

Chapter 192-230 WAC

RECOVERY OF OVERPAYMENTS

WAC

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WAC 192-230-010 Repayment terms defined. For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement mailed to your last known address.

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-230-010, filed 11/21/07, effective 1/1/08.]

WAC 192-230-020 How are cash payments and offsets applied to my overpayment? (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

(a) Court costs.

(b) Interest.

(c) Penalties based on fraud.

(d) Overpaid benefits.

(e) Surcharge assessed under RCW 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-230-020, filed 5/12/10, effective 6/12/10; WSR 07-23-128, § 192-230-020, filed 11/21/07, effective 1/1/08.]

WAC 192-230-030 How is the minimum payment calculated? The department will calculate your minimum

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monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-230-030, filed 11/21/07, effective 1/1/08.]

WAC 192-230-040 When are interest charges added to my overpayment? (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) If the overpayment includes both fraud and nonfraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

(5) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

(6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-230-040, filed 11/21/07, effective 1/1/08.]

WAC 192-230-090 May I repay an overpayment by offset against my benefits? (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

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(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-230-090, filed 11/21/07, effective 1/1/08.]

WAC 192-230-100 What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-230-030, the principal amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, and court costs will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC 192-230-030. If you have missed a portion of two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim. The fifty percent deduction is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-230-100, filed 10/9/08, effective 11/9/08. Statutory Authority:

RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-230-100, filed 12/9/04, effective 1/9/05.]

WAC 192-230-110 May I negotiate with the department to repay less than the full amount?—RCW 50.24-020.

(1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (3), a negotiated settlement of the overpayment for less than the full amount owed will be considered under subsection (2)(a). Settlement offers may also be made by authorized department staff.

(a) The department will consider a settlement offer when it would be against equity and good conscience to require you to repay the full amount. The department may consider, but is not limited to, the following factors in making this decision:

(i) Your general health, including disability, competency, and mental or physical impairment;

(ii) Your education level, including literacy;

(iii) Whether you are currently employed and your history of unemployment;

(iv) Your future earnings potential based on your occupation, skills, and the local labor market;

(v) Your marital status and number of dependents, including whether other household members are employed; and

(vi) Other factors indicating that collection of the full amount would cause you undue economic, physical, or mental hardship and you are unable to provide for basic necessities as described in WAC 192-220-030(2).

(b) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(c) If you previously applied for a waiver and were denied and your circumstances have significantly changed, such as catastrophic illness or loss of income, you may ask to negotiate a settlement for less than the full amount of the overpayment.

(3) A negotiated settlement for less than the full amount owed will not be considered when:

(a) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));

(b) The overpayment decision was issued by a state other than Washington; or

(c) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(4) The department's decision to accept or reject a settlement offer is final. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-230-110, filed 10/9/08, effective 11/9/08.]

WAC 192-230-120 Will a settlement offer be accepted if my overpayment is the result of fraud, misrepresentation, or willful nondisclosure? Except in unusual circumstances, a settlement offer will not be accepted when your overpayment is the result of fraud, misrepresentation, or willful nondisclosure. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair your long-term ability to generate income.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-230-120, filed 10/9/08, effective 11/9/08.]

WAC 192-230-130 How do I make a settlement offer? You may contact the department's unemployment benefits collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-230-130, filed 10/9/08, effective 11/9/08.]