

EDUCATION AND LABOR CABINET
Division of Workplace Development
Office of Unemployment Insurance
(Amendment)

787 KAR 1:360. Overpayment waivers.

RELATES TO: KRS 341.413, 2022 Ky. Acts ch. 199, Part 1D.7.(6)

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. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapters 341, 341.413, and 2022 Ky. Acts ch. 199, Part 1D.7.(6). For unemployment insurance claims filed between January 27, 2020 and September 6, 2021, KRS 341.413 authorizes the secretary to waive overpayments of unemployment insurance benefits if the secretary finds the overpayment was made without fault on the part of the recipient and recovery would be contrary to equity and good conscience.

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 Education and 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 Education and Labor Cabinet.

Section 2. Waivers. 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 3. No-fault Determination. For purposes of Section 2(1) of this administrative regulation, the secretary shall make a determination that the 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 4. Equity and Good Conscience Determination. For purposes of Section 2(2) of this administrative regulation, the secretary shall make a finding that a recovery of an 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.

ANTHONY HUDGINS, Acting Executive Director

APPROVED BY AGENCY: September 12, 2024

FILED WITH LRC: September 12, 2024 at 2:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2024, at 10:00 a.m., at Mayo Underwood Building, 500 Mero St., 3rd Floor, Frankfort, Kentucky 40601. 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 was received by that date, the hearing may be cancelled. 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 November 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charles Wheatley, 500 Mero St., 3rd Floor, Frankfort, Kentucky, 502-782-0555, email Charles.Wheatley@ky.gov.