



Notice of Intent to Adopt Rules

Revised July 2016

1. General Information		
a. Agency/Board Name Department of Workforce Services		
b. Agency/Board Address 1510 East Pershing Blvd	c. City Cheyenne	d. Zip Code 82002
e. Name of Contact Person Marcia J Price	f. Contact Telephone Number 3077776746	
g. Contact Email Address marcia.price@wyo.gov		
h. Date of Public Notice 08-12-2016	i. Comment Period Ends 09-26-2016	
j. Program Department of Workforce Services-Labor Standards Division		

2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.

a. If "New," provide the Enrolled Act numbers and years enacted:

b. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number: 1	Chapter Name: Rules of Practice and Procedure for the Filing, Investigation, and Resolution of Unpaid Wage Claims under Labor Standards	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 3	Chapter Name: Fair Employment Rules	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

c. The Statement of Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

Complete all that apply:

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

(Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Reasons).

(Provide chapter numbers)

N/A These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

d. N/A In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules* may be obtained:
 By contacting the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

* If Item "d" above is not checked, the proposed rules shall be in strike and underscore format.

3. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. Yes No

If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:
 To the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

4. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. Yes No

If "Yes:"	Applicable Federal Law or Regulation Citation:
	Indicate one (1): <input type="checkbox"/> The proposed rules meet, but do not exceed, minimum federal requirements. <input type="checkbox"/> The proposed rules exceed minimum federal requirements.
	Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to: <input type="checkbox"/> To the Agency at the physical and/or email address listed in Section 1 above. <input type="checkbox"/> At the following URL: _____

5. State Statutory Requirements

a. Indicate one (1):
 The proposed rule change *MEETS* minimum substantive statutory requirements.
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):
 The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:
 By contacting the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____
 Not Applicable.

6. Authorization

a. I certify that the foregoing information is correct.

Printed Name of Authorized Individual	John Cox
Title of Authorized Individual	Director, Department of Workforce Services
Date of Authorization	

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; clean copy of the rules; and strike-through and underline version of rules (if applicable). Electronic copies (PDFs) of all items noted (in addition to hard copies) may be emailed to LSO at LSO-Rules@wyoleg.gov.
- Secretary of State: Electronic version of Notice of Intent sent to Rules@wyo.gov.

**Principal Statement of Reasons for Labor Standards Fair Employment Chapter 1
Section 10 – Hearings; Chapter 3, Section 3 – Complaints, Section 5 – Fair Hearings.**

On July 1, 2005, the Legislature amended Wyoming Statute § 27-9-106 (a) to allow a person six months rather than ninety days to file a discriminatory or unfair employment complaint. The Labor Standards Division now proposes to change its rule to reflect this change in Fair Employment Rules Chapter 3, Section 3 (b), (f).

The Administrative Procedure Act states that a party's right to appear in front of an Agency must be in accordance with the Agency's rules. Wyo. Stat. Ann. § 16-3-107(k). The current rules would require an incorporated entity to acquire counsel before appearing before the Agency's appeal tribunal. Generally, these matters do not necessarily require counsel but puts incorporated entities at a disadvantage because it would have to pay for an attorney. The Labor Standards Division wishes to allow greater due process to individuals by granting more expanded rights in terms of who can appear in front of the Agency in a contested case. The Labor Standards Division is following the same protocol as the Workers' Compensation Division as well as the Unemployment Insurance Commission which would allow for a representative of an incorporated entity to appear on behalf of the corporation, etc. This proposal will amend Chapter 1, Section 10 Hearings (c), (d) and Chapter 3, Section 5 (d), (e).

Chapter I

RULES OF PRACTICE AND PROCEDURE FOR THE FILING, INVESTIGATION, AND RESOLUTION OF UNPAID WAGE CLAIMS UNDER LABOR STANDARDS

Section 1. Authority.

These rules and regulations are promulgated and enacted by the Department of Workforce Services pursuant to W.S. 27-2-104 and in accordance with W.S. 16-3-115 of the Wyoming Administrative Procedures Act.

Section 2. Application and Scope.

These rules and regulations are promulgated to assist the Department of Workforce Services in its duty to enforce laws enacted by the legislature relating to labor as is required by W.S. 27-2-104.

Section 3. Definitions.

(a) “Claim” means a signed written complaint filed with Labor Standards by the employee on a form provided by Labor Standards claiming unpaid wages are due and owed employee under W.S. 27-4-101, 27-4-104, or W.S. 27-4-507.

(b) “Employee” means any person, who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) “Claimant” means any employee submitting a claim as defined in subsection (a).

(d) “Employer” means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same employing any person against whom a claim is made.

(e) “Department” means the Wyoming Department of Workforce Services.

(f) “Labor Standards” means Labor Standards, a program within the Department of Workforce Services.

(h) “Wages” means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.

Section 4. Filing Procedures.

(a) Upon receipt of a claim, Labor Standards shall enter its receipt, assign a docket/claim number and indicate the statute alleged to have been violated.

(b) Labor Standards shall serve, by regular mail to the employer's last known address or by personal delivery, a copy of the claim, a blank answer form, together with a letter of instructions.

(c) The employer shall have ten (10) days from the letterhead date to submit an answer to such claim; the employer shall have fifteen (15) days where the employer is located outside of Wyoming. Labor Standards may refer the claim for an administrative hearing pursuant to W.S. 27-4-504 should the employer fail to submit an answer within the above time frames. When a deadline for submitting an answer or a reply to an answer falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next working day. However, such days shall otherwise be counted in computing time limits. The employer's answer or claimant's reply to an answer is deemed submitted when one or more of the following have occurred:

(i) In Person. When an employer or claimant submits an answer or reply to an answer in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When an employer or claimant submits an answer or reply to an answer with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(d) Where the employer concedes the validity of the claim, Labor Standards shall request payment of the claim amount.

(e) Labor Standards shall serve a copy of the employer's answer by regular mail or personal delivery upon the claimant.

(f) The claimant shall submit a reply to the employer's answer within ten (10) days from Labor Standards letterhead date; the Claimant shall have fifteen (15) days where the Claimant is located outside of Wyoming. Claimant's reply shall be deemed submitted when it has been date stamped by Labor Standards

Section 5. Investigation.

For the purpose of determining the validity of the filed claim, Labor Standards may:

- (a) Interview and obtain additional statements from either party;
- (b) Examine, copy and inspect any relevant records or documents held by the parties or other persons;
- (c) Interview, obtain written or oral statements of third persons relevant to the claim;
- (d) Contact and receive relevant information from any other governmental agencies and/or officials;
- (e) Make any and all relevant inquiries necessary in making a determination; and
- (f) Refer the claim for an administrative hearing pursuant to W.S. 27-4-504 should the employer fail to cooperate with the investigation.

Section 6. Wage Offset Rules

These rules are promulgated to govern what sums may be lawfully offset by an employer from money due the employee.

- (a) Definitions.
 - (i) "Wages" means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.
 - (ii) "Compensation" means remuneration, pay, salary or commission to be received by an employee for labor, services or as a result of his or her employment whether the compensation is determined on a time, task, weight, piece, hourly, chore or other basis.
 - (iii) "Fringe Benefits" means any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under a policy of the employer including but not limited to: vacation; holiday; welfare; pension; subsistence; or profit sharing.

(iv) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of an estate of a deceased person, the receiver, trustee, or successor of any of the above, the State of Wyoming, any political subdivision or both, commission, department, institution, or school district.

(v) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(vi) "Department" means the Department of Workforce Services or its designee.

(vii) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services and its designee for these rules.

(b) Offsets.

The following sums shall constitute proper offsets from wages due an employee.

(i) Any sums deducted from wages pursuant to the Internal Revenue Code or any other Federal tax provision.

(ii) Any sums deducted from wages pursuant to the Social Security Administration Act and the Federal Insurance Contribution Act.

(iii) Any sums deducted from wages as dues, contributions, or other fees to any labor organization or association; and any sums as contributions for any employee's participation or eligibility in any health, welfare, insurance, retirement, or other benefit plan or program, provided:

(A) That such employee has granted written authorization for such deductions; and

(B) That such deductions shall terminate upon the employee's written revocation of said authorization.

(iv) Any sums deducted from wages as payments, repayments, contributions, deposits, to any credit union, banking, savings, loan, trust or other financial institution, provided:

(A) That such employee has granted written authorization for such deductions; and

(B) That such deductions shall terminate upon the employee's written revocation of said authorization.

(v) Any sums deducted from wages as payment for any purchase of goods or services by the employee from the employer, provided:

(A) That the goods or services sold by the employer are sold in the ordinary course of his or her business.

(B) That the employee has actual or constructive possession of the goods or services purchased; and

(C) That the employee's purchase is evidenced by the employee's written acknowledgement.

(vi) Any sums deducted from wages for damages suffered by the employer due to the employee's negligence, provided:

(A) That the employee's negligence is determined by a judicial proceeding;

(B) That the amount of the damage suffered by the employer is determined by a judicial proceeding;

(C) That the negligence and damages arise in the course of the employment; and

(D) That the employer has not received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages caused by the employee's negligence, the sum of the offset shall not exceed the amount of any applicable deductible or two hundred fifty dollars (\$250.00) whichever is less.

(vii) Any sums deducted from wages pursuant to "Attachment" (W.S. 1-15-201 through 1-15-212) or "Garnishment" (W.S. 1-15-401 through 1-15-425) and W.S. 27-4-106 through 27-4-108.

(viii) Any sums deducted from wages as repayment to the employer by the employee of any cash advances, loans or payments of expenses for optional benefits such as tuition assistance, relocation and training, made to the employee by such employer, provided:

(A) That the cash advance, loan or payment of expenses to the employee occurred while said employee was in the employ of such employer; and

(B) That the employee's receipt of such cash advance, loan or payment of expenses is evidenced by the employee's written acknowledgement.

(ix) Any sums deducted from wages resulting from cash shortages, provided:

(A) That the employee gives written acknowledgement upon beginning employment that he or she shall be responsible for any such shortages;

(B) That the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;

(C) That the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and

(D) That the employee be the sole and absolute user and have sole access to the register or cash box from the time checked in under subsection (B) until the time checked out under subsection (C).

(x) Any sums deducted from wages as payment for any purchase of tools, equipment, uniforms, or other items required for the employment of the employee, provided:

(A) That the employee has actual or constructive possession of the items; and

(B) That the employee's purchase and receipt of the item is evidenced by written acknowledgement.

(xi) Any sums deducted from wages as payment for tools, equipment, uniforms, or other items assigned to the employee by the employer, provided:

(A) That such item was assigned to the employee to be used within the scope of the employee's employment.

(B) That the employee gave written acknowledgement of the receipt of such items; and

(C) That such items have not been returned to the employer upon termination.

(c) Payment of Undisputed Wages.

(i) In the case of a dispute over wage offsets, the employer shall give written notice to the employee, his counsel, or Labor Standards of the amount of wages which he or she concedes to be due and shall pay such amount without condition within the time required by statute.

(ii) Acceptance by the employee of any partial payment of wages made hereunder shall not constitute a release or waiver as to the balance of any claim for the remaining unpaid wages.

(d) Improper Agreements.

Any agreement and/or contract, written or otherwise, between any employer and any employee or his representative, in contravention of the lawful offsets enumerated in this Chapter shall be null and void.

(e) Check Stubs.

All lawful offsets enumerated in this Chapter shall be itemized on a statement or a detachable check stub and provided to the employee as required by W.S. 27-4-101(b).

(f) Enforcement.

No employer shall be permitted to deduct from wages due an employee any sums not enumerated in this Chapter.

Section 7. Initial Review & Determination.

(a) Upon conclusion of the investigation and all necessary inquiries, Labor Standards shall make a preliminary finding as to the validity of the claim filed. Labor Standards shall notify the parties of the preliminary finding by certified mail.

(b) Either party may submit a request that the preliminary finding be administratively reviewed. Review requests shall be in writing and submitted to Labor Standards within the time period as stated in the preliminary finding. The administrative review will be conducted by someone within Labor Standards other than the compliance officer who made the preliminary finding. The request may be made in one of the following ways:

(i) In Person. When an employer or claimant submits an answer or reply to an answer in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When an employer or claimant submits an answer or reply to an answer with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(A) If neither party timely requests an administrative review of the preliminary finding, the preliminary finding becomes Labor Standard's determination.

(B) The administrative review may confirm, reverse, modify or vacate the preliminary finding. A vacated preliminary finding means the file contained insufficient evidence to support the original preliminary finding. Vacated preliminary findings shall be returned to the original compliance officer for further investigation and re-issuing of the preliminary finding. If the preliminary finding is confirmed, reversed, or modified, this becomes the final determination.

(C) Where the preliminary finding has found the claim to be invalid, Labor Standards shall notify the parties by certified mail.

(D) Where the preliminary finding has found the claim to be valid, Labor Standards shall notify the parties by mail.

Section 8. Conference.

(a) Where Labor Standards deems appropriate or upon request of either party, and upon agreement by both parties, an informal conference may be held.

(b) The conference may be used to establish facts, narrow the issues, and attempt resolution of the claim.

Section 9. Fair Hearings.

(a) Any party aggrieved by a determination may request in writing a fair hearing pursuant to W.S. 27-2-109(g) or W.S. 27-4-504(b).

(b) In the event an employer fails to pay wages as determined due by Labor Standards and fails to request a fair hearing within ten (10) days calendar days of receipt

of the determination, fifteen (15) where the employer is out of state, Labor Standards shall issue an order requiring payment of wages due. Labor Standards order shall constitute the final agency action.

(c) Any request for fair hearing must be submitted to Labor Standards by the aggrieved party within ten (10) days of the date of receipt of the determination or fifteen (15) days if the employer is out of state. A request for fair hearing shall be deemed submitted to Labor Standards when it has been received and date stamped by Labor Standards.

Section 10. Hearings.

(a) Any hearing held pursuant to Section 8 of this Chapter shall be conducted in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115.

(b) Pursuant to W.S. 27-4-504(a), the hearing officer's decision shall constitute the final agency action.

(c) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(d) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.

Chapter I

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Section 3. Definitions.

(a) “Claim” means a signed written complaint filed with Labor Standards by the employee on a form provided by Labor Standards claiming unpaid wages are due and owed employee under W.S. 27-4-101, 27-4-104, or W.S. 27-4-507.

(b) “Employee” means any person, who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) “Claimant” means any employee submitting a claim as defined in subsection (a).

(d) “Employer” means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same employing any person against whom a claim is made.

(e) “Department” means the Wyoming Department of Workforce Services.

(f) “Labor Standards” means Labor Standards, a program within the Department of Workforce Services.

(h) “Wages” means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.

Section 4. Filing Procedures.

(a) Upon receipt of a claim, Labor Standards shall enter its receipt, assign a docket/claim number and indicate the statute alleged to have been violated.

(b) Labor Standards shall serve, by regular mail to the employer's last known address or by personal delivery, a copy of the claim, a blank answer form, together with a letter of instructions.

(c) The employer shall have ten (10) days from the letterhead date to submit an answer to such claim; the employer shall have fifteen (15) days where the employer is located outside of Wyoming. Labor Standards may refer the claim for an administrative hearing pursuant to W.S. 27-4-504 should the employer fail to submit an answer within the above time frames. When a deadline for submitting an answer or a reply to an answer falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next working day. However, such days shall otherwise be counted in computing time limits. The employer's answer or claimant's reply to an answer is deemed submitted when one or more of the following have occurred:

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(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

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(d) Where the employer concedes the validity of the claim, Labor Standards shall request payment of the claim amount.

(e) Labor Standards shall serve a copy of the employer's answer by regular mail or personal delivery upon the claimant.

(f) The claimant shall submit a reply to the employer's answer within ten (10) days from Labor Standards letterhead date; the Claimant shall have fifteen (15) days where the Claimant is located outside of Wyoming. Claimant's reply shall be deemed submitted when it has been date stamped by Labor Standards

Section 5. Investigation.

For the purpose of determining the validity of the filed claim, Labor Standards may:

- (a) Interview and obtain additional statements from either party;
- (b) Examine, copy and inspect any relevant records or documents held by the parties or other persons;
- (c) Interview, obtain written or oral statements of third persons relevant to the claim;
- (d) Contact and receive relevant information from any other governmental agencies and/or officials;
- (e) Make any and all relevant inquiries necessary in making a determination; and
- (f) Refer the claim for an administrative hearing pursuant to W.S. 27-4-504 should the employer fail to cooperate with the investigation.

Section 6. Wage Offset Rules

These rules are promulgated to govern what sums may be lawfully offset by an employer from money due the employee.

- (a) Definitions.
 - (i) "Wages" means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis.
 - (ii) "Compensation" means remuneration, pay, salary or commission to be received by an employee for labor, services or as a result of his or her employment whether the compensation is determined on a time, task, weight, piece, hourly, chore or other basis.
 - (iii) "Fringe Benefits" means any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under a policy of the employer including but not limited to: vacation; holiday; welfare; pension; subsistence; or profit sharing.

(iv) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of an estate of a deceased person, the receiver, trustee, or successor of any of the above, the State of Wyoming, any political subdivision or both, commission, department, institution, or school district.

(v) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(vi) "Department" means the Department of Workforce Services or its designee.

(vii) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services and its designee for these rules.

(b) Offsets.

The following sums shall constitute proper offsets from wages due an employee.

(i) Any sums deducted from wages pursuant to the Internal Revenue Code or any other Federal tax provision.

(ii) Any sums deducted from wages pursuant to the Social Security Administration Act and the Federal Insurance Contribution Act.

(iii) Any sums deducted from wages as dues, contributions, or other fees to any labor organization or association; and any sums as contributions for any employee's participation or eligibility in any health, welfare, insurance, retirement, or other benefit plan or program, provided:

(A) That such employee has granted written authorization for such deductions; and

(B) That such deductions shall terminate upon the employee's written revocation of said authorization.

(iv) Any sums deducted from wages as payments, repayments, contributions, deposits, to any credit union, banking, savings, loan, trust or other financial institution, provided:

(A) That such employee has granted written authorization for such deductions; and

(B) That such deductions shall terminate upon the employee's written revocation of said authorization.

(v) Any sums deducted from wages as payment for any purchase of goods or services by the employee from the employer, provided:

(A) That the goods or services sold by the employer are sold in the ordinary course of his or her business.

(B) That the employee has actual or constructive possession of the goods or services purchased; and

(C) That the employee's purchase is evidenced by the employee's written acknowledgement.

(vi) Any sums deducted from wages for damages suffered by the employer due to the employee's negligence, provided:

(A) That the employee's negligence is determined by a judicial proceeding;

(B) That the amount of the damage suffered by the employer is determined by a judicial proceeding;

(C) That the negligence and damages arise in the course of the employment; and

(D) That the employer has not received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments, compensation, or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages caused by the employee's negligence, the sum of the offset shall not exceed the amount of any applicable deductible or two hundred fifty dollars (\$250.00) whichever is less.

(vii) Any sums deducted from wages pursuant to "Attachment" (W.S. 1-15-201 through 1-15-212) or "Garnishment" (W.S. 1-15-401 through 1-15-425) and W.S. 27-4-106 through 27-4-108.

(viii) Any sums deducted from wages as repayment to the employer by the employee of any cash advances, loans or payments of expenses for optional benefits such as tuition assistance, relocation and training, made to the employee by such employer, provided:

(A) That the cash advance, loan or payment of expenses to the employee occurred while said employee was in the employ of such employer; and

(B) That the employee's receipt of such cash advance, loan or payment of expenses is evidenced by the employee's written acknowledgement.

(ix) Any sums deducted from wages resulting from cash shortages, provided:

(A) That the employee gives written acknowledgement upon beginning employment that he or she shall be responsible for any such shortages;

(B) That the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;

(C) That the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and

(D) That the employee be the sole and absolute user and have sole access to the register or cash box from the time checked in under subsection (B) until the time checked out under subsection (C).

(x) Any sums deducted from wages as payment for any purchase of tools, equipment, uniforms, or other items required for the employment of the employee, provided:

(A) That the employee has actual or constructive possession of the items; and

(B) That the employee's purchase and receipt of the item is evidenced by written acknowledgement.

(xi) Any sums deducted from wages as payment for tools, equipment, uniforms, or other items assigned to the employee by the employer, provided:

(A) That such item was assigned to the employee to be used within the scope of the employee's employment.

(B) That the employee gave written acknowledgement of the receipt of such items; and

(C) That such items have not been returned to the employer upon termination.

(c) Payment of Undisputed Wages.

(i) In the case of a dispute over wage offsets, the employer shall give written notice to the employee, his counsel, or Labor Standards of the amount of wages which he or she concedes to be due and shall pay such amount without condition within the time required by statute.

(ii) Acceptance by the employee of any partial payment of wages made hereunder shall not constitute a release or waiver as to the balance of any claim for the remaining unpaid wages.

(d) Improper Agreements.

Any agreement and/or contract, written or otherwise, between any employer and any employee or his representative, in contravention of the lawful offsets enumerated in this Chapter shall be null and void.

(e) Check Stubs.

All lawful offsets enumerated in this Chapter shall be itemized on a statement or a detachable check stub and provided to the employee as required by W.S. 27-4-101(b).

(f) Enforcement.

No employer shall be permitted to deduct from wages due an employee any sums not enumerated in this Chapter.

Section 7. Initial Review & Determination.

(a) Upon conclusion of the investigation and all necessary inquiries, Labor Standards shall make a preliminary finding as to the validity of the claim filed. Labor Standards shall notify the parties of the preliminary finding by certified mail.

(b) Either party may submit a request that the preliminary finding be administratively reviewed. Review requests shall be in writing and submitted to Labor Standards within the time period as stated in the preliminary finding. The administrative review will be conducted by someone within Labor Standards other than the compliance officer who made the preliminary finding. The request may be made in one of the following ways:

(i) In Person. When an employer or claimant submits an answer or reply to an answer in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When an employer or claimant submits an answer or reply to an answer with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When an employer or claimant submits an answer or reply to an answer with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(A) If neither party timely requests an administrative review of the preliminary finding, the preliminary finding becomes Labor Standard's determination.

(B) The administrative review may confirm, reverse, modify or vacate the preliminary finding. A vacated preliminary finding means the file contained insufficient evidence to support the original preliminary finding. Vacated preliminary findings shall be returned to the original compliance officer for further investigation and re-issuing of the preliminary finding. If the preliminary finding is confirmed, reversed, or modified, this becomes the final determination.

(C) Where the preliminary finding has found the claim to be invalid, Labor Standards shall notify the parties by certified mail.

(D) Where the preliminary finding has found the claim to be valid, Labor Standards shall notify the parties by mail.

Section 8. Conference.

(a) Where Labor Standards deems appropriate or upon request of either party, and upon agreement by both parties, an informal conference may be held.

(b) The conference may be used to establish facts, narrow the issues, and attempt resolution of the claim.

Section 9. Fair Hearings.

(a) Any party aggrieved by a determination may request in writing a fair hearing pursuant to W.S. 27-2-109(g) or W.S. 27-4-504(b).

(b) In the event an employer fails to pay wages as determined due by Labor Standards and fails to request a fair hearing within ten (10) days calendar days of receipt

of the determination, fifteen (15) where the employer is out of state, Labor Standards shall issue an order requiring payment of wages due. Labor Standards order shall constitute the final agency action.

(c) Any request for fair hearing must be submitted to Labor Standards by the aggrieved party within ten (10) days of the date of receipt of the determination or fifteen (15) days if the employer is out of state. A request for fair hearing shall be deemed submitted to Labor Standards when it has been received and date stamped by Labor Standards.

Section 10. Hearings.

(a) Any hearing held pursuant to Section 8 of this Chapter shall be conducted in accordance with the Wyoming Administrative Procedures Act, W.S. 16-3-101 through 16-3-115.

(b) Pursuant to W.S. 27-4-504(a), the hearing officer's decision shall constitute the final agency action.

(c) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(d) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.

Chapter III

FAIR EMPLOYMENT RULES

Section 1. Authority.

These rules are promulgated as authorized by W.S. 27-9-104(a)(ii).

Section 2. Definitions.

As used in these rules:

- (a) "Act" means Wyoming Fair Employment Practices Act of 1965, as amended.
- (b) "Department" means the Department of Workforce Services, State of Wyoming.
- (c) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services.
- (d) "Complaint" means a verified, written statement on a Charge of Discrimination form provided by Labor Standards, which sets forth the name(s) and address(es) of the person(s), employer(s), employment agency(ies) or labor organization(s) alleged to have committed the discriminatory or unfair employment practice(s) and a detailed account of the discrimination or unfair employment practice complained of.
- (e) "Verified" means a complaint in which the complainant signs and swears or affirms before a notary public that the facts and allegations stated in the complaint are true.
- (f) "Complainant" means any person claiming to be aggrieved by a discriminatory or unfair employment practice and who has filed a complaint with Labor Standards.
- (g) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.
- (h) "Employer" means the State of Wyoming, or any political subdivision or board, commission, department, institution or school district thereof, and every other person employing two or more employees within the state; but employer shall not mean religious organizations or associations.

(i) "Respondent" means any employer, employment agency or labor organization against whom a complaint has been filed.

(j) "Court" means the District Court in and for the Judicial District of the State of Wyoming in which the asserted unfair employment practice occurred, or if said court be not in session at the time, then any judge of said court.

(k) "Conciliation Process" means the negotiation process used by Labor Standards in an attempt to arrive at a mutually agreed upon resolution of the complaint where a probable cause determination has been made.

(l) "Make Whole" means any form of relief determined by Labor Standards to place the complainant as nearly as possible in the position he or she would have enjoyed had the discriminatory or unfair employment practice not occurred.

Section 3. Complaints.

(a) Who may file: Any person claiming to be aggrieved by a discriminatory or unfair employment practice; may personally or through his/her attorney file a verified complaint.

(b) Time limit on filing: A complaint must be filed with Labor Standards within six (6) months of the alleged discriminatory or unfair employment practice. If the last day of the sixth (6th) month falls on a Saturday, Sunday or state recognized holiday, the deadline for filing the complaint shall be extended to the next business day.

(c) Form of Complaint: The complaint shall be made on a Charge of Discrimination form provided by Labor Standards.

(d) Place to file: All complaints must be filed at any Labor Standards office.

(e) Manner of Filing: Complaints may be filed with Labor Standards by personal delivery, U.S. Mail, or facsimile. Where a complaint is filed by facsimile, complainant shall forward the original complaint to Labor Standards as soon as possible. A complaint shall be deemed filed when one or more of the following have occurred:

(i) In Person. When a complaint is submitted in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When a complaint is filed with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When a complaint is filed with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(f) Amendments: A complaint may be amended within thirty (30) calendar days of the filing of the complaint to cure only technical defects or omissions. After the statutorily mandated 6-month filing period has expired, a complaint may not be amended to introduce additional claims of discrimination or unfair employment practices.

Section 4. Procedures After Filing of Complaint.

(a) Notification of Respondent(s): Labor Standards shall notify the named respondent(s) in writing that a complaint has been filed. A copy of the complaint shall accompany the notification. The respondent(s) shall be given the opportunity to respond to the allegations contained in the complaint.

(b) Complainant's Reply: The complainant shall be given the opportunity to reply in writing to the respondent(s) response.

(c) Withdrawal of Complaint: The complainant may withdraw the complaint at any time.

(d) Fact-finding/Settlement Conference: Prior to the commencement of its investigation, Labor Standards shall hold a fact-finding/settlement conference if both parties agree to attend. The purpose of the conference is to gather facts, clarify the issues and explore the possibility of settlement. If a settlement is reached by the parties, signed settlement agreements shall be delivered to the parties by personal delivery or certified mail to the last known addresses of the parties. If a settlement is not rendered during the conference, Labor Standards shall pursue the investigation of the allegations contained in the complaint.

(e) Investigation: Labor Standards shall conduct an investigation of the allegations contained in the complaint to determine if probable cause exists to conclude that discrimination occurred or there exists a discriminatory or unfair employment practice. In making a determination, Labor Standards may give substantial weight to the current guidelines of the Equal Employment Opportunity Commission.

(f) No Probable Cause Determination: If Labor Standards determines that probable cause does not exist to conclude that discrimination occurred or that a discriminatory or unfair employment practice exists, Labor Standards shall dismiss the complaint. The complainant and the respondent shall be notified in writing by either

personal delivery or certified mail of the dismissal. A copy of the determination shall accompany the Notice of Dismissal.

(g) Appeal of No Probable Cause Determination: The complainant may request a fair hearing on his or her complaint within twenty (20) days of the complainant's receipt of the Notice of Dismissal.

(h) Probable Cause Determination: If Labor Standards determines that probable cause does exist to conclude that discrimination occurred, Labor Standards shall endeavor to make whole the complainant through its conciliation process. If during the conciliation process a settlement is reached by the parties, a settlement agreement shall be drafted by Labor Standards and signed by the complainant, respondent and Labor Standards. A copy of the signed settlement agreement shall be delivered to the parties by personal delivery or certified mail to each party's last known address. If no settlement is reached within forty-five (45) days after both parties receive the probable cause determination, Labor Standards shall make a determination that the conciliation process has failed and, upon request of either party, refer the complaint to an independent hearing officer for a fair hearing.

(i) Disclosure: Labor Standards shall not disclose the filing of a complaint nor what transpires during the course of an investigation or the conciliation process, except as such disclosures are deemed essential to an investigation or are deemed necessary for evidence at a hearing.

(j) Access to Case Files:

(i) Investigative Records: Prior to a decision being issued by a hearing officer at a fair hearing, the contents of any files maintained by Labor Standards including, but not limited to, all documents, statements, notes, memoranda, correspondence, exhibits and reports or summaries prepared by Labor Standards employees shall be confidential and not subject to public disclosure. The parties to the complaint may inspect any such file or part thereof upon making proper arrangements with Labor Standards at any time after the issuance of the Notice of Hearing. After a decision has been issued by the hearing officer, the contents of the investigative records shall be available for public inspection subject to the Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205, and upon written application to Labor Standards.

(ii) Settlement and Conciliation Conference Records: The contents of any files maintained by Labor Standards pertaining to settlement and/or conciliation efforts conducted including, but not limited to, any correspondence, notes, or reports furnished to or prepared by Labor Standards in connection with such settlement and/or conciliation efforts shall be confidential until the administrative process has been exhausted.

(iii) Fair Hearing Records: A fair hearing record includes but is not limited to the following: pleadings; briefs; memoranda, exhibits; orders; decisions; and the audiotapes of the hearing. Fair hearing records shall be made available for public inspection subject to the Wyoming Public Records Act (W.S. 16-4-201 through 16-4-205) and upon written request to Labor Standards. Labor Standards shall provide to a requesting party copies of any requested document(s) from the fair hearing record at cost.

Section 5. Fair Hearings.

(a) Who Shall Conduct Fair Hearings: Fair hearings shall be conducted by an independent hearing officer. Labor Standards shall contract with an independent hearing officer in accordance with W.S. 27-9-104(b).

(b) Fair Hearing Procedures: The independent hearing officer shall conduct the fair hearing in accordance with W.S. 27-9-101 through 27-9-106 and the Wyoming Administrative Procedures Act, W.S. 16-3-107 through 16-3-115.

(c) Authority and Final Agency Action: The independent hearing officer shall exercise all authority of the Department under W.S. 27-9 101 through 27-9-106. The independent hearing officer's decision shall constitute the Department's final agency action.

(d) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(e) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.

Section 6. Judicial Review.

(a) Appeals to District Court: Pursuant to W.S. § 16-3-114, any complainant or respondent aggrieved or adversely affected by the hearing officer's decision may file a petition for judicial review. Petitions for judicial review of the hearing officer's decision shall be made pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure.

Chapter III

FAIR EMPLOYMENT RULES

Section 1. Authority.

These rules are promulgated as authorized by W.S. 27-9-104(a)(ii).

Section 2. Definitions.

As used in these rules:

- (a) "Act" means Wyoming Fair Employment Practices Act of 1965, as amended.
- (b) "Department" means the Department of Workforce Services, State of Wyoming.
- (c) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services.
- (d) "Complaint" means a verified, written statement on a Charge of Discrimination form provided by Labor Standards, which sets forth the name(s) and address(es) of the person(s), employer(s), employment agency(ies) or labor organization(s) alleged to have committed the discriminatory or unfair employment practice(s) and a detailed account of the discrimination or unfair employment practice complained of.
- (e) "Verified" means a complaint in which the complainant signs and swears or affirms before a notary public that the facts and allegations stated in the complaint are true.
- (f) "Complainant" means any person claiming to be aggrieved by a discriminatory or unfair employment practice and who has filed a complaint with Labor Standards.
- (g) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.
- (h) "Employer" means the State of Wyoming, or any political subdivision or board, commission, department, institution or school district thereof, and every other person employing two or more employees within the state; but employer shall not mean religious organizations or associations.

(i) "Respondent" means any employer, employment agency or labor organization against whom a complaint has been filed.

(j) "Court" means the District Court in and for the Judicial District of the State of Wyoming in which the asserted unfair employment practice occurred, or if said court be not in session at the time, then any judge of said court.

(k) "Conciliation Process" means the negotiation process used by Labor Standards in an attempt to arrive at a mutually agreed upon resolution of the complaint where a probable cause determination has been made.

(l) "Make Whole" means any form of relief determined by Labor Standards to place the complainant as nearly as possible in the position he or she would have enjoyed had the discriminatory or unfair employment practice not occurred.

Section 3. Complaints.

(a) Who may file: Any person claiming to be aggrieved by a discriminatory or unfair employment practice; may personally or through his/her attorney file a verified complaint.

(b) Time limit on filing: A complaint must be filed with Labor Standards within ~~ninety (90) days~~ **six (6) months** of the alleged discriminatory or unfair employment practice. If the ~~ninetieth (90th) day~~ **last day of the sixth (6th) month** falls on a Saturday, Sunday or state recognized holiday, the deadline for filing the complaint shall be extended to the next business day.

(c) Form of Complaint: The complaint shall be made on a Charge of Discrimination form provided by Labor Standards.

(d) Place to file: All complaints must be filed at any Labor Standards office.

(e) Manner of Filing: Complaints may be filed with Labor Standards by personal delivery, U.S. Mail, or facsimile. Where a complaint is filed by facsimile, complainant shall forward the original complaint to Labor Standards as soon as possible. A complaint shall be deemed filed when one or more of the following have occurred:

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(f) Amendments: A complaint may be amended within thirty (30) calendar days of the filing of the complaint to cure only technical defects or omissions. After the statutorily mandated ~~90-day~~ 6-month filing period has expired, a complaint may not be amended to introduce additional claims of discrimination or unfair employment practices.

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(b) Complainant's Reply: The complainant shall be given the opportunity to reply in writing to the respondent(s) response.

(c) Withdrawal of Complaint: The complainant may withdraw the complaint at any time.

(d) Fact-finding/Settlement Conference: Prior to the commencement of its investigation, Labor Standards shall hold a fact-finding/settlement conference if both parties agree to attend. The purpose of the conference is to gather facts, clarify the issues and explore the possibility of settlement. If a settlement is reached by the parties, signed settlement agreements shall be delivered to the parties by personal delivery or certified mail to the last known addresses of the parties. If a settlement is not rendered during the conference, Labor Standards shall pursue the investigation of the allegations contained in the complaint.

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(iii) Fair Hearing Records: A fair hearing record includes but is not limited to the following: pleadings; briefs; memoranda, exhibits; orders; decisions; and the audiotapes of the hearing. Fair hearing records shall be made available for public inspection subject to the Wyoming Public Records Act (W.S. 16-4-201 through 16-4-205) and upon written request to Labor Standards. Labor Standards shall provide to a requesting party copies of any requested document(s) from the fair hearing record at cost.

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(b) Fair Hearing Procedures: The independent hearing officer shall conduct the fair hearing in accordance with W.S. 27-9-101 through 27-9-106 and the Wyoming Administrative Procedures Act, W.S. 16-3-107 through 16-3-115.

(c) Authority and Final Agency Action: The independent hearing officer shall exercise all authority of the Department under W.S. 27-9 101 through 27-9-106. The independent hearing officer's decision shall constitute the Department's final agency action.

(d) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(e) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.

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