

To: All Unemployment Insurance (UI) Program Staff

From: Indiana Department of Workforce Development (DWD)

Date: October 31, 2023

Subject: DWD Policy 2020-04, Change 4
Unemployment Insurance Overpayment Waiver Policy

Purpose

The purpose of this policy is to set forth guidelines for discretionary waivers of unemployment insurance benefit overpayments.

Rescission

DWD Policy 2020-04, Change 3 *Unemployment Insurance Overpayment Waiver Policy*

Change 4 Summary

The purpose of the change is to include definitions of “calendar quarter,” “economic hardship,” “gross income,” “reimbursable employer,” and “without fault” as well as clarify what constitutes “fault.”

References

- Social Security Act (SSA) Sections 303(a)(1) and 303(a)(3)
- Indiana Code (IC) 4-13 et. seq.
- 646 Indiana Administrative Code (IAC) 5-10
- Unemployment Insurance Program Letter (UIPL) 1-16, Change 1 *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*
- DWD Claimant Handbook¹

Definitions

Calendar quarter. Calendar quarters end on March 31, June 30, September 30, and December 31 of each year.

Economic hardship. Repayment would cause economic hardship to an individual when their combined household gross income for the last two completed calendar quarters is 65% or less of the Federal Poverty Guidelines for a household of their size.²

Gross income. Pay before taxes and other deductions are taken out, such as child support, 401k

¹ https://www.in.gov/dwd/files/Claimant_Handbook.pdf.

² <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

contributions, etc.

Reimbursable employer. An employer electing to make payments in lieu of contributions.

Without fault. A person is without fault if that person was blameless in the creation of the overpayment. Examples of fault include, but are not limited to:

1. Failure to provide accurate information on an application for benefits, claim voucher for payment, or any request for information; or
2. Failure to respond to a request for information or a claims investigator's inquiries; or
3. Failure to inform DWD of a known error on a claim.

Content

Eligibility

Liability for repayment of benefits paid to an individual, other than an individual employed by a reimbursable employer, for any week may be waived upon the request of the individual only if the following criteria are met:³

- the benefits were received by the individual without fault of the individual;
- the benefits were the result of payments made:
 - during the pendency of an appeal before an administrative law judge or the review board under which the individual is determined to be ineligible for benefits;⁴ OR
 - because of an error by the employer or DWD; AND
- repayment would cause economic hardship to the individual.

Procedure

Communication of Waiver Request Rights

Claimants are notified of their opportunity to request waiver of recovery of overpayments in the Claimant Handbook and at the time a gross overpayment notice is issued.⁵ The notice will also specify the factors identified in IC 22-4-13-1(i) that establish under what circumstances a waiver may be granted.

Overpayment Waiver Request

The claimant may request a waiver of overpayment by completing the Overpayment Waiver Request application ("waiver request") at any time after the gross overpayment notice is issued, or if the underlying determination is appealed, at any time after the date of the final decision. Waiver requests submitted during a pending appeal of the underlying determination will not be considered. A claimant must resolve any outstanding identity verification issues prior to a waiver being considered. Payments collected prior to a determination on the waiver request will not be returned.

³ IC 22-4-13-1(i).

⁴ IC 22-4-17.

⁵ https://www.in.gov/dwd/files/Claimant_Handbook.pdf.

The Overpayment Waiver Request application can be obtained by choosing the Overpayment Waiver Request Application on the [Forms and Downloads](#) page of DWD's website. A waiver request must be submitted to the Benefit Collections Unit by mail or fax. The table below provides the address and fax number.

Mail	Fax
Indiana Dept of Workforce Development 10 N. Senate Ave Indianapolis, IN 46204	(317) 633-7206

Application Review

All waiver requests will be reviewed by the Benefit Collections Unit. To be considered, waiver requests must be legible, complete, and include all required documentation at the time of submission. Upon receipt of a waiver request, the DWD will place a stay on collections until a determination is made.

Waiver requests will be reviewed in accordance with the criteria identified above.

The Benefit Collection Unit, serving as the Chief Unemployment Insurance Officer's designee, will evaluate waiver requests and issue a determination whether to grant or deny the waiver request. At the discretion of DWD, an investigation may be conducted for the purposes of additional fact finding. A denial of a waiver request which has become final shall bar any later request for waiver with respect to the same overpayment, unless there is a significant change in the claimant's economic circumstances; in which case, the claimant must submit a request for reconsideration.

The determination of the Benefit Collection Unit shall:

- Approve the waiver of recovery of the remaining amount erroneously paid; or
- Approve the waiver of a specified portion of the erroneously paid amount remaining, with the balance not waived to be collected in accordance with standard DWD collections procedures; or
- Deny the waiver of recovery of the entire amount and require repayment via standard DWD collections procedures.

Appeals

Claimants may appeal an adverse waiver determination by submitting a written request to the Appeals Department within 10 days from the sent date on the waiver determination. The parties will be provided notice consistent with IC 22-4-17-6. All such appeals will be heard before an administrative law judge, who will afford reasonable opportunity for a hearing, including receiving evidence. After the hearing, the administrative law judge shall affirm, modify, or reverse the waiver determination.

Either party may appeal the ALJ's decision to the Review Board. All such appeals must be in writing and submitted within 15 days after the date the decision was sent. The Review Board will consider appeals of waiver determinations in the manner consistent with IC 22-4-17 et seq.

Appeals will be held in accordance with 646 Indiana Administrative Code (IAC) 5-10 et seq.

Request for Waiver Reconsideration

If a claimant's initial waiver request is denied, a claimant may submit a request for waiver reconsideration if there has been a significant change in their economic circumstances. A six-month period must have lapsed between the final determination on the initial waiver request and the request for waiver reconsideration. The request must be submitted to the mail or fax number listed above.

A request for reconsideration will only be considered once in a 12-month period. DWD will review the information provided and render a determination. The determination is final and not appealable. A hold will not be placed on collections while a request for waiver reconsideration is under review. Payments collected prior to a determination on the waiver request will not be returned.

Limitations

Waiver requests for these types of overpayments will not be considered:

- Overpayments due to fraud; or
- Individuals with wages from a reimbursable employer charged for benefits by an Unemployment Insurance (UI) or Extended Benefits (EB) claim. This limitation does not apply to federal programs where the employer is not chargeable for benefit payments such as Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), or Federal Pandemic Unemployment Compensation (FPUC).

Action

Staff processing overpayment waiver requests must follow the provisions covered in this policy and all applicable federal guidance and regulations.

Effective Date

Immediately.

Ending Date

Upon rescission.

Additional Information

Questions regarding the content of this publication should be directed to UIPolicy@dwd.in.gov.