

## IDAHO

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### I. AT-WILL EMPLOYMENT

#### A. Statute

There is no statutory codification of the at-will employment doctrine in Idaho.

#### B. Case Law

The law in Idaho regarding at-will employment is expressed in the American Doctrine:

Under the American Doctrine, a general hiring not limited to a specified period creates a presumption of a hiring at-will under which either party may terminate the employment without cause at any time, assuming any notice requirements are met. ... [J]urisdictions following the American rule hold that [a term of a named price per week, month or year] fixes the rate of compensation and not the period of employment.

*Thomas v. Ballou-Latimer Drug Co.*, 442 P.2d 747, 751, 92 Idaho 337, 341 (Idaho 1968).

The presumption of at-will employment is rebuttable based on evidence of the intention of the parties as exemplified by the contract itself and the surrounding circumstances. *Thomas*, 442 P.2d at 751, 92 Idaho at 341.

This principle was reaffirmed in *Strongman v. Idaho Potato Comm'n*, 932 P.2d 889, 129 Idaho 766 (Idaho 1997), wherein the court held:

Unless there is a contract that specifies the duration of employment or limits termination, employment is at-will. Limitations on the employment relationship will be implied “when, from all the circumstances surrounding relationship, a reasonable person could conclude that both parties intended that either party’s right to terminate relationship was limited by the implied in fact agreement.”

*Id.* at 895, 129 Idaho at 772, quoting *Mitchell v. Zilog, Inc.*, 874 P.2d 520, 523, 125 Idaho 709, 712 (Idaho 1994) (*Mitchell* held that the district court properly dismissed the claim that plaintiff was not an at-will employee because (1) the employer had a fair employment practices policy; and (2) the employer had agreed to maintain her employment in Boise). See also *Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 388, 141 Idaho 233, 241 (Idaho 2005) (“presumption of an at-will employment

relationship can be rebutted when the parties intend that an employee handbook or manual will constitute an element of an employment contract”).

## II. EXCEPTIONS TO AT-WILL EMPLOYMENT

### A. Implied Contracts

#### 1. Employee Handbooks/Personnel Materials

In *Metcalf v. Intermountain Gas Co.*, 778 P.2d 744, 116 Idaho 622 (Idaho 1989), *overruled on other grounds by Sorensen v. Comm Tek, Inc.*, 799 P.2d 70, 118 Idaho 664 (Idaho 1990), the Idaho Supreme Court stated that:

Unless an employee handbook specifically negates any intention on the part of the employer to have it become a part of the employment contract, a court may conclude from a review of the employee handbook that a question of fact is created regarding whether the handbook was intended by the parties to impliedly express a term of the employment agreement.

*Id.* at 747, *citing Spero v. Lockwood*, 111 Idaho 74, 75 (1986). In *Metcalf*, where an “employee handbook was silent on the question of whether the terms and employee benefits set out in the handbook affected or otherwise modified the employer’s right to terminate the employment relationship at-will, ... a material issue of fact exist[ed] regarding whether, by providing for accumulated sick leave benefits, the employer impliedly agreed with the employee that the employment relationship would not be terminated or the employee penalized for using the sick leave benefits which the employee had accrued.” *Metcalf*, 778 P.2d at 747, 116 Idaho at 625. *See also Parker v. Boise Telco Fed. Credit Union*, 923 P.2d 493, 129 Idaho 248 (Idaho Ct. App. 1996) (adopting a rule that “an employer, without express reservation of the right to do so, can unilaterally change its written policy from one of discharge for cause to one of termination at will,” but that in order “for the modification ‘to become legally effective, reasonable notice of the change must be uniformly given to affected employees’”); *Crea v. FMC Corp.*, 16 P.3d 272, 275, 135 Idaho 175, 179 (Idaho 2000) (the fact that an employer placed an employee on probation did not create an employment contract or modify an existing contract).

#### 2. Provisions Regarding Fair Treatment

In *Nilsson v. Mapco*, 764 P.2d 95, 98-101, 115 Idaho 18, 21-24 (Idaho Ct. App. 1988), the Court of Appeals reversed and remanded a case to the trial court on the basis that the jury instruction was ambiguous and could have related to breach of contract and could have related to breach of implied covenant. In making this decision, the appellate court recognized that the employer’s employee handbook contained a provision regarding fair treatment.

#### 3. Disclaimers

In *Jones v. Micron Tech.*, 923 P.2d 486, 497-499, 129 Idaho 241, 252-254 (Idaho 1996), the Idaho Supreme Court held that an employee could not rely on provisions discussing grounds for termination in a manual provided after completing an application that clearly stated that the employee understood and agreed that his employment was at-will.

In *Raedlein v. Boise Cascade Corp.*, 931 P.2d 621, 623-624, 129 Idaho 627, 629-630 (Idaho 1996), the Idaho Supreme Court enforced a disclaimer in a policy manual given to an employee that stated the manual was “not intended to and [did] not create a contract of employment in any manner,” that employment was at-will, that “either the employee or the company [could] end the employment relationship at any time and for any reason,” that only the “vice president [of] [h]uman [r]esources [had] any authority to enter into any contract of employment to the contrary, and then only if the vice president sign[ed] a specific written employment agreement.” *Id.* at 623.

In *Mitchell v. Zilog, Inc.*, 874 P.2d 520, 520-523, 125 Idaho 709, 712-713 (Idaho 1994), the court rejected an employee’s argument that a contract for employment existed where the employee information guide provided that it was not intended to be a contract or create any rights, and with respect to both employment and disciplinary practices, stated that although the employer intends to follow the practices outlined in the employee guide, the employer could take action contrary to the practices outlined. *See also Parker v. Boise Telco Federal Credit Union*, 129 Idaho 248, 923 P.2d 493 (Idaho Ct. App. 1996) (the presumption of an at-will employment relationship can be rebutted when the parties intend that an employee handbook or manual altering that relationship will constitute an element of an employment contract; whether the particular handbook alters the at-will relationship may be a question of fact unless the handbook specifically negates any intention on the part of the employer to have it become a part of the employment contract).

In *Moser v. Coca-Cola Nw. Bottling Co.*, 931 P.2d 1227, 1230-31, 129 Idaho 709, 712-713 (Idaho Ct. App. 1997), the court of appeals held in favor of an employer, finding that although an employee was employed by a subsidiary corporation rather than the parent and was only provided with an employment manual of the parent, the facts indicated that the employee was aware that its terms, and in particular its disclaimer of anything other than an at-will employment. *See also Edmondson v. Shearer Lumber Products*, 139 Idaho 172, 179 75 P.3d 733, 740 (Idaho 2003) (employee handbook expressly defined the relationship as at-will and negated the former employee’s claim of intent to restrict the grounds for discharge).

#### 4. Implied Covenants of Good Faith and Fair Dealing

“Idaho law recognizes a cause of action for breach of an implied covenant of good faith and fair dealing. Such a covenant is found in all employment agreements, including employment at-will relationships. The covenant requires the parties to perform, in good faith, the obligations required by their agreement. An action by one party that qualifies or significantly impairs a benefit or right of the other party under an employment contract, whether express or implied, violates the covenant.” *Cantwell v. City of Boise*, 146 Idaho 127, 135-36, 191 P.3d 205, 213-14 (Idaho 2008)(citations omitted); *see also, Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 390, 141 Idaho 233, 243 (Idaho 2005), and *Metcalf v. Intermountain Gas Co.*, 778 P.2d 744, 116 Idaho 622 (Idaho 1989), *overruled on other Grounds by Sorensen v. Comm Tek, Inc.*, 799 P.2d 70, 118 Idaho 664 (1990). However, the covenant does not create a duty for the employer to terminate the at-will employee only for good cause. *Van v. Portneuf Medical Center*, 147 Idaho 552, 562, 212 P.3d 982, 992 (Idaho 2009), *citing Jenkins, id.* at 243, 108 P.3d at 390. The covenant only arises in connection with the terms agreed to by the parties, and does not create new duties that are not inherent in the employment agreement. *Id.* at 562, 212 P.3d at 992, *citing Jones v. Micron Tech., Inc.*, 129 Idaho 241, 247, 923 P.2d 486, 492. In *Metcalf v. Intermountain Gas Co.*, the Supreme Court of Idaho expressly recognized the existence of an implied covenant of good faith and fair dealing in employment contracts:

We hold that the covenant protects the parties' benefits in their employment contract or relationship, and that any action which violates, nullifies or significantly impairs any benefit or right which either party has in the employment contract, whether express or implied, is a violation of the covenant which we adopt today. . . . However, we reject the amorphous concept of bad faith as the standard for determining whether the covenant has been breached. . . . [I]t is difficult to distinguish a bad faith discharge from a no-cause discharge (which is permitted under the at-will doctrine) or a discharge in violation of public policy (which is not permitted under the at-will doctrine).

778 P.2d at 749, 116 Idaho at 627. The *Metcalf* court also stated that a breach of the covenant is a breach of the employment contract and is not a tort. *Id.* at 748, 116 Idaho at 626.

## B. Public Policy Exceptions

### 1. General

The Idaho Supreme Court recognized in *Jackson v. Minidoka Irrigation Dist.*, 563 P.2d 54, 98 Idaho 330 (Idaho 1977), that:

The employment at-will rule is not an absolute bar to a claim of wrongful discharge. As a general exception to the rule allowing either the employer or the employee to terminate the employment relationship without cause, an employee may claim damages for wrongful discharge when the motivation for the firing contravenes public policy.

*Id.* at 57, 98 Idaho at 333. In *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho, Inc.*, 123 Idaho 650, 851 P.2d 946 (Idaho 1993), the Idaho Supreme Court declined to extend this exception to at-will employment contracts to include independent contractors. *Id.* at 653, 851 P.2d at 949.

"The public policy exception to the employment at-will doctrine has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations, or who exercise certain legal rights or privileges." *Mallonee v. State*, 84 P.3d 551, 557, 139 Idaho 615, 621 (Idaho 2004), *citing Sorensen v. Comm Tek, Inc.*, 799 P.2d 70, 74, 118 Idaho 664, 668 (Idaho 1990). *Mollonee* is distinguished by *Denning v. Lincoln County Sheriff's Office*, which states that reporting a possible violation of one's constitutional rights is a protected activity, unlike possible violation of a state policy. No. 1:18-CV-00473-BLW, 2020 WL 355209, at \*7 (D. Idaho Jan. 21, 2020). In *Van v. Portneuf Medical Center*, the Idaho Supreme Court identified a two-part inquiry for making the public policy exception determination, which focuses on: 1) whether there is a public policy; and 2) whether the employee's behavior is protected under the public policy exceptions. 147 Idaho 552, 561, 212 P.3d 982, 991 (Idaho 2009).

"Whether a contract is against public policy is a question of law for the court to determine from all the facts and circumstances of each case." *Quiring v. Quiring*, 944 P.2d 695, 701, 130 Idaho 560, 566 (Idaho 1997) (context of illegal quitclaim deed).

### 2. Exercising a Legal Right

In *Hummer v. Evans*, 923 P.2d 981, 129 Idaho 274 (Idaho 1996), the court held that an employee's termination for responding to a court-issued subpoena was a violation of the public policy. *Watson v. Idaho Falls Consolidated Hospitals*, 720 P.2d 632, 637, 111 Idaho 44, 49 (Idaho 1986),

recognized in dicta the legislative declaration of public policy that the discharge of an employee based on union membership and/or activity offends the principles of public policy.

In *Edmondson v. Shearer Lumber Products*, 75 P.3d 733, 739, 139 Idaho 172, 178 (Idaho 2003), the court held that Idaho's public policy exception does not extend to an employee claiming a private sector employer terminated his employment to restrict his constitutional right of free speech and assembly.

In *Bollinger v. Fall River Rural Elec. Co-op., Inc.*, the Idaho Supreme Court held that an employer merely failing to adhere to its private policies, without more, does not rise to the level of a public policy exception to the at-will exception. 152 Idaho 632, 641, 272 P.3d 1263, 1272 (Idaho 2012).

### 3. Refusing to Violate the Law

In *Mallonee v. State*, 84 P.3d 551, 556-558, 139 Idaho 615, 621-622 (Idaho 2004), the Idaho Supreme Court affirmed the trial court's dismissal of a claim for wrongful termination in violation of public policy related to an alleged refusal to violate the law. *Id.*, citing *Sorensen v. Comm Tek, Inc.*, 799 P.2d 70, 74, 118 Idaho 664, 668 (Idaho 1990). In making this determination, the court recognized the existence of such a claim but held that the former employee had failed to satisfy its evidentiary burden. *Id.*

### 4. Exposing Illegal Activity (Whistleblowers)

In *Thomas v. Med. Ctr. Physicians*, 61 P.3d 557, 566, 138 Idaho 200, 209 (Idaho 2002), the district court erred in granting summary judgment to an employer where the employee alleged that his termination was motivated by his reporting of fellow physician's falsification of medical records and over-billing and indicating that the exception may still be applicable even if the employee does not report it to an outside entity. *See also Hardenbook v. United Postal Service, Co.*, 2010 WL 3613818 (D. Idaho 2010), clarifying that the issue of whether the conduct in question violates public policy is a question for the jury.

In *Ray v. Nampa Sch. Dist. No. 131*, 814 P.2d 17, 21-22, 120 Idaho 117, 121-22 (Idaho 1991), the Idaho Supreme Court held that a genuine issue of material fact existed as to whether an employee was terminated for reporting several electrical and building code violations to the state inspector.

In *Crea v. FMC Corp.*, 16 P.3d 272, 275-76, 135 Idaho 175, 178-79 (Idaho 2000), the court held that an employee stated a claim for violation of the public policy exception where he alleged that he was terminated for uncovering the company's unlawful environmental practices. However, his claim failed as the evidence did not show that his termination was related to this discovery and disclosure. In *Edmonson v. Shearer Lumber Products*, 139 Idaho 172, 75 P.3d 733 (Idaho 2003), the Idaho Supreme Court clarified that the purpose of public policy discharge exception to the employment at-will doctrine is to balance the competing interests of society, the employer, and the employee in light of modern business experience. *Id.* at 167, 75 P.3d at 737; citing *Crea*, 135 Idaho at 178, 16 P.3d at 275.

A public employee's cause of action under the Idaho Whistleblower's Act is laid out in I.C. § 6-2105(4). To prevail in an action brought under the act, the employee must establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf, engaged or intended to engage in an activity protected under I.C. § 6-2104. *Id.* at 2104.

### III. CONSTRUCTIVE DISCHARGE

In *Knee v. Sch. Dist. No. 139*, 676 P.2d 727, 106 Idaho 152 (Idaho Ct. App. 1984), the Court of Appeals held that a request for resignation is *not* automatically a constructive discharge, and that the plaintiff did not state a valid cause of action. “A constructive discharge is, by definition, an involuntary resignation.” *Id.* at 729, 106 Idaho at 154. Thus, the test is whether the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated. *Id.* Constructive discharge can only be proved if the employee establishes facts showing harassment, intimidation, coercion, or other aggravating conduct on the part of the employer that renders working conditions intolerable. *Crafton v. Blaine Larsen Farms, Inc.*, 2006 WL 343250, at \*1 (D. Idaho 2005) (citing *Knee*, 106 Idaho 152, 676 P.2d at 730).

### IV. WRITTEN AGREEMENTS

#### A. Standard “For Cause” Termination

In *Rosecrans v. Intermountain Soap & Chem. Co.*, 605 P.2d 963, 100 Idaho 785 (Idaho 1980), the Idaho Supreme Court stated that when the employee establishes that he has been terminated in violation of an employment contract, the employer has the burden of proving the existence of good cause for the termination. *Id.* at 965, 100 Idaho at 787. When there exists a conflict with respect to the circumstances surrounding the employee’s discharge, the existence of “good cause” is an issue for the trier of fact. *Crafton v. Blaine Larsen Farms, Inc.*, 2006 WL 343250, at \*1 (D. Idaho 2005).

In *Roll v. City of Middleton*, 771 P.2d 54, 61, 115 Idaho 833, 840 (Idaho Ct. App. 1989), the court of appeals stated that to determine whether a justification exists, the terms of the contract must be studied. Accordingly, the court stated that should a jury determine that the plaintiff employee had engaged in “any” of the behavior listed therein as basis for discipline, a jury could find the discharge justified. *Id.*

#### B. Status of Arbitration Clauses

Idaho Code § 7-901 specifically excludes employment contracts from coverage under the Uniform Arbitration Act (UAA). This statute states:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

Idaho Code § 7-901.

In *Gumprecht v. Doyle*, 912 P.2d 610, 128 Idaho 242 (Idaho 1995), the court held that, as the UAA specifically excludes from the Act arbitration agreements between employers and employees, the employment contract between the plaintiff and the defendant corporation, including the arbitration agreement, were not covered by the UAA, and the parties’ arbitration award was not enforceable under the UAA. But see *Moore v. Omnicare, Inc.*, 118 P.3d 141, 147-48, 141 Idaho 809, 815-16 (Idaho 2005) (holding that “the Idaho UAA [Not the FAA] governs the Employment Agreement” due to the parties’ contract mandating that Idaho law would control any dispute).



## V. ORAL AGREEMENTS

### A. Promissory Estoppel

The court in *Raedlein v. Boise Cascade Corp.*, 931 P.2d 621, 129 Idaho 627 (Idaho 1996), addressed an employee's claim that the employer was estopped from terminating the employee without following the terms of the employee handbook. The court stated:

To prove estoppel, the employee must show: (1) lack of knowledge and the means of knowledge of the truth as to the employer's intention that PPR would apply to the discharge of the employee, (2) reliance upon the conduct of the employer, and (3) a prejudicial change of position by the employee based on this lack of knowledge and reliance.

*Id.* at 624, 129 Idaho at 630.

Accordingly, in the face of the disclaimers in the employee manual that these procedures were not binding, the employee's estoppel claim could not be presented. *Raedlin*, 931 P.2d at 624, 129 Idaho at 630. *See also Fry v. Dep't of Corr.*, 953 P.2d 609, 131 Idaho 169 (Idaho 1998) (finding the doctrine of equitable estoppel was not applicable where statute, the department's job announcement, and the memorandum of understanding Fry signed before he began his temporary employment, all stated when he would become a classified employee and thus no false representation had been made); *Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 389, 141 Idaho 233, 242 (Idaho 2005); *Brown v. Caldwell Sch. Dist.*, 898 P.2d 43, 49, 127 Idaho 112, 118 (Idaho 1995) (doctrine of promissory estoppel inapplicable where alleged promise of continued employment was made by an individual who lacked authority to do so and employee's reliance unjustified in light of Idaho Code § 33-513); *Mitchell v. Zilog, Inc.*, 874 P.2d 520, 125 Idaho 709 (Idaho 1994) (an employee could not assert quasi-estoppel where she was aware that corporate policy would consider numerous absences a cause for discharge).

### B. Fraud

In *Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 386-87, 141 Idaho 233, 239-40 (Idaho 2005), the Idaho Supreme Court affirmed the trial court's dismissal of a fraud claim against an employer by a former employee for failing to satisfy the particularity requirements of Idaho R. Civ. P. 9(b).

### C. Statute of Frauds

"Idaho's Statute of Frauds is found in Idaho Code § 9-505. Section 9-505 provides that 'an agreement that by its terms is not to be performed within a year from the making thereof' is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent." *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 411, 179 P.3d 1064, 1067 (Idaho 2008). In *Mackay*, the plaintiff sought to recover for breach of an oral contract for long-term employment, under which he was to be employed until retirement. The employer denied the existence of such an agreement and contended that an oral agreement for long-term employment would violate the Statute of Frauds. *Id.* at 1067. The Idaho Supreme Court explained that "[s]ince Mackay could have retired within one year under the terms of the alleged contract, this contract is outside Idaho's Statute of Frauds provision." *Id.* at 1068.

In *Huvett v. Idaho State Univ.*, 104 P.3d 946, 949, 140 Idaho 904, 907 (Idaho 2004), the court recognized the possibility that the statute of frauds might bar a former employee's claim for breach of a three-year contract but remanded the case to the trial court because the former employee had not had a proper opportunity to argue the issue in the lower court. *Id.*, citing Idaho Code § 9-505 (2004).

## VI. DEFAMATION

### A. General Rule

The Idaho Court of Appeals addressed a defamation claim in the employment context in *Arnold v. Diet Ctr., Inc.*, 746 P.2d 1040, 113 Idaho 581 (Idaho Ct. App. 1987), wherein a former employee sued for defamation based on alleged defamatory statements made by a manager to another employee regarding the reasons for the former employee's termination. The Court of Appeals of Idaho agreed with the trial court's determination that the employer had a legitimate interest in stressing to employees the importance of complying with their agreement of maintaining confidentiality, and the communication therefore was a qualified privilege. *Id.* at 1044, 113 Idaho 581 at 585. The court then stated that to show abuse of the qualified privilege, the plaintiff must show that the statements were made in bad faith, without belief in the truth of the matter communicated or with a reckless disregard of the truth or falsity of the matter. *Id.* at 1044-45, 113 Idaho at 585-86.

#### 1. Libel

In *Olson v. EG&G Idaho Inc.*, 9 P.3d 1244, 1239, 134 Idaho 778, 783 (Idaho 2000), the Idaho Supreme Court held that the employer was not liable to an employee on the employee's defamation claim against her employer, based on a supervisor's comments in the employee's notice of termination due to lack of finding of malice.

#### 2. Slander

The Idaho Court of Appeals addressed a defamation claim in the employment context in *Arnold v. Diet Ctr., Inc.*, 746 P.2d 1040, 113 Idaho 581 (Idaho Ct. App. 1987), wherein a former employee sued for defamation based on alleged defamatory statements made by a manager to another employee regarding the reasons for the former employee's termination.

### B. References

Idaho Code § 44-201(2) provides:

II. An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee or at the request of the current or former employee.



The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead. For the purposes of this code section, “actual malice” means knowledge that the information was false or given with reckless disregard of whether the information was false.

C. Privileges

In *Olson v. EG&G Idaho Inc.*, 9 P.3d 1244, 134 Idaho 778 (Idaho 2000), the Idaho Supreme Court addressed the plaintiff’s claim for defamation against her former employer on the basis that the employer made slanderous comments in communicating the reasons for her termination to her former co-workers. The Idaho Supreme Court acknowledged the existence of the qualified privilege for the employer’s communication and noted that to overcome the privilege the issue to be addressed is “whether there is sufficient evidence to support the conclusion that [defendant] in fact entertained serious doubts as to the truth of [her] statements or that subjectively [defendant] had a high degree of awareness of the probable falsity of the statements.” *Id.* at 1248, 134 Idaho at 782. Furthermore, the *Olson* court held that to overcome the privilege, the employee must make this showing by clear and convincing evidence.

D. Other Defenses

1. Truth

In *Baker v. Burlington N., Inc.*, 587 P.2d 829, 831, 99 Idaho 688, 690 (Idaho 1978), the Idaho Supreme Court recognized that “[i]t is axiomatic that truth is a complete defense to a civil action for libel” and that “[i]n a slander or libel suit it is not necessary for the defendant to prove the literal truth of his statement in every detail, rather it is sufficient for a complete defense if the substance or gist of the slanderous or libelous statement is true.”

2. No Publication

In *McPheters v. Maile*, 64 P.3d 317, 321, 138 Idaho 391, 395 (Idaho 2003), the Idaho Supreme Court recognized that the defendants’ failure to record a satisfaction of judgment did not constitute publication. Consequently, the appellate court found that the trial court’s dismissal of slander of title claim was proper.

3. Self-Publication

Idaho courts have yet to address this issue in the employment context.

4. Invited Libel

Idaho courts have yet to address this issue in the employment context.

5. Opinion

In the context of the media, the Idaho Supreme Court has recognized that “[u]nder the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless

error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." *Wiemer v. Rankin*, 790 P.2d 347, 352, 117 Idaho 566, 571 (Idaho 1990) (internal citations omitted).

E. Job References and Blacklisting Statutes

Idaho Code § 44-201 provides:

(1) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment.

(2) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee or at the request of the current or former employee.

The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead.

For the purposes of this section, "actual malice" means knowledge that the information was false or given with reckless disregard of whether the information was false.

F. Non-Disparagement Clauses

Idaho state appellate courts have not yet addressed this issue. A non-disparagement clause contained in a settlement agreement was at issue in *Blaine Larsen Processing, Inc. v. Hapco Farms, Inc.*, 2000 U.S. Dist. LEXIS 22870 (Dist. Idaho 2000). Both parties to the action claimed that the other party had breached the terms of a settlement agreement. Following trial, the jury found that Hapco had breached the settlement agreement and awarded nominal damages. Hapco argued that Larsen breached the non-disparagement clause when its private investigators made inquiries concerning the personal life of Hapco's owners and concerning other allegations of Hapco misconduct. The District Court concluded that "even if the jury fully accepted Hapco's evidence regarding the activities of Larsen's investigators, it could easily – and reasonably – have concluded that the making of inquiries did not breach the non-disparagement provisions of the agreement, or that such inquiries were, in any event, exempted from the prohibitions of the Settlement agreement."

## VII. EMOTIONAL DISTRESS CLAIMS

### A. Intentional Infliction of Emotional Distress

Recognizing that “[t]o prove intentional infliction of emotional distress the plaintiff must prove that the emotional distress was severe[,]” the Idaho Supreme Court upheld a trial court’s entry of a judgment notwithstanding the verdict on an employee’s emotional distress claims on the basis that although the plaintiff produced expert testimony that the plaintiff was seriously frustrated, the evidence did not show that he was depressed or that he had experienced severe emotional distress. *Jeremiah v. Yanke Machine Shop*, 953 P.2d 992, 999, 131 Idaho 242, 249 (Idaho 1998); *Collier v. Turner Industries, L.L.C.*, 797 F.Supp.2d 1029 (D.Idaho.2011).

### B. Negligent Infliction of Emotional Distress

In *Sorensen v. Saint Alphonsus Regional Med. Ctr., Inc.*, 118 P.3d 86, 93-94, 141 Idaho 754, 761-62 (Idaho 2005), the Idaho Supreme Court recognized that an at-will employee could not recover for negligent infliction of emotional distress when that award would allow her more than she would have otherwise been entitled to given her at-will status. See also *Trautman v. Nez Perce County Sheriff’s Office*, 2011 WL 2118722 (D.Idaho.2011)

## VIII. PRIVACY RIGHTS

### A. Generally

The Idaho Supreme Court recognized that “[t]he Federal Constitution protects a ‘zone of privacy’ that ‘includes an individual’s interest in having certain personal matters remain private.’” *Cowles Publ’g Co. v. Kootenai County Bd. of County Commissioners*, 159 P.3d 896, 902, 144 Idaho 259, 265 (Idaho 2007), citing *Whalen v. Roe*, 429 U.S. 589, 598, 97 S.Ct. 869, 876, 51 L.Ed. 2d 64, 73 (1977). In that case, the Idaho Supreme Court determined that a public employee had no reasonable expectation of privacy because the County’s e-mail policy made it clear that the e-mails were considered public records, were subject to disclosure, and that employees had no right of personal privacy when using the County e-mail system. *Id.* The Court also rejected the employee’s argument that the Idaho Constitution contemplated a right to privacy. *Id.* at n. 4.

### B. New Hire Processing

#### 1. Eligibility Verification and Reporting Procedures

Idaho Executive Order No. 2009-10 requires all state agencies and contractors and subcontractors involved in a state project with state or federal stimulus funds to verify that new employees are eligible for employment under state and federal law.

Idaho employers are required to report all hiring or rehiring of employees to the Department of Labor. I.C. § 72-1604.

#### 2. Background Checks

Idaho courts have not yet addressed this issue in relation to employment and there is no state regulation regarding background checks of employment applicants.

C. Other Specific Issues

1. Workplace Searches

Idaho law is not well-developed in this area. Idaho has not yet addressed whether video surveillance in an employer's restrooms constitutes an invasion of privacy. In the criminal context, at least one case held that reasonable expectation of privacy exists in enclosed public bathroom stalls. *State v. Limberhand*, 788 P.2d 857, 860, 117 Idaho 456, 459 (Idaho Ct. App. 1990) (remanded for further fact finding).

2. Electronic Monitoring

Generally, it is unlawful to monitor or intercept any oral, electronic or wire communication. Idaho Code § 18-6702(1). At least one party to the communication must consent to the communication being intercepted or recorded. Idaho Code § 18-6702(2)(d). Idaho law prohibits making audio recordings of employees without obtaining consent to the recording. However, the section does not apply to video recordings. *See also Cowles Publ'g Co. v. Kootenai County Bd. of County Commissioners*, 159 P.3d 896, 902, 144 Idaho 259, 265 (Idaho 2007), holding that a public employee had no reasonable expectation of privacy in e-mail communications because the County's e-mail policy made it clear that the e-mails were considered public records, were subject to disclosure, and that employees had no right of personal privacy when using the county e-mail system.

3. Social Media

In the context of an appeal of the denial of unemployment benefits, the Court in *Talbot v. Desert View Care Center*, 156 Idaho 517, 328 P.3d 497 (2014), found that an employee's violation of the company's Social Media Policy was employment-related misconduct. In doing so, the Court implicitly upheld a Social Media Policy prohibiting "slanderous, vulgar, obscene, intimidating, threatening or other 'bullying' behavior electronically towards [others specified in the policy]." The decision found the employer's expected standard of behavior to be reasonable under the circumstances. *Id.* at 521.

4. Taping of Employees

Idaho courts have not yet addressed this issue.

5. Release of Personal Information on Employees

Idaho courts have not yet addressed this issue. However, Idaho Code Ann. § 74-106 (West), previously I.C. § 9-340C, does exempt from the Idaho Public Records Act all personnel records of public officials not related to general employment information.

6. Medical Information

Idaho courts have not yet addressed this issue.

7. Restrictions on Requesting Salary History

Idaho courts have not yet addressed this issue.

**IX. WORKPLACE SAFETY****A. Negligent Hiring**

Idaho recognizes the tort of negligent hiring when predicated upon an employee's fraudulent or criminal acts. See *Hoyle v. Utica Mut. Ins. Co.*, 137 Idaho 367, 374, 48 P.3d 1256, 1263 (Idaho 2002).

**B. Negligent Supervision/Retention**

In *Hunter v. State, Dept. of Corrections, Div. of Probation & Parole*, 138 Idaho 44, 50, 57 P.3d 755, 761 (Idaho 2002), the Idaho Supreme Court held that a probationer's employer had no realistic control over probationer for consequences outside employment, and thus owed no duty to probationer's teenage co-worker whom probationer raped and murdered six weeks after co-worker quit her job, precluding co-worker's parents from recovering on claim of negligent supervision against employer in wrongful death action; abrogating *Doe v. Garcia*, 131 Idaho 578, 961 P.2d 1181 (Idaho 1998).

**C. Interplay with Worker's Comp. Bar**

Employers are generally exempt from suits of negligence brought by an employee under the exclusive remedy provision of the workers' compensation law. *Baker v. Sullivan*, 132 Idaho 746, 749-50, 979 P.2d 619, 622-23 (Idaho 1998). However, the exclusive remedy provision does not apply where an injury occurs in the course and scope of employment but is not compensable under the workers' compensation law. *Roe v. Albertson's Inc.*, 141 Idaho 524, 530, 112 P.3d 812, 818 (Idaho 2005).

Regarding claims by third parties, Idaho Code § 72-209(2) states:

The liability of an employer to another person who may be liable for or who has paid damages on account of an injury or occupational disease or death arising out of and in the course of employment of an employee of the employer and caused by the breach of any duty or obligation owed by the employer to such other person, shall be limited to the amount of compensation for which the employer is liable under this law on account of such injury, disease, or death, unless such other person and the employer agree to share liability in a different manner.

**D. Firearms in the Workplace**

Idaho courts have not yet addressed this issue. However, Idaho Code § 5-341 does provide immunity to an employer for any case arising out of an employer's policy to either specifically allow or not prohibit the lawful storage of firearms by employees in their vehicles on the employer's premises. In addition, Idaho Code § 18-3302(25) does not limit the existing rights of a private employer to limit the possession of concealed weapons on its property.

**E. Use of Mobile Devices**

The only prohibition related to the use of mobile devices recognized in Idaho is the provision prohibiting the review, preparation, or transmission of written communications on a cell phone while driving. I.C. § 49-1401A.

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### X. TORT LIABILITY

#### A. Respondeat Superior Liability

Idaho Code § 6-1607(2) creates a presumption of employer nonliability where an action in tort is based on the employer-employee relationship. *Nava v. Rivas-Del Toro*, 151 Idaho 853, 858, 264 P.3d 960, 965 (Idaho. 2011). The subsection states:

There shall be a presumption that an employer is not liable in tort based upon an employer/employee relationship for any act or omission of a current employee unless the employee was wholly or partially engaged in the employer's business, reasonably appeared to be engaged in the employer's business, was on the employer's premises when the allegedly tortious act or omission of the employee occurred, or was otherwise under the direction or control of the employer when the act or omission occurred. This presumption may be rebutted only by clear and convincing evidence that the employer's acts or omissions constituted gross negligence or, reckless, willful and wanton conduct as those standards are defined in section 6-904C, Idaho Code, and were a proximate cause of the damage sustained.

For an employer to be liable for an employee's tortious conduct, the employee must be at least partially engaged in the employer's business and must be to further the employer's business interests. *Nava*, 151 Idaho at 858, 264 P.3d at 965. An employer is not liable where the employee acts out of purely personal motives that are not connected with the employer's interest. *Id.*

#### B. Tortious Interference with Business/Contractual Relations

In *Thomas v. Med. Ctr. Physicians, P.A.*, 61 P.3d 557, 563, 138 Idaho 200, 207 (Idaho 2002), the Idaho Supreme Court recognized that "it is clearly established that a party cannot tortiously interfere with his own contract" and that because "[the employer's] actions with respect to [the employee] concerned [the employee's] employment and arose out of his employment contract, the employee has not stated a claim for tortious interference with contract."

In *Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 390, 141 Idaho 233, 243 (Idaho 2005), the Idaho Supreme Court held that the trial court properly dismissed a claim for tortious interference with contract claim against an employer's managers. Because the managers were at all times working within the course and scope of their employment, the general rule stated above applied, making the lower court's grant of summary judgment in favor of the managers appropriate.

### XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

#### A. General Rule

Idaho's Act pertaining to Agreements and Covenants Protecting Legitimate Business Interests states that an employer may enter into a written agreement or covenant with a key employee to protect its legitimate business interests and prohibit the engagement in a line of business in direct competition to its business after termination if it "is reasonable as to its duration, geographical area, type of employment or line of business, and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests." Idaho Code § 44-2701, *et seq.* For purposes of the act, it is a rebuttable presumption that an agreement with a postemployment term of eighteen months or less is

reasonable as to duration. Idaho Code § 44-2704(2). Additional rebuttable presumptions include a reasonable geographic span if restricted to the geographic areas in which the key employee provided services or had a significant influence, and a reasonable limit on type of employment or line of business if limited to the type conducted by the key employee while employed. Idaho Code § 44-2704(3) and (4).

A key employee is presumed to be one that is among the highest paid five percent of the employer's employees; to rebut this presumption, the employee must show no ability to adversely affect the employer's legitimate business interests. Idaho Code § 44-2704(5). Finally, a rebuttable presumption that irreparable harm is established when it is found that a key employee has breached an agreement. Idaho Code § 44-2704(6). Since the adoption of the Act pertaining to Agreements and Covenants Protecting Legitimate Business Interests, no Idaho Court has released a decision regarding whether the statute extends to an employee not found to be a key employee under the act.

An employer who knowingly employs an individual to work in a capacity that would mean a violation of the covenant not to compete may be liable for the tortious interference with a non-compete agreement. *Magic Valley Truck Brokers, Inc. v. Meyer*, 982 P.2d 945, 133 Idaho 110 (Idaho Ct. App. 1999). This was distinguished by *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, where a non-compete provision was a condition of eligibility to receive a service bonus commission, rather than a contractual promise that would be breached by the agent engaging in competition. *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 456 P.3d 201 (2019), reh'g denied (Jan. 30, 2020). The court distinguished a unilateral offer that never materializes from a post-employment non-compete agreement like in *Magic Valley*.

#### B. Blue Penciling

The Idaho Supreme Court "has sanctioned a 'blue pencil' approach wherein the courts may 'modify' a restrictive covenant to make it reasonable, so long as the covenant in question is not lacking in essential terms which would protect the employee." *Stipp v. Wallace Plating, Inc.*, 523 P.2d 822, 823, 96 Idaho 5, 6 (1974); *Freiburger v. J-U-B Eng'rs, Inc.*, 111 P.3d 100, 107, 141 Idaho 415, 422 (2005) ("This Court has approved of the modification of otherwise unreasonable covenants not to compete." Court refused to reform parties' agreement because reformation would have required more than adding or changing a few words to make it reasonable). This position has been incorporated into the Act pertaining to Agreements and Covenants Protecting Legitimate Business Interests to reflect the intent of the parties and render an agreement or covenant reasonable in light of the circumstances in which it was made, and to specifically enforce it as limited. Idaho Code § 44-2703.

#### C. Confidentiality Agreements

Anti-piracy agreements that restrict a terminated employee from soliciting customers of his former employer or making use of confidential information from his previous employment enjoy "a less stringent test of reasonableness than blanket prohibitions of competition, as they are not considered nearly as oppressive and unreasonable as non-compete agreements." *Freiburger v. J-U-B Eng'rs, Inc.*, 111 P.3d 100, 105, 141 Idaho 415, 420 (Idaho 2005). In deciding whether the at-issue clause was enforceable, the Idaho Supreme Court held that the proper test is whether "the clause is no more restrictive than necessary to protect the employer's legitimate business interests." *Id.* The Act pertaining to Agreements and Covenants Protecting Legitimate Business Interests specifically states that it does not limit a party's ability to protect trade secrets or other information deemed confidential. Idaho Code § 44-2704(1).



D. Trade Secrets Statute

The Idaho Trade Secrets Act is codified at Idaho Code § 48-801, *et seq.* The Act provides a remedy in the form of an injunction for either actual or threatened misappropriation for such a period of time as necessary to eliminate commercial advantage that otherwise would be derived from the misappropriation. Idaho Code § 48-802. Additionally, “[i]n exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.” *Id.*

The party bringing the action may also recover damages for the misappropriation, which damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. Alternatively, “[i]n lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator’s unauthorized disclosure or use of a trade secret.” Idaho Code § 48-803(1). If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1) of this section. *Id.* § 48-803(2).

“An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.” Idaho Code § 48-805.

This Act displaces conflicting tort, restitutionary, and other law of this state providing civil liability remedies for misappropriation of a trade secret, but does not affect: (a) contractual remedies, whether or not based upon misappropriation of a trade secret; or (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret. Idaho Code § 48-806.

The Idaho Supreme Court has held that whether information is a trade secret requires consideration of these factors:

- (1) the extent to which the information is known outside [the plaintiff’s] business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Basic Am., Inc. v. Shatila*, 992 P.2d 175, 184, 133 Idaho 726, 735 (Idaho 2000); *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (Idaho 2010). These factors are to be utilized as guidance, so that information can be deemed a trade secret even without satisfying all six factors.

E. Fiduciary Duty and their Considerations

An employer will not be allowed to enforce a restrictive covenant where there is evidence of bad faith, monopolization, conscious overreaching, or deliberate oppression, unless a compelling public interest is at stake. *Insurance Center, Inc. v. Taylor*, 94 Idaho 896, 899, 499 P.2d 1252, 1255 (Idaho 1972).

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### XII. DRUG TESTING LAWS

The Idaho Employer Alcohol and Drug-Free Workplace Act applies to Idaho's public and private employers. Idaho Code §§ 72-1715, 72-1702.

#### A. Public Employers

"The state of Idaho and any political subdivision thereof may conduct drug and alcohol testing of employees under the provisions of this chapter and as otherwise constitutionally permitted." Idaho Code § 72-1715.

#### B. Private Employers

Idaho Code § 72-1702 provides:

(1) It is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. § 12101.

(2) Nothing herein prohibits an employer from using the results of a drug or alcohol test conducted by a third party including, but not limited to, law enforcement agencies, hospitals, etc., as the basis for determining whether an employee has committed misconduct.

(3) This act does not change the at-will status of any employee.

All private employers must maintain a written drug-testing policy that conforms to the requirements of the Idaho Employer Alcohol and Drug-Free Workplace Act. Idaho Code § 72-1705.

### XIII. STATE ANTI-DISCRIMINATION STATUTE(S)

The Idaho anti-discrimination statutes are contained in the Idaho Human Rights Act [IHRA], Idaho Code § 67-5901 *et seq.* "The purpose of the IHRA is to provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and Titles I and III of the Americans with Disabilities Act (ADA)." *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 413, 179 P.3d 1064, 1069 (Idaho 2008). "[S]tate courts look to federal courts for guidance in the interpretation of the state provisions. *Id.*

#### A. Employers/Employees Covered

Idaho Code § 67-5902(6) provides:

"Employer" means a person, wherever situated, who hires five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are to be partially or wholly performed in the state of Idaho, except for domestic servants hired to work in and about the person's household. The term also means:

- I. A person who as contractor or subcontractor is furnishing material or performing work for the state;
- II. Any agency of or any governmental entity within the state; and
- III. Any agent of such employer.

B. Types of Conduct Prohibited

Idaho Code § 67-5909 provides:

It shall be a prohibited act to discriminate against a person because of, or on a basis of, race, color, religion, sex or national origin, in any of the following and on the basis of age or disability in subsections (1), (2), (3) and (4), provided that the prohibition against discrimination because of disability shall not apply if the particular disability, even with a reasonable accommodation by the employer, prevents the performance of the work required by the employer in that job. The prohibition to discriminate shall also apply to persons with disabilities in real property transactions in subsections (8), (9), (10) and (11) of this section, and to those individuals without disabilities who are associated with a person with a disability.

- (1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any employee in order to comply with this act;
- (2) For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual or to classify or refer an individual for employment;
- (3) For a labor organization;
  - (a) To exclude or to expel from membership, or to otherwise discriminate against, a member or applicant for membership,
  - (b) To limit, segregate or classify membership, or to fail or refuse to refer for employment an individual in any way,
    1. Which would deprive an individual of employment opportunities, or
    2. Which would limit employment opportunities or adversely affect the status of an employee or of an applicant for employment, or
  - (c) To cause or attempt to cause an employer to violate this act.
- (4) For an employer labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification or discrimination; but a notice or

advertisement may indicate a preference limitation, specification, or discrimination when such is a bona fide occupational qualification for employment;

C. Administrative Requirements

Idaho Code § 67-5907 provides:

(1) Any person who believes he or she has been subject to unlawful discrimination, or a member of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination within one (1) year of the alleged unlawful discrimination.

(2) Upon receipt of such a complaint, the commission or its delegated investigator shall endeavor to resolve the matter by informal means prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its delegated investigator shall conduct such investigation as may be necessary to resolve the issues raised by the facts set forth in the complaint.

(3) If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding, and shall notify the complainant and the respondent of its action.

(4) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. No offer or counter offer of conciliation nor the terms of any conciliation agreement may be made public without the written consent of all the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal. If the case is disposed of by such informal means in a manner satisfactory to the commission, the commission shall dismiss the proceeding, and shall notify the complainant and the respondent.

(5) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination if relief is not immediately granted, or if conciliation efforts under subsection (4) have not succeeded, the commission may file a civil action seeking appropriate legal and equitable relief.

(6) A complainant may request dismissal of an administrative complaint at any time. Dismissals requested before three hundred sixty-five (365) calendar days from the date of filing of the administrative complaint may be granted at the discretion of the staff director who will attempt to contact all parties who have appeared in the proceeding and consider their interests. After three hundred sixty-five (365) calendar days, if the complaint has not been dismissed pursuant to subsection (3) of this section or the parties have not entered into a settlement or conciliation agreement pursuant to subsection (2) or (4) of this section or other administrative dismissal has not occurred, the commission shall, upon request of the complainant, dismiss the complaint and notify the parties.

Idaho Code § 67-5908 states that:

(1) Any action filed by the commission shall be heard by the district court unless either party shall move for a jury trial. Except as otherwise provided herein, the court shall hear the case and grant relief as in other civil actions. Any such action shall be brought in the name of the commission for the use of the person alleging discrimination or a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action.

(2) A complaint must be filed with the commission as a condition precedent to litigation. A complainant may file a civil action in district court within ninety (90) days of issuance of the notice of administrative dismissal pursuant to § 67-5907(6), Idaho Code.

D. Remedies Available

Idaho Code § 67-5908(3) provides:

In a civil action filed by the commission or filed directly by the person alleging unlawful discrimination, if the court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

- a. An order to cease and desist from the unlawful practice specified in the order;
- b. An order to employ, reinstate, promote or grant other employment benefits to a victim of unlawful employment discrimination;
- c. An order for actual damages including lost wages and benefits, provided that such back pay liability shall not accrue from a date more than two (2) years prior to the filing of the complaint with the commission or the district court, whichever occurs first;
- d. An order to accept or reinstate such a person in a union;
- e. An order for punitive damages, not to exceed one thousand dollars (\$1,000) for each willful violation of this chapter.

E. Statute of Limitations

Idaho Code § 67-5908(4) provides:

Any civil action filed by the commission shall commence not more than one (1) year after a complaint of discrimination under oath is filed with the commission.

F. Burden of Proof

Idaho Code § 67-5908(5) provides:

In any civil action under this chapter, the burden of proof shall be on the person seeking relief.

In *O'Dell v. Basabe*, 810 P.2d 1082, 119 Idaho 796 (Idaho 1991), the court found that front pay, or compensation for future lost wages, is a permissible element of damages. In *Paterson v. State*, 915 P.2d 724, 128 Idaho 494 (Idaho 1996), the court found that as the creation of an overall hostile work environment is a prohibited act, the individual incidents which comprise the hostile work environment do not each amount to an individual violation of the Act. Thus, the employee cannot collect \$1,000 for each incident reported, but rather once for the overall hostile work environment.

#### XIV. STATE LEAVE LAWS

##### A. Jury/Witness Duty

No employee may be discharged for serving on jury duty. Idaho Code § 2-218(1).

##### B. Voting

Idaho does not have a statute relating to time off from work for voting. It is, however, unlawful to threaten to discharge an employee to influence an employee's vote. Idaho Code § 18-2319.

##### C. Family/Medical Leave

State of Idaho employees fall within the auspices of the federal Family and Medical Leave Act. Idaho Admin. Code § 15.04.01.242.

##### D. Pregnancy/Maternity/Paternity Leave

Idaho does not have any pertinent leave statutes.

##### E. Day of Rest Statutes

Idaho does not have any pertinent day of rest statutes.

##### F. Military Leave

"Whenever any active member of the Idaho national guard in time of war, armed conflict, or emergency proclaimed by the governor or by the president of the United States, shall be called or ordered by the governor to state active duty for a period of thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32 U.S.C., the provision as then in effect of the Servicemembers Civil Relief Act, 50 App. U.S.C. § 501, *et seq.*, and the Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*, shall apply." Idaho Code § 46-409(2).

Idaho employers must reemploy National Guardsmen returning from military service if the military service. Idaho Code § 46-407. Any person who is reemployed under this section shall not be discharged without cause or within one (1) year after such reemployment. *Id.* If an employer fails or refuses to comply with this section, the district court shall have the power to compel the employer to comply with this section and to compensate the member for lost wages and benefits, for costs of the action, and for reasonable attorney's fees. Idaho Code § 46-407(d).

Subject to certain restrictions, an employer must rehire an employee who departs for military training "with the same status, pay and seniority." Idaho Code § 46-224.

An employee's bonus, sick leave, vacation or opportunities for advancement are not to be affected by a leave of absence for military training. Idaho Code § 46-225. Idaho Code § 46-226 provides an employee with a private right of action against an employer that violates Idaho law relating to military leave.

G. Sick Leave

Idaho does not have any pertinent sick leave statutes.

H. Domestic Violence Leave

Idaho does not have any pertinent domestic violence leave statutes.

I. Other Leave Laws

Idaho has no other pertinent leave laws.

**XV. STATE WAGE AND HOUR LAWS**

A. Current Minimum Wage in State

Under I.C. § 44-1502, the amount of minimum wage in Idaho tracks the federal minimum wage.

B. Deductions from Pay

Idaho Code § 45-609 provides that an employer may not divert or withhold any portion of an employee's wages unless empowered to do so by federal or state law or the employer obtains written consent to do so. An employer shall furnish each employee with a statement of deductions made from the employee's wages for each pay period such deductions are made. The willful failure of any employer to comply with the provisions of this subsection shall constitute a misdemeanor.

C. Overtime rules

Idaho does not have any pertinent overtime statutes.

D. Time for payment upon termination

Idaho Code § 45-606 provides that upon termination of employment the employer shall pay or make available the wages then due. The wages shall be paid or made available by the earlier of the next regularly scheduled payday or within 10 days of layoff or termination, weekends and holidays excluded. Upon written request, all wages must be paid within 48 hours, weekends and holidays excluded.

E. Breaks and Meal Periods

Idaho does not have any pertinent break or meal period laws.

F. Employee Scheduling Laws

Idaho does not have any pertinent employee scheduling laws.



**XVI. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT PRACTICES****A. Smoking in Workplace**

There is no Idaho provision that requires employers to provide reasonable accommodation to smokers or that prohibit an employer from prohibiting smoking in an enclosed place of employment. See Idaho Code § 39-5503.

**B. Health Benefit Mandates for Employers**

Idaho has some of the least mandated benefits in the nation. Required benefits in Idaho include a minimum maternity stay, mammography coverage, breast reconstruction where mastectomy covered in individual health benefit plans, and congenital anomalies. See Idaho Code §§ 41-2140, 41-2210, 41-3923.

**C. Immigration Laws**

Idaho Executive Order No. 2009-10 requires all state agencies and contractors or subcontractors involved in a state project with state or federal stimulus funds to verify that new employees are eligible for employment under state and federal law.

**D. Right to Work Laws**

Under Chapter 20, Title 44, the right to work “shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization.” See Idaho Code § 44-2001.

**E. Lawful Off-Duty Conduct (including lawful marijuana use)**

Idaho courts have yet to address this issue in the employment context.

**F. Gender/Transgender Expression**

Idaho courts have yet to address this issue in the employment context.

**G. Other Key State Statutes**

No employee may be forced to undergo a lie detector examination as a condition of continued employment. Idaho Code § 44-903.

No employee may be discharged for instituting or participating in proceedings under the minimum wage law. Idaho Code § 44-1509.

Employers are required to maintain employment records for a minimum of three (3) years and must give employees notice of any reduction in wage before the work is to be performed. Idaho Code § 45-610.