



**To:** All DWD Unemployment Insurance Program Staff

**From:** Regina Ashley, Chief Unemployment Insurance and Workforce Solutions Officer

**Date:** September 22, 2020

**Subject:** DWD Policy 2020-04  
Unemployment Insurance Overpayment Waiver Policy

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## Purpose

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

## References

- Indiana Code § 4-13 et. seq.
- Unemployment Insurance Program Letter 1-16
- Unemployment Insurance Program Letter 1-16, Change 1
- Sections 303(a)(1) and 303(a)(3), Social Security Act (SSA)

## Content

### Eligibility

In accordance with Ind. Code §22-4-13-1(i), 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:

1. the benefits were received by the individual without fault of the individual;
2. the benefits were the result of payments made:
  - a. during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; OR
  - b. because of an error by the employer or the department; AND
3. 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. The notice will also specify the factors identified in Ind. Code §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. Payments collected prior to a determination on the waiver request will not be returned.

The Overpayment Waiver Request application can be obtained at [www.unemployment.in.gov](http://www.unemployment.in.gov), click on Forms and Downloads, and choose Overpayment Waiver Request Application. A waiver request must be submitted to the Benefit Collections Unit by mail or fax.

#### **Mail**

Indiana Dept of Workforce Development  
10 N. Senate Ave  
Indianapolis, IN 46204

#### **Fax**

(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 Department will place a stay on collections until a determination is made.

Waiver requests will be reviewed in accordance with the Ind. Code §22-4-13-1(i) criteria identified above.

The Benefit Collection Unit, serving as the Chief Unemployment and Workforce Solutions Officer’s designee, will evaluate waiver requests and issue a determination whether to grant or deny the waiver request. At the discretion of the Department, 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:

1. Approve the waiver of recovery of the remaining amount erroneously paid; or
2. 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 Department of Workforce Development collections procedures; or
3. Deny the waiver of recovery of the entire amount and require repayment via standard Department of Workforce Development 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 I.C. 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 I.C. 22-4-17 *et seq.*

*Appeals will be held in accordance with 646 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 his/her 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 should be submitted to the mail or fax number listed above.

A request for reconsideration will only be considered once in a 12-month period. The department 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***

- No waiver requests for recovery of fraudulent overpayments will be considered.
- Pursuant to federal law, overpayments of Pandemic Unemployment Assistance payments may not be waived. See, Section 2102(h) of the CARES Act, 20 CFR 625.14(e).
- Waivers of Federal Pandemic Unemployment Compensation (FPUC) are permitted pursuant to the above.

### **Effective Date**

Immediately

### **Ending Date**

Upon rescission

### **Additional Information**

Questions regarding the content of this publication should be directed to DWD Policy: [policy@dwd.in.gov](mailto:policy@dwd.in.gov).