

## ***ARE YOU A VICTIM OF IDENTITY THEFT SEEKING UNEMPLOYMENT INSURANCE BENEFITS?***

Social security numbers are used by the Arizona Department of Economic Security (“DES”) to process applications for unemployment insurance benefits. As a result, a victim of identity theft may run into problems in the unemployment insurance benefits process because of the fraudulent actions of an identity thief.

### ***When Might Being a Victim of Identity Theft Be an Issue?***

There are three phases in the unemployment insurance benefits process where an identity theft victim may run into trouble as a result of that identity theft:

#### **PHASE 1. ELIGIBILITY**

**DES may find that an identity theft victim is not eligible for benefits.** Claimants must be “able to work, and [be] available for work” to receive benefits. A.R.S. § 23-771. An individual with a compromised social security number may have difficulty demonstrating that he or she is able and available to work; the identity thief may be unlawfully working and his or her employer erroneously reporting wages under the claimant’s stolen identity. A Claimant that receives a determination of deputy that he or she is ineligible for benefits only has 15 days to appeal the determination and may not know that his or her identity has been stolen in that time. For more information about eligibility, see *Know Your Rights: Eligibility for Unemployment Insurance*.

#### **PHASE 2. OVERPAYMENT CLASSIFICATION**

**An identity theft victim may be asked to repay money that was paid to an identity thief who was using the victim’s social security number.** An overpayment exists when a claimant receives unemployment benefits to which he or she is not entitled. DES has the right to collect any overpaid benefits. A.R.S. § 23-787. If an identity thief uses the victim’s social security number to claim benefits while the victim is employed, DES may incorrectly believe that the victim received benefits to which he or she was not entitled. This means the victim of identity theft may be asked to repay benefits he or she never received.

Additionally, **an identity theft victim’s overpayment may be classified as fraud when an identity thief uses the victim’s social security number to work.** Fraud is a type of overpayment classification that comes with an automatic penalty of 15 percent of the amount of overpayment, a potential felony conviction, and other consequences. See A.R.S. §§ 23-785; 23-787(B). A fraud determination occurs when a claimant knowingly misrepresents or conceals material facts to obtain benefits to which the claimant is not lawfully entitled. A.A.C. R6-3-1301(7). The fraud determination is tied to the social security number provided to DES, which means that the identity thief may cause the fraud determination. This could happen if the thief claims benefits while the victim is working or if the victim applies for benefits while the thief is using the stolen social security number. For more information about overpayment or fraud classification, see *Know Your Rights: Overpayment of Unemployment Insurance Benefits*.

## PHASE 3. WAIVER

**An identity theft victim may need to request a waiver of overpaid benefits if the victim never received the benefits due to identity theft.** To be eligible for a waiver, a claimant must have received the overpaid unemployment benefits through no fault of his or her own and it must be against “equity and good conscience” to collect from the claimant. A.R.S. § 23-787(c). Therefore, if, due to identity theft, a claimant never received the benefits for which DES is seeking repayment, he or she may be eligible for a waiver and may seek a waiver. For more information about waiver and how to seek one, see *Know Your Rights: Waiver of Overpayment of Unemployment Insurance Benefits*.

### *Tips for Identity Theft Victims*

The first step, if you are worried about an adverse determination from DES due to identity theft, is to inform the DES deputy assigned to your case that you are a victim of identity theft.

If the deputy ignores your status as an identity theft victim and you receive an adverse determination from DES, you may appeal that determination. When you appeal a determination, you will have the opportunity to offer evidence to an Administrative Law Judge (“ALJ”) about the underlying issues. Because ALJ’s must consider all relevant evidence, you may:

**1. Submit evidence to DES before the hearing that demonstrates you are a victim of identity theft.** The following documents might help demonstrate that you are a victim:

– *An Identity Theft Affidavit from the Federal Trade Commission.* A victim of identity theft may contact the Federal Trade Commission (FTC) to create an Identity Theft Report by completing an online Identity Theft Affidavit,<sup>1</sup> and taking it a police station, or by calling the Identity Theft Hotline at (877) 438-4338.<sup>2</sup>

– *A Police Report.* Once you report identity theft to the police, you may ask for a copy of the police report for your records.

**2. Inform the ALJ that you were a victim of identity theft and why that matters.**

– Explain to the ALJ how the identity theft has affected you in the phase of the unemployment benefits process that you are in, as discussed above.

**3. Consult with an attorney if you need legal advice.**

– You may contact the Work-Life Law and Policy Clinic for further information about unemployment insurance at (480) 727-2382 or seek a referral at <http://www.AZLawHelp.org>.

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<sup>1</sup> Federal Trade Commission: Consumer Information Page, *Create an Identity Theft Report*. <https://www.consumer.ftc.gov/articles/0277-create-identity-theft-report>.

<sup>2</sup> Other steps to consider include: (1) submitting an identity theft affidavit with the Internal Revenue Service (IRS) at <http://www.irs.gov/pub/irs-pdf/f14039.pdf>; (2) filing a Consumer Complaint Form with the Arizona Attorney General’s Office at <https://www.azag.gov/complaints/consumer>; (3) obtaining a free credit report at <https://www.annualcreditreport.com> to see if the identity theft has impacted your credit in other ways; and (4) placing a *free* “active duty alert” on your credit reports if appropriate by contacting one of the nationwide consumer-reporting companies: Equifax: (800) 525-6285 or [www.equifax.com](http://www.equifax.com); Experian: (888) 397-3742 or [www.experian.com](http://www.experian.com); or TransUnion: (800) 680-7289 or [www.transunion.com](http://www.transunion.com).