

## OREGON UNEMPLOYMENT BENEFITS: OVERPAYMENTS AND OVERPAYMENT WAIVERS

**WHAT IS AN UNEMPLOYMENT BENEFIT OVERPAYMENT?** Overpayments happen when the Employment Department gives someone more unemployment benefits than they should have received. When the Employment Department decides that a person has been overpaid, they also make a decision about what caused the overpayment. There are three different kinds of unemployment overpayments, depending on what cause the overpayment.

1. Agency Error: Overpayment due to a mistake made by the Employment Department, or other reasons that were outside the claimant's control;<sup>1</sup>
2. Non Fraud Misrepresentation: Overpayment due to the claimant's honest mistake, for example if a claimant misunderstands a question or accidentally puts incorrect information on their application or weekly claim;<sup>2</sup> and
3. Misrepresentations and Fraud: Overpayments due to fraud, when a person intentionally lied to (or withheld information from) the Employment Department in order to get benefits, called "intentional misrepresentation" or "fraud".<sup>3</sup>

**WHY DOES THE CATEGORY OF THE OVERPAYMENT MATTER?** You have different rights, and you will be subjected to different penalties and collection methods, depending on the type of overpayment you have. It is important to pay attention to any "Notice of Overpayment" you get from the Employment Department because some types of overpayments can require you to pay back a lot of money, disqualify you from future benefits, and can result in your tax refund being taken and/or wages and property to be garnished.

Misrepresentation and fraud	Non-fraud misrepresentation	Everything else (such as agency error)
<ul style="list-style-type: none"> <li>• <b>PENALTIES:</b> Up to 52 weeks of disqualification and financial penalties.</li> <li>• <b>REPAYMENT:</b> Typically repaid by offsetting future weekly benefits. The employment department can also garnish wages, obtain property liens, and intercept state and federal tax refunds.</li> <li>• <b>WAIVER:</b> Waiver is not available.</li> <li>• <b>TIME LIMIT ON COLLECTION:</b> There is no time limit on collecting this type of overpayment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>PENALTIES:</b> None.</li> <li>• <b>REPAYMENT:</b> Typically repaid by offsetting future weekly benefits. The employment department can also garnish wages, obtain property liens, and intercept state and federal tax refunds.</li> <li>• <b>WAIVER:</b> Waiver is available if repaying the overpayment would be a hardship.</li> <li>• <b>TIME LIMIT ON COLLECTION:</b> There is five-year time limit on collecting this type of overpayment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>PENALTIES:</b> None.</li> <li>• <b>REPAYMENT:</b> Offsetting future weekly benefits is the <u>only</u> way these overpayments can be collected.</li> <li>• <b>WAIVER:</b> Waiver is available if repaying the overpayment would be a hardship.</li> <li>• <b>TIME LIMIT ON COLLECTION:</b> There is five-year time limit on collecting this type of overpayment.</li> </ul>

<sup>1</sup> ORS 657.315.

<sup>2</sup> ORS 657.310.

<sup>3</sup> ORS 657.310 and ORS 657.215.

**HOW WILL I LEARN ABOUT AN OVERPAYMENT?** If you are facing an overpayment, you will receive 2 separate “Administrative Decisions” from the Employment Department. First, you should get an “Administrative Decision” telling you that you were not eligible for some or all of the weeks of benefits you already received. After the first eligibility decision, you should get a second “Administrative Decision” telling you that because you weren’t eligible for some benefits you got, you have an overpayment that you must repay. This notice should tell you exactly how much money you owe due to the overpayment, explain which type of overpayment the Employment Department thinks you owe (fraud, honest mistake, or paid in error), and whether you have the right to ask for a “waiver” of the overpayment. (See p. 3-4 for information on “waivers”).

### **SHOULD I APPEAL AN OVERPAYMENT DECISION?**

Yes! It is very important to challenge BOTH of the decisions. First you must ask for a hearing on (appeal) the Employment Department decision that you weren’t eligible for some or all of the benefits they gave you. If you win this appeal, you may not owe any overpayment at all. You must ALSO ask for a hearing on (appeal) the second decision that tells you how much and what type of overpayment you owe. This is your chance to prove that, even if you do owe some overpayment, that the amount of overpayment is wrong, or that the overpayment was an honest mistake and not fraud. **IT IS IMPORTANT TO APPEAL BOTH OF THESE DECISIONS SEPARATELY.** If you don’t ask for a hearing on the first decision that says you received benefits you weren’t eligible for, it is very hard to challenge the overpayment that will come next. You have 20 days from the date of decision to ask for an appeal. If you miss the 20-day deadline, you can file a late request and explain why you had good reasons for missing the deadline, and that you filed as soon as you could based on your situation. You must ask for good cause within 7 days of discovering you missed the deadline.

**HOW DO I APPEAL AN OVERPAYMENT DECISION?** Within 20 days of the mailing date of the decision, you can appeal by fax at (503) 947-1335 or submitting a request through the Oregon employment Department’s Contact Us form: <https://oedcontactus.oregon.gov/hc/en-us/requests/new>. You could also mail an appeal to 875 Union St NE, Salem, OR 97301, but due to the very short timeline for hearing requests, we recommend using fax or the Contact Us form.

You do not need to include a long explanation about why you disagree with the decision, but can simply state that you disagree with the agency’s decision and request a hearing. The Employment Department also requests that you include the following information, if possible:

- The last four digits of your Social Security Number or your full Customer Identification Number (CID),
- The administrative decision number (on the decision you are appealing),
- The mailing date of the administrative decision you’re appealing,
- A brief description of why you are appealing, and
- Any request for language interpretation or disability accommodation.

### **SHOULD I CONTINUE TO CLAIM WEEKLY BENEFITS WHILE I AM APPEALING THE OVERPAYMENT?**

Yes. During the entire appeal process, continue to file for weekly benefits.

## WHAT IS A “WAIVER” OF AN OVERPAYMENT?

A “waiver” of an overpayment is when the Employment Department agrees not to make you pay back the money they overpaid you. An overpayment waiver “extinguishes liability” of the person who owes the debt. This means that the overpayment debt you owe is forgiven.

## AM I ELIGIBLE FOR AN OVERPAYMENT WAIVER?

You can apply for a waiver if your overpayment was caused by your “honest mistake” or by something outside your control, such as an agency error. You cannot apply for a waiver if your overpayment was based on “fraud” or “intentional misrepresentation”. This is why it is very important to appeal any agency decision saying that you committed fraud or “willfully made a false statement or misrepresentation or willfully failed to report a material fact” related to your unemployment claim. (See p. 1 for appeal rights).

To be eligible for a waiver of regular unemployment insurance benefits, you must show the Employment Department that you need at least 90% of your monthly income to pay for your basic living expenses. If you are asking for waiver of overpayment of Pandemic related unemployment benefits (benefits created in response to the COVID-19 pandemic) you may be eligible for a waiver if repayment of the overpayment would cause financial hardship, if the receipt of benefits caused you to relinquish a “valuable right” or change positions for the worse, or if recovery would be unconscionable (unfair) under the circumstances.

- An example of financial hardship could be if repaying the overpayment would mean you were unable to pay for essential things like food, shelter, childcare, fuel and insurance for your vehicle or utilities.
- An example of when the receipt of unemployment benefits caused you to relinquish a valuable right could be if the receipt of unemployment benefits caused you to lose eligibility for other programs such as TANF, SNAP or Oregon Health Plan.
- An example of when the receipt of unemployment benefits caused you to change your position for the worse could be if you decided to pay off credit cards or other debts instead of paying minimum monthly payments or if you signed a rental agreement for a more expensive dwelling.
- An example of when recovery of an overpayment would be unconscionable (unfair) could be if you were expressly instructed by an Employment Department employee to file for a PUA claim, and did as you were instructed and were ultimately assessed an overpayment.

## WHAT HAPPENS IF I DON'T GET A WAIVER:

If you ask for a waiver, but you aren't given one, you can appeal the waiver denial. If you don't apply for a waiver, or your waiver request is turned down and you don't otherwise participate in a repayment plan with the Office of Overpayment Recovery, the employment department will take other steps to reclaim the overpayment. You are likely to face offsetting of future weekly benefits. The employment department can also garnish wages, obtain property liens, and intercept state and federal tax refunds.

## HOW CAN I APPLY FOR A WAIVER?

**Online:** The fastest way to apply for a waiver is to file an online waiver request form available [here](#).<sup>4</sup> This waiver application technically only applies benefits paid under *federal* programs such as Pandemic Unemployment Assistance (PUA) or Pandemic Unemployment Compensation (PUC). For this reason, we recommend that after filling out the *federal* benefit overpayment waiver, that people who also received regular UI payments also fill out the waiver found at [www.workinginoregon.org/opay](http://www.workinginoregon.org/opay).

**Telephone:** If you need assistance because you have a disability or because you need a language interpreter, you can request an “accommodation”, that someone from the Oregon Employment Department help you apply for waiver over the telephone. You can request an accommodation by sending a request to the “Universal Access Coordinator” through [oedcontactus.oregon.gov](http://oedcontactus.oregon.gov).

**Paper:** You can also download a more comprehensive waiver application at [www.workinginoregon.org/opay](http://www.workinginoregon.org/opay). You can fax or mail your completed and signed form along with your bills, statement or additional documentation.

Oregon Employment Department  
875 Union St. NE. Salem, OR. 97311  
FAX 503-947-1811

## HOW SHOULD I RESPOND IF THE EMPLOYMENT DEPARTMENT IS PRESSURING ME INTO MAKING A PAYMENT PLAN OR IS THREATENING TO GARNISH MY WAGES OR INTERCEPT TAX REFUNDS?

Apply for a waiver immediately if the overpayment was caused by anything other than fraud. See the instructions on page 3 about how to apply for a waiver.

If you had a good reason for not appealing the notice of overpayment when that was issued (such as not receiving the notice, being in the hospital, or not understanding the notice because it did not come in a language or format that you could read) you can request a hearing on the overpayment itself and explain why you have good cause for late filing.

If you agree that you were overpaid and are not eligible for a waiver, contact the Office of Overpayment Recovery (800) 553-5396 and arrange for a payment plan that you can afford.

## WHAT HAPPENS IF MY TAX REFUND IS TAKEN TO REPAY MY UNEMPLOYMENT OVERPAYMENT?

The state of Oregon can take your state and/or federal tax refund to pay back an unemployment insurance overpayment if the Employment Department gave you written notice of the overpayment, and gave you all available chances to challenge (disagree with) the overpayment. The Employment Department also has to give you a written notice that they plan to take your tax refund. If you get this notice, you have 60 days from the date on the written notice to “disagree” with this plan to take your tax refund. (OAR 471-030-0058). You also must receive a certified mail “Notice of Intent to Offset” from the Oregon Department of Revenue that your tax refund is about to be withheld to pay your overpayment. You also have 60 days from the date of this notice from the Department of Revenue to either pay the debt, or challenge this decision. (OAR 150-305-0350). To challenge the state’s right to take your tax refund, you must show that you don’t owe any overpayment, or that the overpayment isn’t legally allowed to be collected because, for example, the debt is so old that it is past the date when the state is allowed to collect the money. \*Even if you have a

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<sup>4</sup> <https://app.smartsheetgov.com/b/form/4a3fe03b663c4570abe068c2c5a6218b>

payment plan with the agency to repay the overpayment and you are making payments according to that plan, the state can still take your tax refund to pay down the overpayment debt. Once your tax refund is taken to repay the overpayment, you will receive another notice from the Oregon Department of Revenue telling you what happened to your tax refund. If your tax refund has already been taken, call 1.888.564.2828, option #3, or email [OJD.TaxOffset@ojd.state.or.us](mailto:OJD.TaxOffset@ojd.state.or.us) to ask for help.

### **HOW DO I FIND LEGAL ASSISTANCE?**

For more information, you can contact the Public Benefit Hotline at 800-520-5292. The Hotline is generally staffed Mondays and Thursday from 1-4pm, and Tuesdays and Wednesday from 9:30 a.m. to 12:30 p.m.. You can also contact the Oregon State Bar lawyer referral service at (503) 684-3763.