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Other types of investigation

- Fraud/Embezzlement
- Ethics violations
- Misconduct
- Theft
- Time theft
- Bullying
- Whistleblower

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The importance of an effective investigation



- Effective investigations usually resolve issues at the lowest possible level.
- Effective investigations send a message that the organization expects employees to comply with policies relating to unacceptable conduct.
- Effective investigations usually result in the parties feeling that they have been treated fairly, no matter what the outcome.
- Effective investigations will assist in defending the entity if litigation is filed, BUT THAT IS NOT THEIR PRIMARY PURPOSE OR FOCUS.

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Problems caused by no investigation or a poorly done investigation

- If a problem does exist, it will not be properly remediated
- Sends a message to employees that policies don't really mean what they say
- May cause employee to be reluctant to report future incidents
- May give rise to add'l complaints of retaliation



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Questions



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WHEN?



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MYTH OR TRUTH

There is no obligation on the part of the organization to take action unless there is a formal complaint.

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Legal Standard:
Duty to Investigate

- Employer knew about the behavior or complaint
- Employer should have known about the behavior or complaint
- Employer had constructive knowledge of the complaint
- Does not have to be formal written complaint

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What constitutes a "complaint"?

- Written or verbal communication from employee "specifically" complaining of discrimination, harassment or other objectionable conduct
- Employee verbally states he/she has "generally" been treated badly or unfairly because of unlawful reason
- Allegations of violation of policy that could potentially rise to level of discrimination or misconduct
- Supervisor/manager reports that inappropriate acts or misconduct have occurred
- EEOC /IHRC Charge of Discrimination / Lawsuit
- Post-complaint/investigation claims of mistreatment for complainant (retaliation)

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Policy Manual Violations

- Goes beyond federal or state law
- Includes all kinds of discrimination and harassment
- Prohibits workplace bullying and intimidation
- Establishes zero tolerance policy

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Duty to Investigate

- Federal & state harassment/discrimination/safety laws impose legal duty on employer to investigate employee-related complaints (defenses & mitigation)
- "For Cause" terminations require fair & thorough investigations

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WHO

Determining WHO should investigate may be one of the most important decisions you will make in responding to workplace misconduct allegations.

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Selecting the Investigator

- Ability to understand purpose of investigation & potential issues it may raise
- Knowledge of policies & practices
- Knowledge of applicable legal issues
- Ability to take thorough, accurate notes which can be used as evidence
- Ability to be objective
- "Communication fit" with personalities & backgrounds of potential witnesses
- Comfort level for witnesses

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Important Qualities

- Neutral
- Trained
- Ability to be comprehensive
- Ability to document thoroughly and explore different avenues of information
- Ability to maintain confidentiality

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Important to consider

- Interviewing skills, including the ability to identify follow-up questions when new facts or issues arise during interviews
- Ability to determine credibility of witnesses
- Experience conducting investigations
- Consider cost both of investigation and of potential consequences

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Training required-Harassment

- Understanding law of discrimination and policy purpose
- Understanding impact of systems (including organizational culture, leadership) for preventing discrimination
- Understanding implicit and explicit biases, stereotypes and impact on investigation
- Understanding the psychology of harassment, coping skills, impact on groups, psychology of harassers, etc.
- Understanding effective interview techniques
- Understanding documentation
- Understanding privilege, confidentiality, and professionalism
- Understanding appropriate conclusions, relevance, corroboration, and reporting on results of investigation
- Understanding prompt, corrective action
- Understanding how to assist in healing the aftermath

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Potential choices: What are advantages and disadvantages?

- Manager or supervisor
- HR professional
- Private investigator or outside consultant
- In-house counsel
- Outside counsel

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HR professional as investigator

- Neutrality
- Unbiased
- Ability to work with management post-investigation
- Experience and training

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Attorney as Investigator

- Not defense of claim, rather investigation
- Independence
- Neutrality
- Experience and training
- Understanding of role of investigator vs. attorney
- Potential witness

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When to go external

- Higher level employee or longer term employee as target
- Multiple complainants
- Close or small work group
- HR professional tied in to issues or facts
- Possibility that bias might be presumed
- Investigator relationships
- Investigator too busy
- Potential for messy or ugly
- Potential for criminal activity

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Difficult Issues: Understanding the psychology of harassment and reporting: Hesitant reporting

- Fear of losing their job
- Fear of retaliation
- Fear of getting someone into trouble
- Fear of disrupting the workplace
- Fear of being accused of having no sense of humor, or not being a team player
- Fear of being embarrassed
- Fear of feeling impotent or not valued
- Fear of not being believed.

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MYTH OR TRUTH
 Some discrimination may occur as a result of stereotypes about particular types of people.

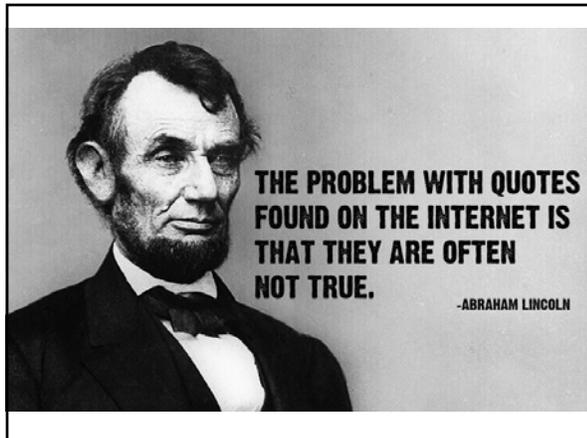
Difficult Issues: Understanding the psychology of harassment and reporting: Common Psychological Responses to Harassment (Coping)

- Avoidance
- Denial (relabeling, tolerating, detaching, self-blame)
- Minimizing
- Assertion
- Advocacy or seeking help
- Social coping

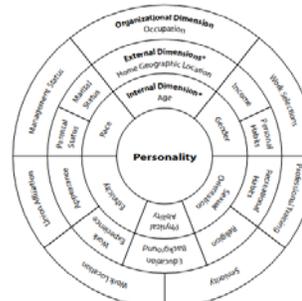
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MYTH OR TRUTH
 What happens on Facebook stays on Facebook.



Four Layers of Diversity



DIFFICULT ISSUES: UNDERSTANDING DIVERSITY

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Difficult Issues: Understanding the psychology of harassment and reporting: Severity of Behavior

TABLE 11.1

Two Levels of Severity

| Less Serious | More Serious |
|---|---|
| A Single Incident Verbal Comments "Complimentary" or "Welcoming" | A Repeated Incident Physical Contact/Proposition Threatening, Intimidating, Demeaning, or Derogatory |
| One Aggressor Physical Threat Not an Issue Directed at a Group | Many Aggressors Physical Threat Possible Directed at an Individual |
| Escape Possible One Victim Minimal Power Factors Used Otherwise Good Environment | Escape Restricted Multiple Victims Multiple Power Factors Presence of Other Harassment or Threats in the Environment |
| Rehabilitation of Aggressor Possible/Remorse Evident | Aggressor Denies Conduct or Is Defiant/Recidivism Potential High |

MYTH OR TRUTH

People who have mental disabilities are violent and unpredictable and thus a danger in the workplace.

Difficult Issues: Understanding the psychology of harassment and reporting: Effects of harassment

| Psychological Effects | Physiological Effects | Career-Related Effects |
|--|--|---|
| <ul style="list-style-type: none"> • Depression, anxiety, shock, denial • Anger, fear, frustration • Insecurity, embarrassment, betrayal • Confusion, powerlessness • Shame, self-consciousness • Guilt, self-blame, isolation | <ul style="list-style-type: none"> • Headaches • Lethargy • Gastrointestinal distress • Dermatological reactions • Weight fluctuations • Sleep disturbances, nightmares • Phobias, panic reactions • Sexual problems | <ul style="list-style-type: none"> • Decreased job satisfaction • Unfavorable performance evaluations • Loss of job promotion • Drop in academic or work performance due to stress • Absenteeism • Withdrawal from work or school |

Difficult Issues: Making Credibility Determinations

- Contradictions
- Prior inconsistent statements
- Demeanor
- Corroborating evidence
- Determining which version of facts is most probable
- Setting aside investigator biases



HOW



Important to Note

- The legal standard is an absolute minimum, organizations are free to adopt stricter rules.
- Laws are based on communal interests that may be different from an organization's interests.
- An organization's values can drive behavioral rules as well.
- Most organizations should establish workplace conduct and investigation norms that go beyond the minimum that the law provides.

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Putting processes in place

- When an investigation is triggered, what is the investigative plan?
- What are the criteria for recordkeeping?
- Is there a standard reporting system?
- Is there a standard written report format?
- What is the review process?
- What are the procedures for uncovering documentation or computer evidence?

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Protocols for Investigation

- Start (and complete) investigation promptly
 - ▣ Ellerth and Faragher defenses – prompt, remedial action
- Outline scope & breadth of investigation
- Prepare a timeline, include each step that will be taken & expected completion date
- Recognize that chronology & order of interviews can either contaminate or enhance success of investigation

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Starting

- Prepare an outline of critical issues:
 - ▣ Ensures all issues regarding each witness will be addressed
 - ▣ Ensures a thorough & consistent line of questioning
 - ▣ Allows investigator to compare similarly situated witnesses from a standardized approach



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Think about

- Rules, policies, & procedures
- Personnel files (named individuals & "comparators")
- Memoranda or notes about incident
- Complaints (internal or external)
- Videotape (security)
- E-mail, Internet, Blogs, Facebook, etc.
- Other potential information sources

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Logistics

- Location is Important
 - ▣ Cubicles and open offices are not sufficient
 - ▣ Quiet, private room is appropriate
- Ground Rules
 - ▣ Company meeting
 - ▣ Expect/require honesty, candor
 - ▣ Expect confidentiality

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Logistics

- Ground Rules Cont'd
 - ▣ OK for union to participate to ask questions or clarify – but expect employee to answer
 - ▣ Will break at end and give union and employee time to speak privately – come back and add anything at that time
- Make appropriate disclosures (e.g., who you are, who you represent, why you are there, etc.)

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Include

- Disclose nature & purpose of investigation at beginning
 - ▣ Be candid when interviewing person who is focus of investigation
 - ▣ Explain to witness that company takes complaints seriously
- Do not promise confidentiality!

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Include

- Stress voluntary nature of participation
 - ▣ Make clear employee may terminate discussion at any time
- No retaliation
- Advise that no judgments have been made about any aspect of investigation, including validity of complaint
- Just the Facts!

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Things to be aware of

- Scope
- Witness interaction
- Credibility
- Severity
- Corroboration
- Welcomeness
- Implicit bias
- Policy vs. illegal



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Other things to explore

- Type of training attended pre-complaint
- Scope of knowledge of behaviors (supervisors, co-workers)
- Other similar incidents
- Number and type of witnesses
- Individual's knowledge of policies
- Personnel rules

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Things to be aware of

- Retaliation
- Reporting structure
- Criminal violations
- Defending the case vs. preserving the employment relationship
- Corrective action
- Workgroup issues

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PROPOSED LEGISLATION AND RULE CHANGES

Susan Buxton, Esq., DHR Administrator



RULES



See print out and DHR website



STATUTE CHANGES



STATEMENT OF PURPOSE

RS 194-03

The federal government has mandated changes to the federal rules implementing overtime exemptions. The changes are effective December 1, 2016. The rule changes will create consequences for state employees under certain overtime exemptions of the Fair Labor Standards Act. As many as 1,350 state employees will convert from being overtime exempt under the FLSA to being covered. Idaho law provides compensatory pay for most exempt state employees. With the new changes, the previously exempt employees' rate of compensatory pay will go up from a ratio of 1:1 to 1:1.5; however, certain employees will lose 3 days of vacation annually. Agencies have expressed concerns to DHR that the loss of vacation time for those employees will affect retention and recruitment and in some cases create morale issues. DHR proposes that current employees in positions exempt from FLSA overtime provisions on November 1, 2016 and changing to FLSA covered status prior to December 1, 2016, be allowed to maintain the higher vacation accrual rate, i.e., have "grandfathered" status, as long as they maintain their current position within their agency. Emergency enactment of this provision is requested.



RS24829

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature First Regular Session - 2017

I N T H E
BILL NO. _____
B Y

AN ACT
2 RELATING TO PERSONNEL; AMENDING SECTION 67-5334, IDAHO CODE, TO PROVIDE AN
3 EXEMPTION ON VACATION TIME FOR CERTAIN EMPLOYEES; DECLARING AN EMER- GENCY
4 AND PROVIDING RETROACTIVE APPLICATION.

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

6 SECTION 1. That Section 67-5334, Idaho Code, be, and the same is hereby
7 amended to read as follows:



8 67-5334. VACATION TIME. (1) Vacation time shall be computed as fol-
 9 lows:
 10 (a) Vacation time shall not accrue to any officer or employee on any
 11 kind of leave of absence without pay, suspension without pay or layoff.
 12 Vacation leave shall accrue while an officer or employee is on approved
 13 leave with pay, on approved vacation leave, on approved military leave
 14 with pay, and on approved sick leave, but not when compensatory time is
 15 taken.
 16 (b) The rate per hour at which vacation leave shall accrue to eligible
 17 classified officers and employees earning credited state service who
 18 are covered and nonexempt under the federal fair labor standards act,
 19 29 U.S.C. section 201, et seq., shall be at the rate represented by the
 20 proportion 96/2080 during the first tenthousand four hundred (10,400)
 21 hours of credited state service; at the rate represented by the propor-
 22 tion 120/2080 during the second ten thousand four hundred (10,400)
 23 hours of credited state service; at the rate represented by the propor-
 24 tion 144/2080 during the third ten thousand four hundred (10,400) hours
 25 of credited state service; and at the rate represented by the proportion
 26 168/2080 thereafter. The provisions of this section shall not apply to
 27 employees designated as exempt from overtime under 29 CFR 541, on Novem-
 28 ber 1, 2016, and thereafter moved to covered status prior to December 1,
 29 2016, provided the employee remains in the same position.

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30 (c) Classified officers and employees earning credited state service
 31 and defined as an exempt "professional," "administrative," "computer
 32 worker" under the federal fair labor standards act, 29 U.S.C. section 2
 33 01, et seq., or who are designated as exempt under any other complete
 34 exemption in federal law shall be at the rate represented by the propor-
 35 tion 120/2080 during the first tenthousand four hundred (10,400) hours
 36 of credited state service; at the rate represented by the proportion
 37 144/2080 during the second ten thousand four hundred (10,400) hours of
 38 credited state service; and at the rate represented by the proportion
 39 168/2080 thereafter. The provisions of this section shall not apply to
 40 employees designated as exempt from overtime under 29 CFR 541, on Novem-
 41 ber 1, 2016, and thereafter moved to covered status prior to December 1,
 42 2016, provided the employee remains in the same position.

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***FAQ - EXEMPT EMPLOYEES
 WITH 1:1 COMP-TIME
 BALANCES WHO CHANGE TO
 FLSA NON-EXEMPT
 (COVERED)***

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See print out and DHR website

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**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Division of Human Resources has initiated proposed rulemaking procedures. The action is authorized pursuant to Idaho Code Section 67-5309.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

**Tuesday, October 18, 2016
9:00 am to 12:00 pm**

**Office of Division of Human Resources
304 N. 8th Street, Room 347
Boise, ID**

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The following amendments are being proposed for DHR Rule 15.04.01:

- Subsection 010.14 defines seasonal work as it relates to employees who work seasonally. Seasons referenced are summer, fall, winter, spring, holiday, or harvest;
- Subsection 074.04 deletes “informal agreements” in the job classification Hay point factoring process;
- Section 086 makes it clear that applications for classified jobs are submitted online only and deletes language regarding other options in Subsection 086.02;
- Subsection 086.05 makes it clearer that employees on entrance probation are not eligible to be on promotional hiring lists;
- Section 089 is deleted in its entirety since locations for taking examinations are not needed with the online application process;
- Subsection 120.03 clarifies that agencies are the responsible record keeper for Limited Service Agreements;
- Section 122 is divided into two subsections to give greater clarity regarding temporary appointments. The first section addresses the initial hire and second section addresses circumstances that limit movement of temps into classified positions without examination;
- Section 151 clarifies the probationary rule for employees who successfully complete probation;
- Subsection 152.01 clarifies the probationary rule for employees who are not successful completing probation;
- Subsection 200.04 clarifies the problem solving process for enhanced use of mediation. Employees and agency representatives may agree to extend timelines in writing and the process should follow management’s chain of command;
- Subsection 220.04.a. clarifies the manner in which performance evaluations are accessed when classified employees transfer agencies;
- Subsection 241.01 conforms rules to processing codes used in IPOPS system regarding compensatory time and vacation in conjunction with a Workers Compensation claim;
- Section 250 deletes references to “earned administrative leave” which was previously eliminated; and
- Subsection 250.10 updates the rule by deleting language relevant to the former “MDA” leave which was previously eliminated.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Idaho Code Section 67-5220(2), negotiated rulemaking was not feasible to conduct due to discussions on a separate matter with state agencies, HR professionals and interested parties during the month of August, 2016. The matter related to proposed legislative changes DHR is making to adapt to changes in federal wage and overtime law and regulation.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed Rule and subsections, contact Kim Toryanski, Deputy Administrator, phone number (208) 854-3077.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 2nd day of September, 2016.

Susan E. Buxton
Administrator
Division of Human Resources
304 N. 8th Street
Boise, ID 82720

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS -- A THROUGH E.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (3-1-87)

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits remain intact. (3-20-14)

02. Administrator. The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. (5-8-09)

03. Agency Classification. A classification of positions unique to an agency. (5-8-09)

04. Allocation. The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

05. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

06. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

07. Appointing Authority. The officer, board, commission, person or group of persons authorized by

statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)

08. Appointment, Limited. The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

09. Appointment, Nonclassified. The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

10. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

11. Appointment, Probationary. The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

12. Appointment, Project Exempt. The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

13. Appointment, Provisional. The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)

14. Appointment, Seasonal. An appointment to a regular position in classified service with intermittent work periods defined by a season (summer, fall, winter, spring, holiday or harvest.) (Ref. Section 67-5302(3+2), Idaho Code) ~~(3-16-04)~~()

15. Appointment, Temporary. The appointment of a person to a nonclassified position which is of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) agency. Temporary appointments may occur for intermittent periods of time and include recurring assignments. (Ref. Section 67-5302(33), Idaho Code) (5-8-09)

16. Base Pay. The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)

17. Certifiable Range. An examination score and a rank on an eligibility register sufficiently high to be among the top twenty-five (25) available names, plus names of all individuals with scores identical to the twenty-fifth ranking eligible, for certification to fill a position in the classification for which the register was established. (4-7-11)

18. Classified Service. That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (5-8-09)

19. Commission. As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code. (5-8-09)

20. Compensation Plan. The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division of Human Resources and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. (5-8-09)

21. Compensation Schedule. The pay grades established by the Division of Human Resources and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

- 22. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule Section 050) (5-8-09)
- 23. Disabled Veteran.** Those veterans separated under honorable conditions who: (3-20-14)
- a.** Have served on active duty in the armed forces and have a current service-connected disability rating of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or (3-20-14)
 - b.** Are Purple Heart recipients. (Ref. Section 65-502(4), Idaho Code) (3-20-14)
- 24. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Section 190 of these rules. (5-8-09)
- 25. Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)
- 26. Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

074. ASSIGNMENT OF HAY EVALUATION POINTS.

- 01. Assignment to Pay Grade.** Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-16-04)
- 02. Guide Charts.** The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-16-04)
- 03. Factoring Benchmarks.** The factoring benchmarks correlated by Hay Management Consultants shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-16-04)
- 04. Factoring Process.** Hay evaluation points shall be assigned to a classification through the following methods, which may be used separately or in combination with the others: (3-16-04)
- ~~**a.** *Informal Agreement.* The appointing authority presents the new or revised classification and factoring recommendation informally to the administrator of the Division of Human Resources or designee and there is agreement on the points assigned. (3-16-04)~~
 - ba.** Factoring Session. The administrator shall determine the membership of a factoring committee and schedule a factoring session in which the appointing authority or designee may present both oral and written information concerning the classification to be factored. The factoring committee shall assign Hay evaluation points in accordance with Rule 074 and the administrator shall notify the appointing authority in writing of the decision of the factoring committee. The appointing authority may request an issue conference with the factoring committee and present their perspective on the assigned points. The factoring committee may affirm or modify the assigned points. The administrator will provide a letter to the appointing authority stating the outcome of the issue conference. (3-16-04)
 - eb.** Hay Management Consultants. After consultation with the appointing authority, the administrator

may refer the classification to Hay Management Consultants for a factoring analysis. (3-16-04)

05. Approval. After consultation with the administrator of the Division of Financial Management for approval regarding potential fiscal impacts, the administrator of the Division of Human Resources shall have final approval of the Hay evaluation points assigned to each classification. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

086. APPLICATIONS.

01. Form. All applications must be filed in the form approved by the administrator. (5-8-09)

02. Filing of Applications. Applications are currently accepted by internet application system, ~~mail, personal delivery, electronic mail and FAX to the Division of Human Resources. An application will also be considered timely if any state employment office or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources, and ensures that it is delivered to the Division of Human Resources by close of the next business day.~~ (3-16-04)()

03. Application by Military Personnel. An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

04. Application by Disabled Veterans. A disabled veteran may file an application at any time up until a selection for any classification for which the Division of Human Resources maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (5-8-09)

05. Promotion of Entrance Probationary Employee. Any classified employee on entrance probation may ~~not~~ file an application for a promotion ~~at opportunity and be placed on a register but may not be appointed~~ until permanent status has been attained. (Ref. Rule Subsection 169.03.) (3-16-04)()

06. Disclosure of Information for Hiring Purposes. By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 74-106, Idaho Code). (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

089. ~~LOCATION OF EXAMINATIONS. (RESERVED)~~
~~To enhance recruiting efforts, agencies may request examinations be held in specific areas of the state, by approved proctors outside the state of Idaho, or via electronic communications.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

120. LIMITED SERVICE APPOINTMENTS.

01. Designation. Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. (3-16-04)

02. Permanent Status and Expedited Layoff. Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Paragraph 140.01.c. of these rules. (5-8-09)

03. Limited Service Agreement. Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be ~~submitted to the administrator~~ kept by the appointing authority. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

122. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

01. Hours Limitation. Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment (Ref. Section 67-5302(33), Idaho Code). ()

02. Transition to Classified Service. ~~An applicant who is hired as a temporary employee from a hiring list created from a certified register, and serves at least one thousand forty (1,040) hours of continuous service, may be hired by the employing agency into that position in classified service as an entrance probationary employee without further examination. The announcement for the temporary position from which the certified register was created must~~ Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further examination if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. ~~(Ref. Section 67-5302(33), Idaho Code)~~ (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

151. SATISFACTORY SERVICE.

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. ~~The~~ appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division of Human Resources a performance evaluation ~~indicating satisfactory performance and shall certify the employee to permanent status. Such e~~ Certification to permanent status shall be effective one thousand forty (1,040) hours of credited state service after appointment, except that it shall be effective two thousand eighty (2080) hours of credited state service after appointment for peace officer classifications unless either period has been extended pursuant to Rule 150.03. (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04) (3-30-01)()

152. SEPARATION DURING PROBATION.

01. Notification. If a probationary employee does not serve satisfactorily, the appointing authority must, ~~no later than thirty (30) calendar days after the expiration of the probationary period,~~ provide the employee and the Division of Human Resources a performance evaluation indicating unsatisfactory performance in order to process the failure to complete probation separation within thirty (30) days after the expiration of the probationary period. (Ref. Section 67-5309(j), Idaho Code and Rule Subsection 210.04) (5-8-09)()

02. During Entrance and Voluntary Probation. (3-30-01)

a. An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (Ref. Section 67-5309(j), Idaho Code, and Subsection 210.04) (5-8-09)

b. Notice to the employee of termination for unsatisfactory service must be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. (3-30-01)

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions are appealable in accordance with Section 201 of these rules. (5-8-09)

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. (5-8-09)

02. Establishment of Agency Problem-Solving and Due Process Procedures. Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Section 200 of these rules. (5-8-09)

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. (5-8-09)

04. Elements of the Problem-Solving Procedure. The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or

representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code; Rule Section 152). ~~(5-8-09)~~()

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and must require that the investigation and resolution of them be conducted with maximum regard for confidentiality. (5-8-09)

06. Elements of Due Process Procedure. An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than ten (10) working days after the employee has received notice, unless both the employee and agency agree otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agencies's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and agency agree otherwise in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code; Rule Sections 150 through 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. (5-8-09)

07. Notification. A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, provisional or entrance probationary status in the agency concerned. (5-8-09)

08. Assistance to Agencies. The administrator will assist agencies whenever requested in the development or revision of their agency problem-solving and due process procedures. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

b. Any employee may at all reasonable times during business hours review his service record maintained in the Division of Human Resources or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. ()

a. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (4-7-11)

#b. All performance evaluation documents must be *copied provided* by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. (3-20-14)()

(BREAK IN CONTINUITY OF SECTIONS)

241. WORKERS COMPENSATION OR DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee will be given the choice of either: (5-8-09)

a. Leave of absence without pay while receiving workers compensation; or (5-8-09)

b. Utilizing a portion of accrued sick *or other paid* leave to supplement workers compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (5-8-09)()

02. Layoff After Twelve Weeks' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule Subsection 101.01) Conditional releases will be considered in accordance with the Americans with Disabilities Act. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and must establish reasonable justification for approval. (5-8-09)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, ~~earned administrative leave~~ or compensatory time off for overtime before commencing leave without pay. (Ref. Section 240) (5-8-09)()

d. Resignation. If vacation leave, ~~earned administrative leave~~ and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (5-8-09)()

02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Subsection 240.07 of these rules. (5-8-09)

03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (5-8-09)

04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Subsection 124.05 of these rules. The employee will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (5-8-09)

05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: (5-8-09)

- a. Vacation leave; (5-8-09)
- b. Sick leave; (5-8-09)
- c. Special leave situations; (3-20-14)
- d. Compensatory time off for overtime worked; and (3-20-14)
- e. Administrative leave. (3-20-14)

06. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (5-8-09)

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (5-8-09)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (5-8-09)

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or

representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (5-8-09)

e. Notification. An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. (3-20-14)

07. Religious Leave. Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (5-8-09)

08. Leave During Facility Closure or Inaccessibility. (7-1-93)

a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees are authorized administrative leave to cover their scheduled hours of work during the closure or inaccessibility. (3-20-14)

b. Early release. When the appointing authority or designated representative authorizes early release of employees, the resulting time off will be charged to administrative leave. (3-20-14)

09. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (5-8-09)

10. Employee Assistance Program Leave. ~~Up to two (2) hours per visit will be granted for utilization of Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program.~~ (5-8-09) ()

11. Bone Marrow and Organ Donor Leave With Pay. (5-8-09)

a. Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (5-8-09)

b. Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (5-8-09)

FAQ - Exempt Employees with 1:1 Comp-time Balances Who Change to FLSA Non-Exempt (Covered)

Q: If an employee is changed from 'FLSA Exempt' to 'FLSA Covered' and has a 1:1 comp time balance, can the 1:1 comp time hours just stay in the current leave balance?

A: No. Any 1:1 comp time hours on the books when the Exempt employee moves to Covered CANNOT remain in the current balance and be mixed with 1:1.5 hours. Remember 1:1 hours are generally "use or lose" per Idaho Code 67-5328(3)(c) and 59-1607(5), while 1:1.5 hours must be paid per Idaho Code 67-5328(3)(d) and 59-1607(6) and Federal Law. SCO is creating a separate tracking field in EIS for 1:1 comp hours.

Q: For employees moving from Exempt to Covered on 11/20/16 due to FLSA changes, does the Agency need to do anything to move 1:1 hours to the separate tracking field?

A: No, DSP will use the list of employees provided by each affected Agency to manually move any 1:1 comp-time hours remaining on the system to the new exempt comp-time balance. (No agency action required in this step)

Q: What about for any employees moving from FLSA Exempt to FLSA Covered changing in the future due to changes in duties or position?

A: If an Exempt employee moving to Covered has any 1:1 comp hours on the books, the Agency shall provide a Personnel Remarks action in IPOPS requesting DSP move the hours to the separate tracking field.

Q: If an employee has both 1:1.5 and 1:1 comp-time hours, which gets used first?

A: Covered 1:1.5 Comp Hours will always be used first. Hours in the Exempt comp-time balance can only be used when the employee's Covered comp-time balance is equal to zero (0.0).

Q: If an employee has 10 hours Covered comp-time and 30 hours Exempt comp-time, what happens if the employee codes 8 hours of CPT (Comp-time Taken) on his/her time sheet?

A: The Covered comp-time balance will be reduced to 2 hours. No action is needed to move hours.

Q: If the same employee has 10 hours Covered comp-time and 30 hours Exempt comp-time, what happens if the employee codes 40 hours of CPT (Comp-time Taken) on his/her time sheet?

A: The Agency shall submit an IPOPS Personnel Remarks to move 30 hours from the Exempt comp-time to the current comp-time balance. Note: Only transfer the hours as needed.

Q: What if the Agency *does not* transfer the hours necessary for the employee's timesheet coding?

A: The payroll process will use up comp time in the current balance and then default to vacation leave and then leave without pay. NOTE: Be sure to monitor the messages on the 'Payroll Processing Messages' (B-444395) report each payroll to ensure CPT does not default to another earnings code when the employee has an exempt comp-time balance that was not moved.

Q: What about the limit on comp time now that there could be two "buckets" of comp time for some employees?

A: Idaho Code 67-5328 and 59-1607 states an employee cannot accrue more than 240 hours of comp-time. The 240 hour maximum applies to the **combination** of the Covered and Exempt Comp-Time Balances. Therefore, a FLSA Covered employee who exceeds the 240 hours maximum needs to be paid for the extra hours. Beginning with the December 16, 2016 pay date, agencies will be responsible for making sure the 240 maximum accrual is not exceeded.

Q: How does an Agency pay a Covered employee when he/she exceeds the 240 total comp time hours?

A: The agency will need to pay a FLSA Covered employee for comp-time earned in excess of 240 hour maximum by either (1) overriding the employee's time sheet to pay comp-time rather than accrue it or (2) changing the employee's overtime accrual switch on the employee's personnel record via IPOPS.

Q: How can an Agency know how much total comp time an employee has when the hours are tracked in two separate places?

A: An IBIS report will be available for agencies to see employees' comp-time balances (both the Covered and Exempt balances).

If you have any questions regarding this FAQ sheet, please contact DSP Help Desk at DSPHelp@sco.idaho.gov