

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~~[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 Ky. Acts ch. 199, Part 1D.7.(6) 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, 341.413, and 2022 Ky. Acts ch. 199, Part 1D.7.(6).]~~

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. ~~[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 3. ~~[Section 4.]~~ No-fault Determination. For purposes of Section ~~2[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 4. ~~[Section 5.]~~ Equity and Good Conscience Determination. For purposes of Section ~~2[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.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Wheatley

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides the criteria for waiving overpayments of unemployment insurance claims.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to carry out KRS 341.413 and RS 2024 SB 140.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 341.115(1) authorizes the secretary promulgate administrative regulation necessary or suitable for the proper administration of KRS Chapter 341

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides definitions and procedures for waiving overpayments of unemployment insurance claims pursuant to KRS Chapter 341, KRS 341.413, and RS 2024 SB 140.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment removes portions of the existing regulation in effect prior to the enactment of RS 2024 SB 140 by expanding the overpayment waiver eligibility dates and simplifying the process to obtain the waiver.

(b) The necessity of the amendment to this administrative regulation:

The amendment is needed to conform to the expanded claim filing timeframe stated in RS 2024 SB 140 (i.e., January 27, 2020 – September 6, 2021).

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment provides the procedures for waiving overpayments of unemployment insurance claims filed between January 27, 2020 and September 6, 2021.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment provides the secretary and Office of Unemployment Insurance staff with the necessary definitions and procedures for waiving overpayments of unemployment insurance claims filed between January 27, 2020 and September 6, 2021.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects all unemployment insurance benefit recipients in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Prior to the enactment of RS 2024 SB 140, unemployment insurance overpayment recipients were required to take action within 30 days of notification of the overpayment from the secretary. The law no longer requires recipients to take action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This administrative regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits, thus reducing affirmative actions previously required by overpayment recipients.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The amendment creates no new costs to implement.

(b) On a continuing basis:

This amendment creates no new costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current federal funding will be used for the ongoing implementation and enforcement of this administrative regulation amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding will not be necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

(9) TIERING: Is tiering applied?

Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 341.413 and RS 2024 SB 140

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation impacts Office of Unemployment Insurance (OUI) within the Kentucky Education and Labor Cabinet.

(a) Estimate the following for the first year:

Expenditures:This administrative regulation amendment will create no new expenditures for the first year.

Revenues:This administrative regulation amendment will create no new revenues.

Cost Savings:This administrative regulation amendment will create no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this administrative regulation amendment.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this administrative regulation amendment.

(4) Identify additional regulated entities not listed in questions (2) or (3):

No additional regulated entities are affected by this administrative regulation amendment.

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this administrative regulation amendment.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This administrative regulation amendment has no fiscal impact on the OUI. The amendment lessens the burden on claimants who receive an overpayment waiver.

Unemployment insurance claimants no longer are required to take proactive steps to obtain the overpayment waiver.

(b) Methodology and resources used to determine the fiscal impact:

Because there is no fiscal impact related to this administrative regulation amendment, no methodology or resources were necessary to determine fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The administrative regulation amendment does not create an overall negative or adverse major impact on OUI.

(b) The methodology and resources used to reach this conclusion:

Because there is no fiscal impact related to this administrative regulation amendment, no methodology or resources were necessary to determine fiscal impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

No federal mandate constituted the administrative regulation amendment.

(2) State compliance standards.

RS 2024 SB 140 created the standard for this administrative regulation amendment.

(3) Minimum or uniform standards contained in the federal mandate.

No federal mandate is involved with this administrative regulation amendment.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No federal mandate is involved with this administrative regulation amendment.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

No federal mandate is involved with this administrative regulation amendment.