

LABOR CABINET
Office of Unemployment Insurance
(Amendment)

787 KAR 1:360. Overpayment waivers.

RELATES TO: KRS 341.413, 2022 R.S. HB 1 [~~2021 Ky. Acts ch. 16, sec. 2~~]

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 [~~2021 Ky. Acts ch. 16, sec. 2~~] 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 ~~if~~ recovery ~~of~~ 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 [~~and Ky. Acts ch. 16, sec. 2~~].

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 ~~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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran McFarlan

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides the procedures 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 2022 R.S. HB 1.

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

KRS 341.115(1) authorizes the secretary promulgate administrative regulations 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 2022 R.S. HB 1.

(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:

In compliance with 2022 R.S. HB 1, the amendment expands the timeframe in which the secretary is authorized to waive an overpayment of benefits for unemployment insurance claims from January 27, 2020 – December 31, 2020 to January 27, 2020 – September 6, 2021.

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

The amendment is needed to conform to the expanded claim filing timeframe stated in 2022 R.S. HB 1 (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 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:

No additional compliance duties are imposed and no immediate action is required.

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

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

(a) Initially:

\$194,560.

(b) On a continuing basis:

\$93,600.

(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 implementation and enforcement of this administrative regulation.

(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 regulation.

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

There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied?

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

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

KRS 341.413 and 2022 R.S. HB 1.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated for the state for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated for the state for subsequent years.

(c) How much will it cost to administer this program for the first year?

\$194,560.

(d) How much will it cost to administer this program for subsequent years?

\$93,600.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):None.

Expenditures (+/-):See above.

Other Explanation:

This amendment does not impose any additional expenditures to employers.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(c) How much will it cost the regulated entities for the first year?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):See above.

Expenditures (+/-):No increase.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this amendment will have an overall negative or adverse economic impact of \$500,000 or more on the Office of Unemployment Insurance.