



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

TO: Unemployment Insurance System

FROM: Indian Department of Workforce Development

DATE: September 4, 2020

SUBJECT: DWD Policy 2020-03 Employer Pattern of Failure to Respond to DWD UI Program Information Requests

Purpose

To provide an explanation of Indiana Code § 22-4-11-1.5 when the experience account of an employer will not be relieved of erroneous payments if employer establishes a pattern of failure to respond to the DWD UI programs information requests.

Rescission

None

References

Indiana Code § 22-4-11-1.5

Content

The Indiana Department of Workforce Development (DWD) is responsible for administering Indiana Code § 22-4-11-1.5, which states:

IC 22-4-11-1.5

Experience account not relieved of erroneous payments if employer establishes pattern of failure to respond to department information requests

Sec. 1.5. (a) As used in this section, "erroneous payment" means a payment that would not have been made but for the failure by an employer or a person acting on behalf of the employer with respect to a claim for unemployment benefits to which the payment relates.

(b) As used in this section, "pattern of failure" means a repeated and documented failure by an employer or a person acting on behalf of an employer to respond to requests for information made by the department, taking into consideration the number of failures in relation to the total number of requests received by the employer or the person acting on behalf of an employer.

(c) The experience account of an employer may not be relieved of charges for a benefit overpayment from the state's unemployment insurance

benefit fund established by IC 22-4-26-1, if the department determines that:

- (1) the erroneous payment was made because the employer or a person acting on behalf of the employer was at fault in failing to respond in a timely or adequate manner to the department's written request for information relating to the claim for unemployment benefits; and
- (2) the employer or a person acting on behalf of the employer has established a pattern of failure to respond in a timely or adequate manner to department requests described in subdivision (1).

Definitions

“[R]equests for information made by the department” means a request for information regarding a claim for unemployment insurance benefits, a notice of liability, or a document sent by DWD to the employer or a person or entity acting on behalf of the employer that requests or requires a response. “[F]ailure to respond” means a failure by the employer or a person or entity acting on behalf of the employer to respond to a request for information within the deadlines set by DWD, or a response within the deadlines set by DWD indicating that the employer or a person or entity acting on behalf of the employer declines to provide information.

DWD will determine that a benefit overpayment “was made because the employer or person acting on behalf of the employer was at fault in failing to respond in a timely or adequate manner to the department’s written request for information relating to the claim for unemployment benefits” if the employer or a person or entity acting on behalf of the employer failed to respond to a request for information made by DWD about the claim upon which the benefit overpayment was established. A “repeated and documented failure . . . taking into consideration the number of failures in relation to the total number of requests received by the employer or the person acting on behalf of an employer” that constitutes a “pattern of failure” means 25% of DWD’s request are not responded when looking at a 365-day period. This means that DWD will not relieve the benefit overpayment described in this paragraph if the employer or a person or entity acting on behalf of the employer has failed to respond to a request for information made by DWD regarding the claim upon which the overpayment was established and also failed to respond to a request for information 25% of the time in the previous calendar year.

Applicability

Indiana Code § 22-4-11-1.5 and this Policy apply to all employers that have or are required to establish employer experience accounts with DWD under Indiana Code § 22-4-11-1 *et seq.* Indiana Code § 22-4-11-1.5 and this Policy do not apply to an employer that legally does not have or is not required to establish an employer experience account with DWD.

Action

Indiana’s Unemployment Insurance system will follow the guidance contained in this policy. Directors and managers will ensure that employees who work with this policy’s subject matter are aware of the details contained in this policy and follow its guidelines.

Effective Date

Immediately

Ending Date

Upon rescission

Contact for Questions

policy@dwd.in.gov