

KNOW YOUR RIGHTS: OVERPAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS

The Arizona Department of Economic Security (DES) may determine that a claimant is not entitled to unemployment insurance benefits that were already paid. DES has a right to seek repayment of these overpaid benefits. This document provides an overview of overpayments, how they are classified, why that classification matters, and offers tips for claimants with overpayments.

What is an Overpayment?

- An overpayment is a payment of any amount of unemployment insurance benefits to a person whom DES later determines is not entitled to all or part of those benefits.¹
- An overpayment occurs when:
 - 1) Eligible claimants receive more benefits than they are entitled to because of DES error;
 - 2) Claimants initially receive benefits and are subsequently disqualified; or
 - 3) Claimants receive benefits because of fraud.

How do you Know if you have an Overpayment?

- DES will send you a form letter called a *Determination of Overpayment*. This letter specifies the weeks and amount that DES alleges you were overpaid. It will also classify the overpayment into one of the below categories.

Types of Overpayments & Why the Classifications Matters²

DES has a right to recoup overpaid benefits, associated interest and related fees. Among other things, the type of overpayment dictates the amount of money that may be recovered and the ways in which the overpayment may be collected. The main classifications are:

- 1) **Administrative Error:** when an overpayment occurs without fault of the claimant
 - Ex: A DES error in processing paperwork leads a claimant to receive extra benefits or DES later overturns an initial determination that found claimant eligible.
 - 10% interest on any unpaid principal balance begins to accrue 6 months after the date of determination.
 - Claimants may seek a waiver of the recoupment of an overpayment classified as Administrative Error. See *Know Your Rights: Waiver of Unemployment Benefits*.
- 2) **Non-fraud:** when a claimant unintentionally gave incorrect or incomplete information
 - Ex: A claimant unintentionally lists a former employer as the local company and not the large national conglomerate that owns the local company (because they had never heard of the parent company).
 - DES does not specify what information the claimant provided that was incorrect or incomplete. Nor does it currently grant waivers for non-fraud overpayments.
 - 10% interest is charged from the month following the date of determination.

¹ A.R.S. § 23-787(A); A.A.C. R6-3-1301.

² A.R.S. §§ 23-787(B), 44-1201; A.A.C. R6-3-1301(5-8); A.A.C. R6-3-1312.

- 3) **Fraud:** when a claimant knowing misrepresents or conceals material facts to obtain benefits to which the claimant was not lawfully entitled ³
- Ex: DES views it as a misrepresentation for claimant to list the separation from employment as a layoff instead of a termination, when the person actually quit in anticipation of being fired.
 - DES does not specify currently what information the claimant knowingly misrepresented or what material facts were concealed.
 - A fine of 15% of the overpaid benefits is added to the overpayment balance.
 - 10% interest is charged from the month following the date of determination.
 - There is the potential for criminal prosecution with a penalty of up to 2 years in prison and \$150,000 in fines for each fraudulent statement.
 - Claimants are disqualified from obtaining more unemployment insurance benefits for a period of 2 years. Claimants also are prohibited from obtaining new benefits until all fraudulent overpayment, penalties, and interest are repaid.

How can I change my Classification or Appeal?

- Claimants may challenge the finding, amount, or classification of overpayment within 15 days of the date on the notice of determination.
- If a claimant timely appeals a determination of overpayment, DES will send the claimant a notice of a telephonic hearing with an Administrative Law Judge.
 - As explained in the notice, Claimants may submit documents, register witnesses, and/or testify at the telephone hearing run by an Administrative Law Judge.
 - After the hearing, the Administrative Law Judge issues a written decision, which may be appealed further if the claimant believes the decision is wrong.

Tips for Claimants with an Overpayment

- Keep all documents received from DES and all documents you submit to DES.
- DES may collect overpayments after the 15 day window from the notice has passed.
 - If the claimant is still receiving benefits, DES may deduct all or a portion of the overpayment from future benefits payable to the claimant.⁴
 - If the claimant is not currently receiving benefits, DES may garnish wages, lottery winnings, and/or tax returns. DES also may begin collection proceedings to recoup any overpayment balance.⁵
- Interest accrues on overpayments during appeals.⁶
- If you have an administrative or non-fraud overpayment, DES may agree to a repayment plan if you ask for one.
- There is no limit on the amount of time that DES takes to collect an overpayment; and long periods of time may pass from the date the underlying benefits were distributed.

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.R.S. §§ 23-787(B), 23-785.

⁴ A.R.S. § 23-787(A).

⁵ 26 U.S.C. § 6402(F); A.R.S. § 23-787(F); 31 C.F.R. § 285.8; A.A.C. R6-3-1813.

⁶ A.A.C. R6-3-1812.