

LABOR CABINET
Office of Unemployment Insurance
(Amendment)

787 KAR 1:360. Overpayment waivers.

RELATES TO: KRS 341.413, 2022 R.S. HB 1

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims filed between January 27, 2020 and December 31, 2020, KRS 341.413 authorizes the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, finds the overpayment was made without fault on the part of the recipient and recovery would be contrary to equity and good conscience. Notwithstanding KRS 341.413, 2022 R.S. HB 1 authorizes the secretary to waive an overpayment of benefits for unemployment insurance claims filed between January 27, 2020 and September 6, 2021. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341, KRS 341.413, and 2022 R.S. HB 1.

Section 1. Definitions.

- (1) "Benefits" means benefits as defined by KRS 341.020(4).
- (2) "Financial hardship" means:
 - (a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; or
 - (b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.
- (3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.
- (4) "Office error" means:
 - (a) Errors in computing the benefit rate;
 - (b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;
 - (c) Payment beyond the expiration of the benefit year;
 - (d) Payment in excess of the maximum benefit amount;
 - (e) Payment under an incorrect program;
 - (f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud is not considered "office error";
 - (g) Monetary redeterminations;
 - (h) Payment during a period of disqualification;
 - (i) Payment to a wrong claimant; or
 - (j) Erroneous payments resulting from human error in the data entry process.
- (5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a written request for waiver of a determined overpayment within thirty (30) days of the date of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an alleged overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if the

secretary determines that:

- (1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and
- (2) Recovery would be contrary to equity and good conscience as established in Section 5 of this administrative regulation.

Section 4. No-fault Determination. For purposes of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient if the overpayment of benefits resulted from:

- (1) "Office error" as defined by Section 1 of this administrative regulation; or
- (2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience if an individual demonstrates that:

- (1) Recovery would cause financial hardship to the person from whom it is sought;
- (2) The alleged overpayment recipient can show, regardless of the individual's financial circumstances, that due to the notice that the payment would be made or because of the incorrect payment, the individual has relinquished a valuable right or changed positions for the worse. This may be shown if the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits; or
- (3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: April 26, 2022

FILED WITH LRC: April 28, 2022 at 10:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on July 27, 2022, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Oran McFarlan, Staff Attorney, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone 502-564-1490, email oran.mcfarlan@ky.gov.