

# Chapter 192-220 WAC

## OVERPAYMENT NOTICE, ASSESSMENT AND FRAUD

### WAC

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**WAC 192-220-010 Will I be notified about a potential overpayment?** (1) If a potential overpayment exists, the department will provide you with a written overpayment advice of rights explaining the following:

- (a) The reasons you may have been overpaid;
- (b) The amount of the possible overpayment as of the date the notice is sent;
- (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;
- (d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;
- (e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries;
- (f) An explanation that if you are not at fault, you may request a waiver of the overpayment; and
- (g) A statement that you have five working days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether you are at fault. If you do not provide the information within this time frame, the department will make a decision based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-010, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-010, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-010, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-220-010, filed 12/9/04, effective 1/9/05.]

**WAC 192-220-015 What is an overpayment assessment?** As used in this chapter and chapter 192-230 WAC, the term "overpayment assessment" includes both unemployment benefits you received for which you were not eligible as

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well as any penalty assessed under RCW 50.20.070 resulting from fraud.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-015, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-017 Am I required to repay the overpayment?** (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

- (3) You are not eligible for a waiver when:
- (a) You are at fault for the overpayment;
  - (b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));
  - (c) The overpayment is the result of a conditional payment of benefits;
  - (d) The overpayment decision was issued by a state other than Washington; or
  - (e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-017, filed 10/9/08, effective 11/9/08.]

**WAC 192-220-020 When does the department consider me at fault for an overpayment?** (1) The department will decide if you are at fault for an overpayment based on information provided by you and your employer and from information contained in the department's records. You will be considered at fault:

- (a) When the overpayment is the result of fraud, misrepresentation, or willful nondisclosure; or
- (b) When all of the following three elements are present:
  - (i) You were paid benefits in an amount greater than you were entitled to receive and you kept those benefits; and
  - (ii) You provided incorrect information, did not disclose information which you should have provided, or you caused another person to fail to disclose information; and
  - (iii) You had notice that the information should have been reported including, but not limited to, written communications from the department such as the unemployment claims kit and directives.

(2) You may be considered at fault, even though you provided the department with all relevant information before a decision was issued, when you should reasonably have known the payment was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper. These are examples

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only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner, or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which the department finds you knew the payment was improper.

(3) In deciding if you are at fault, the department will also consider your education, mental abilities, emotional state, experience with claiming unemployment benefits, and other personal factors which affect your ability to report all relevant information to the department. This includes any written information provided to you by the department.

(4) You are not at fault when you provided the department with all relevant information before a decision was issued and you would not reasonably have known the payment was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper. These are examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department removed a payment stop in error, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner, or a court.

(f) Other circumstances in which the department finds you did not know the payment was improper.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-020, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-220-020, filed 12/9/04, effective 1/9/05.]

**WAC 192-220-030 What does equity and good conscience mean in regard to overpayment waiver decisions? —RCW 50.20.190(2).** (1) "Equity and good conscience" means fairness as applied to a given set of circumstances.

(2) It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required to provide for basic necessities including food, shelter, medicine, utilities, and related expenses. Unless there are unusual circumstances which would argue against waiver, the department will presume

repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days.

(3) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:

(a) Your general health, including disability, competence, and mental or physical impairment;

(b) Your education level, including literacy;

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

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

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

(f) Whether an error by department staff contributed to the overpayment;

(g) Whether you refused or were ineligible for other government benefits because you received unemployment benefits; and

(h) Other factors indicating that repayment of the full amount would cause you undue economic, physical, or mental hardship.

(4) When determining whether a waiver of benefit overpayments may be granted based on equity and good conscience, the department must consider whether the employer or employer's agent failed to respond timely or adequately without good cause to the department's written request for claim information. This subsection does not apply to negotiated settlements.

(5) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsections (2), (3), and (4).

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 14-04-073, § 192-220-030, filed 1/30/14, effective 3/2/14. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-030, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-220-030, filed 12/9/04, effective 1/9/05.]

**WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed?** (1) RCW 50.20.070 provides dollar penalties when fraud is committed and increased disqualification periods when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the criteria in this section.

(2) Once the department sends a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the date the decision is sent will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is sent on June 1 for weeks claimed on April 30. On July 1, a decision is sent assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was sent.

(3) The department will treat any fraud for weeks filed more than fourteen days after the date a prior fraud decision is sent as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is sent assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. In addition to the fifteen percent penalty, the disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks and a penalty of fifteen percent beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-220-040, filed 10/7/16, effective 11/14/16; WSR 13-24-012, § 192-220-040, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-040, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-045 How is the fraud penalty calculated?—RCW 50.20.070.** (1) The department will assess the penalty established under RCW 50.20.070 for fraud based on a percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(a) For a first occurrence, the penalty is fifteen percent of benefits overpaid.

(b) For a second occurrence, the penalty is twenty-five percent of benefits overpaid.

(c) For a third or subsequent occurrence, the penalty is fifty percent of benefits overpaid.

(2) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-012, § 192-220-045, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-045, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision?** (1) The department will send a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes

because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and a fifteen percent dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is sent on August 1 and benefits are denied for the following twenty-six weeks and a fifteen percent penalty is assessed. On August 10, another fraud decision is sent which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the twenty-six week denial period begins with August 10, the date the second fraud decision is sent.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-220-050, filed 10/7/16, effective 11/14/16; WSR 13-24-012, § 192-220-050, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.-010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-050, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-060 Will I be notified of my right to appeal the overpayment?** (1) The department will send you and all interested employers information about the overpayment assessment and the right to appeal any of the following elements of the assessment:

(a) The reason for the overpayment.

(b) The amount of the overpayment.

(c) The finding of fault or nonfault.

(d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

(a) An employer that provides information to the department which results in an overpayment assessment.

(b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-220-060, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-060, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-070 Overpayments under RCW 50.12.070 (2)(c).** You are not required to repay benefits improperly paid to you because an employer failed to correctly report your wages or hours and a later correction results in a lower benefit amount or your claim becomes invalid. However, you remain liable for any overpayment assessment resulting from an eligibility decision issued before your claim became invalid that has become final.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-220-070, filed 11/21/07, effective 1/1/08.]

**WAC 192-220-080 How do I obtain a waiver? (1)**

When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-080, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-080, filed 10/9/08, effective 11/9/08.]