

KNOW YOUR RIGHTS: WAIVER OF OVERPAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS

Claimants who have been overpaid unemployment insurance benefits are responsible for repaying that money back to the state. However, some claimants may be eligible for a waiver of repayment. This document explains waiver and offers tips to claimants seeking one with the Arizona Department of Economic Security ("DES").

What is a Waiver of Overpayment of Unemployment Insurance Benefits?

- A waiver is a decision from DES that a claimant does not have to repay all or some part of the outstanding debt that may be owed from the overpayment of benefits.
- You may be eligible for a waiver if: the overpayment was obtained through no fault of your own; *and* it would be against equity and good conscience to require repayment.¹

How does DES determine fault?

- DES currently interprets fault as any overpayment with a classification of other than administrative. Given this, DES only considers waiver requests for administrative overpayments. For more information on the type of classification and how to appeal it, see *Know Your Rights: Overpayment of Unemployment Insurance Benefits*.

How does DES determine "against equity and good conscience"?

- DES examines whether it would be fair and the degree of difficulty it would create for a claimant to repay the debt, even in small amounts over a period of time.
- According to DES,² some of the factors that are relevant to the determination of whether repayment would be "against equity and good conscience" include:
 - 1) **Overpayment Status** including the current balance of benefits owed, longevity of debt, and efforts to repay.
 - *Ex:* Claimant has had an overpayment for over five years. During that time, Claimant has worked temporarily and consistently made payments when possible. Claimant has not found work for a year and has been unable to fully pay off the overpayment debt.
 - 2) **Financial Considerations** such as income, living expenses, and other debt.
 - *Ex:* Claimant makes repairs to her vehicle that, had it not been for the awarded benefits, would have postponed.
 - *Ex:* Claimant provides money to help his 19 year old son get dental work that would have not have been offered but for the benefits.
 - *Ex:* Claimant has a significant amount of credit card debt, obtains public assistance for housing and medical care, and has no savings.
 - 3) **Potential earning power** like whether the Claimant has specialized skills, barriers to employment exist, and caregiver roles.

¹ A.R.S. § 23-787(c).

² Notice of Substantive Policy Statement Arizona Department of Economic Security, # 3-18P-001, http://www.azdes.gov/uploadedFiles/DES_Rules/UITax-3-18P-001.pdf.

- *Ex:* Claimant was able and willing to work when she received benefits, but now has a medical condition that prevents her from working full time.
- *Ex:* There has been a downturn in the claimant's industry recently and Claimant's limited other skills has prevented him from finding new work.

Are there any other requirements?

- DES requires the overpayment to be final before someone can apply for a waiver.
 - The overpayment classification typically becomes final 15 days after the date listed on the *Determination of Overpayment*.
 - The determination is not final if an eligibility or overpayment appeal is pending.

How can I apply for a Waiver?

- Submit a **Confidential Financial Statement** (UB092A) to DES.³
- Attach supplemental documentation that includes any information that:
 - Is relevant to determining whether repayment would be "against equity and good conscience" and/or
 - You did not have room to explain on the Confidential Financial Statement form.

* Remember to keep a copy of all information submitted to and received from DES.*

What happens after you file for a Waiver?

- A Deputy will review the form and make a determination.
- If the deputy approves the waiver, DES will notify you in writing and state that you are relieved of your obligation to repay.
- If the deputy denies your waiver, DES will notify you in writing, and you may:
 - 1) Appeal the determination of deputy within 15 days of the date listed on the determination. If you timely appeal a waiver denial, DES will send you a notice of a telephonic hearing with an Administrative Law Judge (ALJ).
 - As the notice will explain, you may submit documents and/or register witnesses for the telephonic hearing. The ALJ also asks you questions under oath, including whether there is other testimony you'd like to provide.
 - After the hearing, the ALJ issues a written decision, which may be appealed further if you believe it is wrong.
 - 2) Try to set up a repayment plan by contacting DES's Office of Accounts Receivable and Collection at (602) 252-0024.
 - 3) Repay the overpayment in full.
- You may apply for another waiver later if your circumstances change from the original application. For example, if you lose a job or incur significant medical expenses for a dependent. This starts the waiver application process over again.

For More Information Visit

- DES's Guide to Unemployment Insurance (p.9), <https://www.azdes.gov/InternetFiles/Pamphlets/pdf/pau-007-PD.pdf>.
- The William E. Morris Institute for Justice's Guide to Unemployment Insurance (p. 34), <http://morrisinstituteforjustice.org/docs/UnemploymentInsuranceGuide.pdf>.
- Information about referrals for legal assistance is available at <http://www.azlawhelp.org/> or by calling (866) 637-5341.

³ A copy may be obtained on the [DES website \(https://www.azdes.gov/uploadedFiles/Employment/Unemployment_Insurance_Benefits/ub_092_A_english.doc\)](https://www.azdes.gov/uploadedFiles/Employment/Unemployment_Insurance_Benefits/ub_092_A_english.doc) or you may request that DES mail you a copy via phone at (877) 600-2722. The form contains filing instructions.