



Outline of Selected State Unemployment Insurance Laws Protecting Workers in Overpayment Proceedings and Regulating Employer Abuses

**by
National Employment Law Project
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1. Fraud versus Non-Fraud Overpayments –Definitions

Illinois: Unemployment Insurance Reporter, Regulation, Illinois, Sec.

2835.40. Benefits Received Without Fault

The receipt of any sum paid to a claimant as benefits, due to agency error, is without fault. A good faith mistake of fact by the claimant in the filing of his claim for benefits which results in an overpayment of benefits does not constitute fault. (*As adapted, effective* December 23, 1982.)

Maine: Unemployment Insurance Reporter, Regulation, Maine, 5.

Overpayment Not Due to Unemployment Fraud or Misrepresentation.

For purposes of subsection 10 of section 1194 of the Employment Security Law, the term "error" may include, but will not be limited to, the following situations which shall not constitute unemployment fraud or misrepresentation:

A. An error in identity.

B. In the absence of evidence of knowledge of falsity or knowing failure to disclose, a claimant's erroneous report of his or her earnings amount.

C. An error in computing the amount payable.

D. A claim that was paid which should not have been paid until a determination of the claimant's eligibility for that payment had been made.

E. Payment of a full or reduced benefit check due to a data entry error. (As amended, effective May 30, 2000.)

Maine: Unemployment Insurance Reporter, Regulation, Maine, 2.

Definitions.

For purposes of this subsection and of subsection 5 of section 1051 of the Employment Security Law, the following terms shall have the following meanings:

A. "Amounts erroneously paid" means benefit payments made to a claimant to which, as a result of a later determination, reconsidered determination, redetermination, or decision by a deputy, the Division of Administrative Hearings, the commission, or a court, the claimant was not eligible or qualified for benefits.

B. "Without fault on his part" means that the claimant, in applying for benefits, made no misrepresentations or omissions as to any information used to determine his or her eligibility or qualification for benefits.

Acceptance of a payment which the claimant knew, or could have been expected to know, was incorrect

will constitute fault on the claimant's part. **In determining whether a claimant is at fault, the commission shall consider all pertinent circumstances, including the claimant's age and intelligence as well as any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).**

New Hampshire: Unemployment Insurance Reporter, Regulation, New

Hampshire, Emp 502.03. Overpayment Without Fault.

(a) For the purposes of RSA 282-A:165, II of the New Hampshire unemployment compensation law an individual who has received benefits later found to be overpaid shall be **without fault** in causing the overpayment where:

(1) Such individual is paid benefits which should not have been paid by reason of the authorized representative of the commissioner either having had and failed to use or having failed to attempt to obtain that information which such authorized representative had reason to know existed, which was necessary to

make a correct decision;

(2) Such individual is paid benefits based in whole or in part on annual earnings incorrectly assigned to the individual; except the amount of benefits determined in whole or in part upon annual earnings listed as being wages paid by an employer for whom the claimant performed no services within the affected base year;

(3) Such individual is paid benefits after the individual has exhausted the maximum benefits available to the individual;

(4) Such individual is paid benefits with respect to any week for which the individual has been previously determined to be disqualified or ineligible;

(5) Such individual is paid benefits where such benefits were paid due to an authorized representative of the commissioner incorrectly computing wages under RSA 282-A:32, and such representative at the time had the information necessary for a correct computation; or

(6) Such individual was without fault under Emp 502.03(b).

(b) For the purposes of RSA 282-A:165, II of the New Hampshire unemployment compensation law an individual who has received benefits later found to be overpaid shall be **with fault** in causing the overpayment where the overpayment resulted totally or partially from:

(1) The individual making a material statement or representation which the individual knew or should have known was inaccurate;

(2) The individual failing or causing another to fail to disclose a material fact which the individual knew or should have known was material; or

(3) The individual failing to return checks which the individual knew or should have known were not due.

(c) In determining whether the individual knew or should have known under (b) above, the commissioner shall consider the totality of the circumstances, taking into account any physical, mental, educational or linguistic limitations, including any lack of facility with the English language the person has, in applying the following factors to the individual:

(1) The individual's understanding of the reporting requirements;

(2) The requirements communicated to the individual to report events affecting payments;

(3) Knowledge of the occurrence of events that should have been reported;

(4) Efforts to comply with the reporting requirements;

(5) Opportunities to comply with the reporting requirements;

(6) Understanding of the obligation to return checks which were not due; and

(7) The extent to which the individual was unable to comply with reporting requirements due to age, comprehension, memory, physical, mental, educational, linguistic, English language proficiency, or similar limitations. (*As readopted with amendments, effective July 1, 2010.*)

2. Fact-Finding Required Prior to Overpayment Determination

Maine: Unemployment Insurance Reporter, Maine, Sec. 1194.

DETERMINATION

2. A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during that benefit year in accordance with section 1192, subsection 5.

* * *

If, during the period a claimant is receiving benefits, new information or a new issue arises concerning the claimant's eligibility for benefits or which affects the claimant's weekly benefit amount, benefits may not be withheld until a determination is made on the issue. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which must include the issue to be decided, the law upon which withheld until a determination is made on the issue. **Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which must include the issue to be decided, the law upon which it is based, any factual allegations known to the bureau, the right to a fact-finding interview, the date and location of the scheduled interview, and the conduct of the interview and appeal.** The fact-finding interview must be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include in the notice a statement notifying the claimant that any benefits paid prior to the determination may be an overpayment under applicable law and recoverable by the bureau if it is later determined that the claimant was not entitled to the benefits. If the claimant does not appear for the scheduled interview, the deputy shall make a determination on the basis of available evidence. The deputy shall make a prompt determination of the issue based solely on any written statements of interested parties filed with the bureau before the interview, together with the evidence presented by interested parties who personally appeared at the interview. Upon request and notice to all parties at the interview, the deputy may accept corroborative documentary evidence after the interview. In no other case may the deputy base his decision on evidence received after the interview has been held.

A. This subsection does not apply when the claimant reports that, in the week claimed:

- (1) The claimant worked and reports a specific amount of earnings for that work;
- (2) The claimant worked and had earnings from that work, but does not furnish the amount of earnings;
- (3) The claimant reports that the claimant was not able or available for work for a specific portion of the week and there is sufficient information for the deputy to determine that the inability or unavailability for work was for good cause. If the information provided by the claimant indicated unavailability during the claim week, but is not specific as to the amount of time involved, the department shall immediately initiate a fact-finding interview with the individual and make a determination regarding the claimant's weekly benefit amount on the basis of that interview. If the department is not able to conduct an immediate factfinding interview with the claimant, the notification and fact-finding process described in this subsection must be followed; or

**Maine: Unemployment Insurance Reporter, Regulation, Maine, 2.
Investigation of Cases of Potential Unemployment Fraud or Misrepresentation.**

The following procedures shall be used in the investigation of claims involving potential unemployment fraud or misrepresentation.

A. Obtaining documentary evidence. Prior to interviewing the claimant, the deputy shall obtain all available documentation.

B. Scheduling the interview. The deputy shall notify the claimant in writing of the date and time that the fact-finding interview will be held. Such notice shall be sent to the claimant's last known or given address, via certified mail, return receipt requested, as well as regular mail, and shall include the following information: date, time and location of the interview; the facts which are known to the bureau; the claimant's right to request a postponement; the claimant's right to provide written information; the amount of any potential overpayment; and the consequences of a finding of unemployment fraud or misrepresentation. The interview will be scheduled no earlier than ten (10) days after the mailing date of either notice. If the notice is returned to the deputy because it cannot be delivered by mail, the deputy shall review all available records in order to determine if the address on the notice is the correct one. If another

address is found, a new notice will be mailed to the claimant at such other address.

1. In-person interview. If the interview will be conducted in person, the notice will include the location of the interview

2. Telephone interview. If the interview will be conducted by telephone, the notice will include the telephone number at which the claimant will be called, the time frame during which the claimant will be called, and the deputy's telephone number. In addition, a copy of all documentary evidence which the deputy has related to the potential unemployment fraud or misrepresentation will be forwarded to the claimant prior to the interview.

C. Interviewing the claimant. Prior to interviewing the claimant, the deputy shall advise the claimant that he or she has the right to remain silent; that everything that he or she says can and will be used against him or her in a court of law; and that he or she has the right to the advice of a lawyer before, and the presence of a lawyer during, the questioning. If the claimant desires the advice of a lawyer, and has not yet retained legal counsel, the interview shall be postponed for a reasonable length of time. The form on which the interview

is recorded shall contain a listing of the rights which are contained in this paragraph. If the claimant declines to provide any information, the deputy will make the following written notation on the form, "Claimant declined to provide any information," and the deputy will then sign the interview form and terminate the interview. If the claimant agrees to provide information, the deputy shall transcribe such information onto the interview form and receive any other evidence which the claimant proffers.

1. In-person interviews. Upon completion of the claimant's statement, the deputy shall request the claimant to sign the interview form and the deputy shall also sign the form.

2. Telephone interviews. When the interview is being conducted by telephone, the deputy will allow the claimant a reasonable period, but not less than seven (7) days, to send in any other evidence which the claimant wants to offer. The deputy also will prepare an interview form in the same manner as described on paragraph C above. This form shall be sent to the claimant for signature and returned to the deputy. The deputy is authorized to issue a decision based on available information, including the information recorded on the interview form, if the interview form is not returned within ten (10) days after it is mailed to the claimant. (As amended, effective March 27, 2004.)

Ohio RC 4141.28(E) and (F)

(E) CLAIM FOR BENEFITS

The director shall examine the first claim and any additional claim for benefits. On the basis of the information available, the director shall determine whether the claimant's most recent separation and, to the extent necessary, prior separations from work, allow the claimant to qualify for benefits. Written notice of the determination granting or denying benefits shall be sent to the claimant, the most recent separating employer, and any other employer involved in the determination, except that written notice is not required to be sent to the claimant if the reason for separation is lack of work and the claim is allowed.

If the director identifies an eligibility issue, the director shall send notice to the claimant of the issue identified and specify the week or weeks involved. The claimant has a minimum of five business days after the notice is sent to respond to the information included in the notice, and after the time allowed as determined by the director, the director shall make a determination. **The claimant's response may include a request for a fact-finding interview when the eligibility issue is raised by an informant or source other than the claimant, or when the eligibility issue, if determined adversely, disqualifies the claimant for the duration of the claimant's period of unemployment.** When the determination of a continued claim for benefits results in a disallowed claim, the director shall notify the claimant of the disallowance and the reasons for it.

(F) ELIGIBILITY NOTICE

Any base period or subsequent employer of a claimant who has knowledge of specific facts affecting the claimant's right to receive benefits for any week may notify the director in writing of those facts. The director shall prescribe a form for such eligibility notice, but failure to use the form shall not preclude the director's examination of any notice.

To be considered valid, an eligibility notice must: contain in writing, a statement that identifies either a source who has firsthand knowledge of the information or an informant who can identify the source; provide specific and detailed information that may potentially disqualify the claimant; provide the name and address of the source or the informant; and appear to the director to be reliable and credible.

An eligibility notice is timely filed if received or postmarked prior to or within forty-five calendar days after the end of the week with respect to which a claim for benefits is filed by the claimant. An employer who timely files a valid eligibility notice shall be an interested party to the claim for benefits which is the subject of the notice.

The director shall consider the information contained in the eligibility notice, together with other available information. After giving the claimant notice and an opportunity to respond, the director shall make a determination and inform the notifying employer, the claimant, and other interested parties of the determination.

Tennessee: Unemployment Insurance Reporter, regulation, Tennessee, 0800-9-1-.26. Suspected Overpayments

(1) The Department will send a notice to any unemployment benefit recipient who is suspected of having been overpaid benefits under this chapter. **Such notice will inform the recipient that such recipient should report in person to a Employment Security Office within seven (7) days after the date of mailing to provide information concerning a possible overpayment of benefits.**

(2) When a benefit recipient who is suspected of having received an overpayment from the Department reports to an Employment Security Office in accordance with the call-in notice, a statement shall be taken from that person regarding the suspected overpayment.

(3) The Department shall evaluate the information provided and issue its findings and conclusions concerning the existence and amount of any overpayment.

(4) If a benefit recipient suspected of having a benefit overpayment fails to respond to a call-in notice, the Department will make a decision based on the available information.

(5) When the Department issues its written overpayment decision, the decision will include:

(a) the notice of the recipient's right to appeal any determination of overpayment and,

(b) if the recipient is not at fault, the notice of the recipient's right to request a waiver of repayment at that time and for a period of up to ninety (90) days.

(c) The notice shall also state that if a recipient fails either to appeal the Department's overpayment decision or to request a waiver of repayment within the designated time period, the Department's overpayment decision shall become final and collection efforts, including the possible offsetting of future benefits, may be commenced by the Department.

(6) A recipient shall have fifteen (15) days from the date the above decision and notice are mailed to request a hearing on any or all of the issues concerning the existence of an overpayment, the amount of the overpayment, and any denial of a request to waive repayment.

(7) If a recipient fails to request a hearing or a waiver within the fifteen (15) day period, the Department's initial decision concerning the existence and amount of the overpayment shall become final.

(8) Once the decision is final, the Department may begin to recoup the amount overpaid by offsetting that amount against the recipient's future benefits.

(9) Recipients requesting a hearing on either the amount, the existence, or the waiver of an overpayment shall have a hearing promptly scheduled in accordance with the rules set forth in T.C.A. Chapters 0800-11-2 and 0800-11-4.

(10) No benefit recipient, other than those who fail to observe the time limits here set forth, shall have unemployment benefits withheld to offset the amount of the overpayment until the Appeals Referee has conducted the required hearing and issued findings and conclusions concerning the amount and existence of the overpayment and whether repayment of it should be waived. (*As amended, effective May 30, 1996; as renumbered, effective August 15, 2009.*)

3. General Notice and Hearing Rights - Non-Fraud Cases

Connecticut: Unemployment Insurance

Reporter, Regulation, Connecticut, Sec. 31-273-2. NON-FRAUD

OVERPAYMENTS: NOTICE, HEARING AND DETERMINATION

(a) Where the Administrator determines that an individual has through error received any sum as benefits while any condition for the receipt of benefits imposed by Chapter 567 of the General Statutes was not fulfilled with respect to his claim, or that an individual has received a greater amount of benefits than was due him, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid. The Administrator shall take such action unless he determines that repayment or recoupment would defeat the purpose of the benefits or be against equity and good conscience and should be waived pursuant to Section 31-273-4. The Administrator shall charge the individual with an overpayment only so long as such error has been discovered and brought to the individual's attention within one year of the date of receipt of such benefits, except as provided in subsection (i) of this section.

(b) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits, the Administrator shall give adequate notice to the individual that a hearing will be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks. The notice to the individual shall include:

(1) the time and place of such hearing;

(2) notification that such hearing will be conducted in accordance with the provisions of Section 31-273-8;

(3) identification of the question or questions of eligibility to be addressed at such hearing;

(4) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual, and that if the individual's receipt of such sum of benefits was not due to fraud, willful misrepresentation or willful nondisclosure of a material fact by himself or through the agency of another, he shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual;

(B) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4; and

(C) if no waiver is made pursuant to subparagraph (B) of this subdivision, whether such overpaid benefits

shall be recouped by offset from the individual's weekly unemployment benefits;
(5) notice to the individual that if he fails to appear at such hearing, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator, by offset from the individual's unemployment benefits, pursuant to subsection (c) of this section; and
(6) notice that the Administrator's determination or any portion thereof may be appealed to the Employment Security Appeals Division.

The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8.

North Carolina: Unemployment Insurance Reporter, Regulation, North Carolina, REGULATION NO. 20. OVERPAYMENT HEARINGS

20.10 Any interested party who feels that the adjudicator's determination of fraudulent or nonfraudulent overpayment of claims benefits is not in accordance with the law may appeal within ten (10) days from the date the determination was mailed.

20.11 Overpayment cases shall be heard by a Deputy Commissioner or Special Deputy Commissioner pursuant to the regulations governing appeals referees hearings except as otherwise provided in this regulation. The hearing shall be heard upon order of the Chief Deputy Commissioner. The Deputy Commissioner or Special Deputy Commissioner shall notify all interested parties of the date, time and place of the hearing; shall have the power and authority to issue subpoenas, conduct hearings, administer oaths, and take evidence as necessary; and shall make findings of fact and conclusions of law on all questions and issues that are raised at the hearing.

20.12 The issues to be considered at the hearing shall be limited to the following determinations:

- (A) whether the party received benefits to which he/she was not entitled and;
- (B) whether the party made a false statement or knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount thereof, as provided in G.S. 96-18.

20.13 Interested parties to the hearing are the claimant, and any other parties necessary to a determination of the issues.

20.14 Any party who knowingly makes a false statement or knowingly fails to disclose a material fact in connection with the payment of benefits is subject to criminal prosecution for a misdemeanor as well as penalties imposed by the Commission. Any person receiving benefits to which they were not entitled to:

- (A) shall be liable to have such sum deducted from future benefits payable to him/her or to repay the Commission a sum equal to the amount received by him/her;
- (B) shall not be entitled to receive benefits for one (1) year if the overpayment is found to have been made because of fraud.

20.15 Appeals of the decision of the Deputy Commissioner or Special Deputy Commissioner shall be pursuant to the regulations governing appeals from decisions of the Appeals Referees. The appeal will be directed to the Office of the Chief Deputy Commissioner who may affirm, modify, or reverse the decision of the Deputy Commissioner or Special Deputy Commissioner. Appeals from the decision of the Chief Deputy Commissioner shall be according to N.C.G.S. 96-15(h) and (i).

Tennessee: Unemployment Insurance Reporter, regulation, Tennessee, 0800-9-1-.26. Suspected Overpayments

(1) The Department will send a notice to any unemployment benefit recipient who is suspected of having been overpaid benefits under this chapter. Such notice will inform the recipient that such recipient should report in person to a Employment Security Office within seven (7) days after the date of mailing to provide information concerning a possible overpayment of benefits.

(2) When a benefit recipient who is suspected of having received an overpayment from the Department reports to an Employment Security Office in accordance with the call-in notice, a statement shall be taken from that person regarding the suspected overpayment.

(3) The Department shall evaluate the information provided and issue its findings and conclusions concerning the existence and amount of any overpayment.

(4) If a benefit recipient suspected of having a benefit overpayment fails to respond to a call-in notice, the Department will make a decision based on the available information.

(5) When the Department issues its written overpayment decision, the decision will include:

(a) the notice of the recipient's right to appeal any determination of overpayment and,

(b) if the recipient is not at fault, the notice of the recipient's right to request a waiver of repayment at that time and for a period of up to ninety (90) days.

(c) The notice shall also state that if a recipient fails either to appeal the Department's overpayment decision or to request a waiver of repayment within the designated time period, the Department's overpayment decision shall become final and collection efforts, including the possible offsetting of future benefits, may be commenced by the Department.

(6) A recipient shall have fifteen (15) days from the date the above decision and notice are mailed to request a hearing on any or all of the issues concerning the existence of an overpayment, the amount of the overpayment, and any denial of a request to waive repayment.

(7) If a recipient fails to request a hearing or a waiver within the fifteen (15) day period, the Department's initial decision concerning the existence and amount of the overpayment shall become final.

(8) Once the decision is final, the Department may begin to recoup the amount overpaid by offsetting that amount against the recipient's future benefits.

(9) Recipients requesting a hearing on either the amount, the existence, or the waiver of an overpayment shall have a hearing promptly scheduled in accordance with the rules set forth in T.C.A. Chapters 0800-11-2 and 0800-11-4.

(10) No benefit recipient, other than those who fail to observe the time limits here set forth, shall have unemployment benefits withheld to offset the amount of the overpayment until the Appeals Referee has conducted the required hearing and issued findings and conclusions concerning the amount and existence of the overpayment and whether repayment of it should be waived. (As amended, effective May 30, 1996; as renumbered, effective August 15, 2009.)

4. General Notice and Hearing Rights - Fraud Cases

Unemployment Insurance Reporter: Alabama, regulation, Alabama, 48044.04, Administrative Penalties

(1) When it has been determined that within the preceding thirty-six calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements with intent to obtain benefits, such claimant shall be subject to penalties authorized in *Code of Ala. 1975, §25-4-145(a)(3)* of the Code.

(2) Any penalties imposed by this rule shall be in addition to any other.

(3) Sources of information concerning the application of an administrative penalty shall include but not be limited to:

(a) Employer report of wages, with comparative analysis of same with concurrent benefit payments.

(b) Area claims centers obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

(c) Tips and leads from other sources of a claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

(4) The claimant shall be notified of the application of the administrative penalty.

(5) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud.

(6) The fraud determination shall be based on the facts obtained and shall become final within 15 days after the decision is mailed to the claimant's last known address, unless an appeal is made to the department by filing a notice of appeal at any claims office or at the Central office of the Alabama Department of Industrial Relations.

(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty, or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for any other determination involving a denial of benefits.

California: Unemployment Insurance Reporter, regulation, California, 22.13751.

(g) Overpayment Notice and Hearing. If the department determines that an overpayment exists, **it shall notify the claimant of the amount of the overpayment, the cause of the overpayment, the reasons for denial of waiver if waiver is denied, the terms of the repayment schedule established under subdivision (d)(3)(D) of this section and the right to appeal (see Sections 1377, 2737, 3751, and 4751 of the code) to an administrative law judge, and to a hearing on all issues regarding the overpayment, including any determination denying waiver of the overpayment and the terms of such repayment schedule.** When a waiver of an overpayment has become final, it shall not be redetermined in the absence of fraud, misrepresentation, or willful nondisclosure by the claimant relating to the waiver.

Connecticut: Unemployment Insurance Reporter, Regulation, Connecticut, Sec. 31-273-5. FRAUD OVERPAYMENTS: NOTICE, HEARING AND DETERMINATION

(a) Where the Administrator determines that any individual has, by reason of fraud, wilful misrepresentation or wilful nondisclosure by himself or through the agency of another of a material fact, received as benefits fifty dollars or more while any condition imposed by Chapter 567 of the General Statutes was not fulfilled, or has received an amount which is fifty dollars or more than was due him, such

individual shall be charged with an overpayment of a sum equal to the amount so overpaid to him and shall be liable to repay to the Administrator such sum as well as any other penalties assessed by the Administrator in accordance with the provisions of Section 31-273-6.

(b) If any individual charged by the Administrator with an overpayment, pursuant to subsection (a), does not make repayment in full of the sum overpaid, the Administrator shall recoup such sum as specified in Section 31-273-7.

(c) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in his opinion, is uncollectible.

(d) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 with respect to one or more weeks for which an individual was previously paid any sum of benefits or detects that an individual received more benefits than that to which he was entitled, and reasonably believes on the basis of available evidence that such receipt of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual himself or through the agency of another, **the Administrator shall notify the individual in writing of the identification of such question and that he has a right to a hearing to be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks, and whether any benefits were received fraudulently.** The

notice shall inform the individual that if he does not exercise such right by notifying the Administrator within fourteen days of the date the notice was mailed, a decision will be rendered on the basis of the record available to the Administrator which may be appealed to the Employment Security Appeals Division. In addition, such notice shall advise the individual that an adverse determination will result in the imposition of an administrative penalty pursuant to Section 31-273-6 and may result in recoupment methods conducted pursuant to the provisions of Section 31-273-7.

If the individual exercises his right to a hearing, the Administrator shall give the individual adequate notice that a hearing will be held. **The notice shall include:**

(1) the time and place of such hearing.

(2) notification that the hearing will be conducted in accordance with the provisions of Section 31-273-8.

(3) identification of the question or questions of eligibility to be addressed at such hearing;

(4) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual;

(5) notice that if, following consideration of any question of eligibility or entitlement, there exists the possibility that the individual was overpaid benefits and the individual's receipt of such sum of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure by himself or through the agency of another of a material fact, he shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual, and

(B) whether or not the individual's receipt of such sum was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by himself or through the agency of another for the purpose of obtaining benefits;

(B) notice that a finding of fraud, wilful misrepresentation or wilful nondisclosure pursuant to subdivision 5(A) of this subsection can result in the imposition of an additional penalty of not less than two nor more than thirty-nine forfeited weeks of benefits; and

(7) notice to the individual that if he fails to appear at such hearing and a determination of ineligibility or non-entitlement is made, the Administrator will proceed to adjudicate the issues identified in subdivision (5) of this subsection and make a determination with respect to those issues on the basis of the record available to the Administrator. The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8.

(e) Where the individual is determined to be ineligible for benefits and overpaid as a result of fraud, wilful

misrepresentation or wilful nondisclosure of a material fact by himself or through the agency of another following a hearing described in subsection (d), the Administrator shall issue a determination which contains the following information:

- (1) the reason the individual was ineligible for or not entitled to benefits;
- (2) the week or weeks for which the individual was overpaid as the result of such ineligibility or nonentitlement;
- (3) the total amount of the overpayment;
- (4) an administrative determination that the individual was overpaid because he, by his own act of commission or omission or through the agency of another knowingly committed fraud, misrepresented a material fact or failed to disclose a material fact for the purpose of obtaining benefits;
- (5) notice that such overpaid sum shall be repaid in full directly to the Administrator, and that if such sum is not repaid in full, it shall be recouped pursuant to the provisions of Section 31-273-7;
- (6) the administrative penalty to be imposed, pursuant to Section 31-273-6; and
- (7) the individual's statutory appeal rights.

5. Hearing Required Before Terminating or Suspending Benefits

Tennessee: Unemployment Insurance Reporter, regulation, Tennessee, 0800-9-1-.25. Special Regulation Pertaining to Overpayment Recoupment

(1) In compliance with an injunction issued by the U.S. District Court for the Middle District of Tennessee, Nashville District, a recipient of unemployment benefits who is subject to recoupment for overpayment of unemployment benefits will be given adequate and timely notice of an opportunity for a hearing prior to any attempt to withhold employment benefits.

(2) No benefits will be withheld from a recipient of unemployment benefits, who is subject to recoupment for overpayment of unemployment benefits, until that recipient has been apprised of such recipient's right to have a hearing on the existence of the overpayment and/or the waiver of repayment, and been given an opportunity to exercise that right. (As amended, effective May 30, 1996; as renumbered, effective August 15, 2009.)

6. Recovery of Overpayment Suspended Pending Appeal

Colorado: Unemployment Insurance Reporter, Regulation, 7 CCR 1101-2-15.2 , Benefit Overpayments

15.2.1 *Statutory References:* 8-79-102, 8-81-101(4)(a)(I)(II), and 8-81-101(4)(c), C.R.S.

15.2.2 *Request for Waiver:* When a determination establishing an overpayment is final, the overpaid claimant shall be notified of the overpayment and advised that a written request for waiver of recovery may be submitted to the division. **Upon receipt of such request, the division shall suspend recovery of the overpayment until the waiver determination is final.**

.1 If the final waiver determination denies said request, subsequent requests for waiver may be submitted upon a showing by the claimant of a significant change in financial conditions affecting his or her ability to repay the overpaid amount, such as catastrophic illness or loss of employment.

.2 A final determination that approves a waiver request shall apply only to the overpaid balance at the time the request was made, as evidenced by the postmark date, if mailed, the date received, if filed in person, the receipt date encoded on a facsimile document, or the receipt date recorded by the division's automated

systems if filed using division-approved electronic means and shall not be retroactive to any part of the overpaid amount already recovered.

Maine: Unemployment Insurance Reporter, Maine, Sec. 1051.

PENALTIES

5. If, after due notice, any person refuses to repay amounts erroneously paid to that person as unemployment benefits, the amounts due from that person are collectible in the manner provided in subsection 6 or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to that person under this chapter; provided that there is no recovery of payments from any person who, in the judgment of at least 2 commission members, is without fault and where, in the judgment of the commission, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. **No recovery may be attempted until the determination of an erroneous payment is final as to law and fact and the individual has been notified of the opportunity for a waiver under this subsection.**

Maine: Unemployment Insurance Reporter, Regulation, Maine, 7.

Future Benefit Deductions.

A. The Commission, in accordance with 26 M.R.S.A. section 1051(5) and Chapter 26(B)(C)(I) above may determine, upon a claimant's request for a waiver, that collection of an erroneous payment of benefits may be by offset of future benefits. Such a determination will prevent further collection of the overpayment under 26 M.R.S.A. section 1051(6) and 36 M.R.S.A. Chapter 831 relating to income tax setoffs. It will not, however, prevent further collection under 26 M.R.S.A. section 1051(8) relating to the setoff of lottery winnings.

B. Pursuant to 26 M.R.S.A. section 1051(5), the Commission authorizes the Commissioner or his or her designees to withhold from future benefits amounts erroneously paid to a claimant as unemployment benefits in accordance with the following procedures:

1. Final Agency Action. No recovery may be attempted under this delegation of authority until the determination of the erroneous payment is final as to fact and law.

2. Cessation of Withholding of Benefits Pending Waiver Applications. Upon a claimant's filing of a written request for the waiver of repayment of amounts erroneously paid to the claimant as unemployment benefits, withholding from the claimant's benefits must cease as of the date of the filing of the waiver application pending the Commission's decision on the application and the expiration of all appeal rights from that decision.

3. Limitation on Recovery. Deduction from benefits that may be or become payable under this delegation of authority shall be limited to the amount specified in the Employment Security Law of any weekly benefit payment otherwise due the claimant. This delegation of authority does not affect deductions, recoveries or repayments under section 1051(4) of the Law, which covers nondisclosure or misrepresentation to receive benefits.

4. **Notice to Claimant. No recovery may be attempted under this delegation of authority until the claimant has been notified of the opportunity to apply for a waiver of repayment under section 1051(5) of the Law.** (As adopted, effective May 30, 2000.)

Massachusetts: Unemployment Insurance
Reporter, Regulation, Massachusetts, SECTION 6.12: Initiation of
Recoupment

(1) No collection efforts will be commenced by the Department and no current or future unemployment benefits will be withheld to offset an overpayment until the determination, redetermination, or decision issued pursuant to M.G.L. c. 151A, §71 has become "final". **Said determination, redetermination, or decision is not "final" until the overpaid claimant has exhausted all levels of administrative and judicial review or has failed to request review at the next applicable level within the time allowed by law. A determination or decision on a waiver request becomes "final" within the meaning of 430 CMR 6.00 when the overpaid claimant has exhausted all levels of administrative review.**

(2) Recoupment shall commence after the determination, redetermination or decision issued pursuant to M.G.L. c. 151A, §71 becomes final, unless the overpaid claimant has, within 15 days after notice of his or her right to request a waiver, has requested a waiver. If no request for waiver has been filed during the 15 day period, or if the overpaid claimant has made an election pursuant to 430 CMR 6.07(1)(e), the Department shall commence recoupment until such time as a waiver request is received.

(3) Upon receipt of a waiver request, the Department shall cease any recoupment activity previously initiated until such time as a determination or decision on the waiver request becomes final, at which time recoupment shall continue.

- 7. Waivers of Non-Fraud Overpayments**
 - a. General Waiver Language**
 - b. Equity and Good Conscience Standard**
 - c. Automatic Waiver Due to Misreported Wages by Employer**
 - d. Automatic Waiver Due to Employer Failure to Comply with Reports**

a. General Waiver Language

Connecticut: Unemployment Insurance
Reporter, Regulation, Connecticut, Sec. 31-273-4. WAIVER

(a) The Administrator shall determine that repayment or recoupment of any benefits found to be overpaid pursuant to Section 31-273-2 **would defeat the purpose of the benefits or would be against equity and good conscience and shall be waived only if the individual did not receive such benefits by reason of fraud, wilful misrepresentation or wilful nondisclosure by himself or through the agency of another of a material fact, and one of the following conditions exists:**

- (1) it has been established by evidence or testimony, presented in person or in writing, that the individual's prospects for securing full-time employment are severely limited as a result of physical or mental disability, poor health or any other circumstances which would be detrimental to his employability; or
- (2) the benefits were overpaid to the individual as a result of retrospective application of a legislative change; or
- (3) the benefits were overpaid as a direct result of gross administrative error; or
- (4) the benefits were overpaid as the result of a decision by an Appeals Referee, the Employment Security Board of Review or any court of law reversing a prior decision, and adequate notice was not given to the individual that he would be required to repay benefits in the event of any reversal upon appeal; or

(5) it has been established by evidence or testimony, presented in person or in writing, that the individual substantially, detrimentally and irreversibly changed his position in reliance upon the receipt of unemployment compensation by foregoing receipt of any public welfare benefits for which he would have been entitled but for the receipt of such unemployment compensation; or

(6) the individual—

(A) has been overpaid benefits in an amount equal to or greater than two times his weekly benefit amount at the time the overpayment was made; and

(B) the individual's annualized family income, as determined under subsection (c) of this section, does not exceed one hundred and fifty percent of the poverty level, most recently published in the Federal Register by the United States Department of Commerce, Census Bureau, which corresponds to the size of the individual's family unit; or

(7) the individual is deceased.

(b) For the purposes of this section, "gross administrative error" may be found only where it is clear that a reasonable examiner, adjudicator or trier of fact in the same circumstances and presented with the same facts would not have made the same determination or taken the same action, or the Employment Security Division has failed to discharge its responsibilities so as to deprive the individual of substantial due process of law. Reversal or modification of any determination upon appeal shall not, by itself, constitute grounds for finding gross administrative error.

Gross administrative error by the Administrator may be found only where the individual was not aware and reasonably would not have been aware of such error, so that reliance could not justifiably have been placed upon a determination resulting from such error.

Gross administrative error by the Employment Security Appeals Division may be found only upon a specific finding by the Employment Security Board of Review that an individual was overpaid benefits as a direct result of a decision by the Appeals Division which constitutes gross administrative error within the meaning of this subsection. The Employment Security Board of Review may determine whether an overpayment directly resulted from gross administrative error by the Appeals Division either:

(1) upon appeal of the Referee's decision by any party to the Board of Review; or

(2) upon direct certification of the question of gross administrative error to the Board of Review by the Administrator, or an Appeals Referee in any subsequent proceeding.

(c) In order to determine an individual's "annualized family income" pursuant to subparagraph (B) of subdivision (6) of subsection (a) of this section, the Administrator shall:

(1) determine the total gross income of the individual and his spouse, including cash contributions of any other family member to the individual's household, during the six months prior to the hearing held under Section 31-273-2 to determine whether the individual's overpayment should be waived, excluding any unemployment compensation which has been determined to be overpaid; and

(2) multiply such total income by two; and

(3) deduct any extraordinary medical expenses for which the individual is responsible but which are not covered by a health insurance plan.

(d) In order to determine whether an overpayment of benefits shall be waived pursuant to subdivision (6) of subsection (a) of this section, the Administrator may require the individual to present any financial records, pay stubs, federal income tax returns, or other data deemed necessary for such determination. The Administrator may require the individual to provide his spouse's social security number for the purpose of verifying the spouse's income.

(e) The Administrator shall publish annually tables which set forth income levels equal to one hundred and fifty percent of the poverty level, most recently published by the United States Department of Commerce, Census Bureau, in relation to family size. Such tables shall be utilized in making all determinations

pursuant to subdivision (6) of subsection (a) of this section. Copies of such tables may be obtained by any individual, upon request, at any office of the Connecticut Labor Department, Employment Security Division. (*Adopted, effective March 29, 1988.*)

b. Equity and Good Conscience Standard

Colorado: Unemployment Insurance Reporter, Regulation, 7 CCR 1101-2-15.2 , Benefit Overpayments

15.2.4 *Criteria for Waiver.* A person who is overpaid any amount of benefits is liable for the amount overpaid. The division may waive the recovery of all or any part of an overpaid amount only when:

.1 The overpayment did not result from false representation or willful failure to disclose a material fact by the claimant; and

.2 Requiring repayment would be inequitable.

15.2.5 *False Representation.* For purposes of part XV of the regulations, the term "false representation" means any representation made by an individual that he or she knew to be false or any representation made by an individual with an awareness that he or she did not know whether the representation was true or false.

15.2.6 *Willful Failure to Disclose a Material Fact.* For purposes of part XV of the regulations, the term "willful failure to disclose a material fact" means knowingly withholding material information from the division.

15.2.7 Inequitability. **In determining whether requiring repayment of an overpaid amount is inequitable, the division shall consider the following factors, which are not exclusive, and any other relevant factors:**

.1 The claimant's financial condition required that the overpaid benefits be spent on reasonable and necessary living expenses.

.2 The claimant's household income is below the federal poverty income guidelines.

.3 The claimant lacks the ability to repay the overpaid amount based on prior income level, current household income and assets, and future earnings potential.

.4 Requiring repayment will cause extraordinary financial hardship by depriving the claimant of the ability to provide for basic necessities that cannot be deferred, such as food, shelter, clothing, utilities, and medical costs not covered by insurance.

.5 The claimant detrimentally changed his or her position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that he or she would not have entered except for the receipt of the overpaid benefits.

.6 The claimant relinquished a valuable right in reliance on the receipt of the overpaid benefits, including the receipt of other governmental benefits for which he or she would have been entitled except for the receipt of the overpaid benefits. Although the claimant is not required to apply for other governmental benefits and be rejected from receiving them, he or she may be required to prove eligibility for such benefits by establishing his or her economic situation at the time unemployment benefits were received as well as the requirements for receiving said benefits.

.7 The claimant was at fault in causing the overpayment through his or her negligence, carelessness, or acceptance of a payment that the individual either knew, or reasonably could have been expected to know, was incorrect. (*As amended, effective January 1, 2003.*)

Illinois: Unemployment Insurance Reporter, Regulation, Illinois, Sec. 2835.45. Recoupment Against Equity and Good Conscience

(a) Recoupment will be considered to be against equity and good conscience if the recoupment would cause the individual extreme financial hardship. **For this purpose, extreme financial hardship shall mean the**

inability to meet vital financial obligations which cannot be deferred. Such obligations include:

- (1) Rent, if the individual has received an eviction notice or five day notice from the landlord;
- (2) Utility bills, if the individual has received a utility cutoff notice;
- (3) Unexpected medical bills not covered by insurance; and
- (4) Other debts incurred for essential living expenses the payment of which cannot be deferred.

(b) The decision whether the recoupment would cause the individual extreme financial hardship shall be based on an assessment of the individual's complete financial situation. Factors, such as the extent of an individual's savings, his eligibility for welfare or other forms of public assistance, shall be relevant in making this decision.

(c) Notwithstanding subsections (a) and (b), whenever an individual is overpaid a sum as benefits and the payment of such sum was the result of the individual having claimed a dependent, under Section 401 of the Act, when a dependent child of that same parent has already been claimed as a dependent by the other parent who was also entitled to claim the dependent and the individual had responded negatively to the question on this subject on the Form, BIS-0030, Unemployment Claim Application, or the Internet Claim Application, because the other parent who claimed the dependent has returned to work, recoupment of such sum shall be deemed to be against equity and good conscience. (*As amended, effective December 1, 2008.*)

Maine: Unemployment Insurance Reporter, Regulation, Maine, 2.

Definitions.

C. "Against equity and good conscience" and "defeat the purpose of benefits otherwise authorized" shall be determined in the discretion of the commission and **shall require consideration of the totality of the circumstances surrounding the erroneously paid amounts as well as the claimant's personal circumstances.**

Factors to be considered shall include, but are not limited to the following:

1. The claimant's general health and earning capacity;
2. Whether other individuals depend or rely upon the claimant for support and sustenance;
3. The claimant's employment status at the time of the request;
4. The claimant's current family income and reasonable expenses;
5. The claimant's assets, liquid and otherwise. Certain assets, such as a home, a car, basic household furnishings and other basic necessities will be excluded from consideration;
6. The existing long and short-term debts of the claimant and his or her family;
7. Any extraordinary medical or other expenses of the claimant and his for her family;
8. Whether the claimant has received unemployment benefits as a windfall, for example, where a back-pay award is later received;

c. Automatic Waiver Due to Mis-/Untimely-Reported Wages by Employer

Alabama Regulation 480-4-4.07

.07, Waiver of Requirement to Repay Overpayments

(1) The requirement for an individual to repay and overpayment resulting from other than a false statement, misrepresentation of fact or failure to report or disclose a material fact and the determination of such overpayment has become final, may be waived by the Director, at his discretion, when it has been determined that the payment of such benefits constituting the overpayment was without fault on the part of the individual receiving the benefits except the Director shall not waive over-payments due to back pay awards under *Code of Ala. 1975, §25-4-78(b)* and overpayments resulting from Java decisions pursuant to *Code of Ala. 1975, §25-4-91(d)(1)a.*

(2) In determining whether the individual receiving benefits constituting the over-payment was without fault on the part of the individual the following factors shall be considered:

- a. Whether a statement or representation of a material nature was made by the individual in connection with the application for unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.
- b. Whether the individual failed, or caused another to fail, to disclose a material fact in connection with an application for unemployment compensation that resulted in an overpayment and whether the individual knew or should have known that the fact was material.
- c. Whether the individual knew, or could have been expected to know, that the individual was not entitled to the receipt of such benefit payments.
- d. Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action, commission or omission, of the individual or of which the individual had knowledge and which was erroneous or inaccurate or was otherwise incorrect.
- e. Whether the overpayment was the result of a decision on appeal, and whether the Director had given notice to the individual that the case had been further appealed and the individual may be required to repay the overpayment in the event of the reversal of the appeals decision.

(3) In the event of an affirmative finding on any of the factors contained in (2) of this rule, recovery of the overpayment shall not be waived and further determination of any factors will not be necessary.

(4) When an overpayment results from payment of benefits based on exempt or non-covered wages erroneously reported by an employer, such overpayment may be waived by the Director without application of the foregoing criteria.

Florida: Unemployment Insurance Reporter, Florida, Sec. 443.151.

Recovery and Recoupment

(6)(a) Any person who, by reason of her or his fraud, receives benefits under this chapter to which she or he is not entitled is liable for repaying those benefits to the Agency for Workforce Innovation on behalf of the trust fund or, in the agency's discretion, to have those benefits deducted from future benefits payable to her or him under this chapter. To enforce this paragraph, the agency must find the existence of fraud through a redetermination or decision under this section within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be effected within 5 years after the redetermination or decision.

(b) Any person who, by reason other than her or his fraud, receives benefits under this chapter to which, under a redetermination or decision pursuant to this section, she or he is not entitled, is liable for repaying those benefits to the Agency for Workforce Innovation on behalf of the trust fund or, in the agency's discretion, to have those benefits deducted from any future benefits payable to her or him under this chapter. Any recovery or recoupment of benefits must be effected within 3 years after the redetermination or decision.

(c) Any person who, by reason other than fraud, receives benefits under this chapter to which she or he is not entitled as a result of an employer's failure to respond to a claim within the timeframe provided in subsection (3) is not liable for repaying those benefits to the Agency for Workforce Innovation on behalf of the trust fund or to have those benefits deducted from any future benefits payable to her or him under this chapter.

(d) Recoupment from future benefits is not permitted if the benefits are received by any person without fault on the person's part and recoupment would defeat the purpose of this chapter or would be inequitable and against good conscience.

d. Automatic Waiver Due to Employer Failure to Comply with Reports

Maine: Unemployment Insurance Reporter, Maine, Sec. 1194.

DETERMINATION

2. A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during that benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts, shall determine whether or not that claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer that claim or any question involved in the claim to the Division of Administrative Hearings or to the commission, which shall make a determination with respect to the claim in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits is subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the Director of Unemployment Compensation upon the basis of which the director shall notify appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual must be charged, if and when paid.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons for the determinations. Subject to subsection 11, unless the claimant or any such interested party, within 15 calendar days after that notification was mailed to the claimant's last known address, files an appeal from that determination, that determination is final, except that the period within which an appeal may be filed may be extended, for a period not to exceed an additional 15 calendar days, for good cause shown. If new evidence or pertinent facts that would alter that determination become known to the deputy prior to the date that determination becomes final, a redetermination is authorized, but that redetermination must be mailed before the original determination becomes final.

If an employer's separation report for an employee is not received by the office specified on the separation report within 10 days after that report was requested, the claim must be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision do not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision constitute an overpayment.

If an employer files an amended separation report or otherwise raises a new issue as to the employee's eligibility or changes the wages or weeks used in determining benefits that results in a denial of benefits or a reduction of the weekly benefit amount, the benefits paid prior to the date the determination is mailed do not constitute an overpayment. Any benefits received after that date to which the claimant is not entitled pursuant to a new determination based on that new employer information constitute an overpayment.

8. Non-Fraud Overpayments – Limits on Recoupment from Future Benefits

Arizona: Unemployment Insurance Reporter, Arizona, Sec. 23787.

**Repayment of and deductions for benefits obtained by claimants not entitled to benefits;
collection**

A. A person who receives any amount as benefits under this chapter to which the person is not entitled is

liable to repay the overpaid amount to the department. The department may deduct all or a portion of the overpayment from future benefits payable to the person under this chapter.

B. If benefits to which a person is not entitled are received by reason of fraud as determined by the department, the person is not eligible to receive any benefits under this chapter until the total amount of the overpayment has been recovered or otherwise satisfied in compliance with a civil judgment.

C. If benefits to which a person is not entitled are received without any fault on the person's part and if repayment or deduction from future benefits would either defeat the purpose of this chapter or be against equity and good conscience, the department may waive all or a portion of the amount overpaid.

D. If benefits to which a person is not entitled are received without any fault on the person's part,

deductions made by the Department pursuant to subsection A from benefits payable to an individual for any week shall not exceed twenty five percent of the individual's weekly benefit amount unless required by federal law, except that the amount recouped from benefits payable may be fifty percent of the weekly benefit amount if the individual has previously received benefits but has not received benefits for at least twelve consecutive months prior to the most recent receipt of benefits and there has been no reasonable attempt to repay the indebtedness during that period. The fifty percent recoupment rate may not be put in effect prior to one year after the establishment of the overpayment.

Michigan: Unemployment Insurance Reporter, Michigan, Sec. 421.62.

**FALSE STATEMENTS, MISREPRESENTATIONS OR
CONCEALMENT OF MATERIAL INFORMATION; PENALTIES;
ACTIONS**

(a) If the commission determines that a person has obtained benefits to which that person is not entitled, the commission may recover a sum equal to the amount received by 1 or more of the following methods: (1) deduction from benefits payable to the individual, (2) payment by the individual to the commission in cash, or (3) deduction from a tax refund payable to the individual as provided under section 30a of Act No. 122 of the Public Acts of 1941, being section 205.30a of the Michigan Compiled Laws. **Deduction from benefits payable to the individual shall be limited to not more than 20% of each weekly benefit check due the claimant.** The commission shall not recover improperly paid benefits from an individual more than 3 years, or more than 6 years in the case of a violation of section 54(a) or (b) or sections 54a to 54c, after the date of receipt of the improperly paid benefits unless: (1) a civil action is filed in a court by the commission within the 3-year or 6-year period, (2) the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits, or (3) the commission issued a determination requiring restitution within the 3-year or 6-year period. Furthermore, except in a case of an intentional false statement, misrepresentation, or concealment of material information, the commission may waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience.

(b) For benefit years beginning before the conversion date prescribed

9. Regulating Employer and Third-Party Abuses

a. Employer Fails to Respond to State Notice in Timely Fashion:

Overpaid Benefits Charged to Employer's Account

b. Employer Forfeits Appeal Rights for Failing to Respond to State Notice

c. Suspending Third-Party Representatives

**a. Employer Fails to Respond to State Notice in Timely Fashion:
Overpaid Benefits Charged to Employer's Account**

California, Unemployment Insurance Code, Sec. 1026.1

Notwithstanding any other provision of this code, an employer's reserve account shall not be relieved of charges relating to a benefit overpayment if the department determines that the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits. The department shall make this determination when the employer or agent fails to respond timely or adequately in two instances relating to the individual claim for unemployment compensation benefits. This section shall apply to benefit overpayments established on or after October 22, 2013.

Connecticut, Sec. 31-241(a)

Notwithstanding any provisions of this chapter to the contrary, whenever the employer, after receiving notice of such hearing, fails to appear at the hearing or fails to timely submit a written response in a manner prescribed by the administrator, such employer's proportionate share of benefits paid to the claimant prior to the issuance of a decision by a referee under section 31-242 for any week beginning prior to the forty-second day after the end of the calendar week in which the employer's appeal was filed shall be charged against such employer's account and the claimant shall not be charged with an overpayment with respect to such benefits pursuant to subsection (a) of section 31-273.

Georgia: Unemployment Insurance Reporter, Georgia, Sec. 34-8-157.

(b) Regular benefits paid with respect to all benefit years that begin on or after January 1, 1992, shall be charged against the experience rating account or reimbursement account of employers in the following manner:

* * *

(3) An employer's account may be charged for benefits paid due to the employer's failure to respond in a timely manner to the notice of claim filing even if the determination is later reversed on appeal; and

Hawaii: Unemployment Insurance Reporter, Hawaii, Sec. 383-33.

DETERMINATIONS, IN GENERAL

A determination upon a claim filed pursuant to section 383-32 shall be made promptly by a representative of the department of labor and industrial relations authorized to make determinations upon claims and shall include a statement as to whether and in what amount the claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under section 383-29(a)(5) and, if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to such benefit year.

If any employer fails to furnish the information necessary to determine whether and in what amount the claimant is entitled to benefits in the manner and within the time specified by this chapter or regulations of the department, the department shall make a determination based upon such information as is available. In the absence of fraud, any redetermination made on the basis of information furnished by the employer after the prescribed period shall be effective only as to benefits paid after the weeks in which the information was received. In the absence of a showing by the employer satisfying the department that he could not reasonably comply with the department's requirement, any benefits overpaid prior to the effective date of the redetermination as a result of the employer's failure to furnish the information as required shall be

charged entirely against the account of the non-complying employer; provided that the overpaid benefits shall not, in any event, be recoverable from the claimant.

b. Employer Forfeits Appeal Rights for Failing to Respond to State Notice

Nebraska, Revised Statute 48-632. Claims; determination; notice; persons entitled; employer; rights; duties.

(1) Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his or her last-known address. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer from whom claimant received wages on or after the first day of the base period for his or her most recent claim, and who has indicated prior to the determination, in such manner as required by rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law. An employer shall provide information to the department in respect to the request for information within ten days after the mailing or electronic transmission of a request.

(2) If the employer provided information pursuant to subsection (7) of section [48-652](#) on the claim establishing the previous benefit year but did not receive a determination because of no involvement of base period wages and there are wages from that employer in the base period for the most recent claim, the employer shall be provided the opportunity to provide new information that such individual may be ineligible or disqualified under any provision of the Employment Security Law on the current claim. This subsection shall not apply to employers who did not receive a determination because the separation was determined to result from a lack of work.

(3) **On or after October 1, 2012, if an employer fails to provide information to the department within the time period specified in subsection (1) of this section, the employer shall forfeit any appeal rights otherwise available pursuant to section [48-634](#).**

c. Suspending Third-Party Representatives

**Iowa: Unemployment Insurance Reporter, Iowa, Sec. 96.3.
RECOVERY OF OVERPAYMENT OF BENEFITS**

7.a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The Department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the Department a sum equal to the overpayment.

b.(1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to

attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Wisconsin: Unemployment Insurance Reporter, Wisconsin, Sec. 108.105 (1).SUSPENSION OF AGENTS

The department may suspend the privilege of any agent to appear before the department at hearings under this chapter for a specified period if the department finds that the agent has engaged in an act of fraud or misrepresentation or repeatedly failed to comply with department rules, or has engaged in the solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay.

(2) The department may suspend the privilege of an agent to act as an employer's representative under this chapter for up to one year if, during any 12-month period, in 5 percent or more of all appeal tribunal hearings held in which employers represented by the agent are appellants there is a final appeal tribunal decision finding that the employer represented by the **agent failed to provide correct and complete information requested by the department during a fact-finding investigation and there is no finding that the employer had good cause for that failure.**

(3) Prior to imposing a suspension under this section, the secretary of workforce development or the secretary's designee shall conduct a hearing concerning the proposed suspension. The hearing shall be conducted under ch. 227 and the decision of the department may be appealed under s. 227.52. As added by Act 17, L. 1985; as amended by Act 38, L. 1987; Act 3, L. 1997; Act 426, L. 2005.

10. Collection Agency Restrictions

Minnesota: Unemployment Insurance Reporter, Minnesota, Sec. 268.18.

UNEMPLOYMENT BENEFIT OVERPAYMENTS

Subd. 6. **Collection of overpayments.** (a) The commissioner may not compromise the amount that has been determined overpaid under this section including penalties and interest.

(b) The commissioner shall have discretion regarding the use of any method of recovery of any overpayment under subdivision 1. **Regardless of any law to the contrary, the commissioner shall not be required to refer any amount determined overpaid under subdivision 1 to a public or private collection agency, including agencies of this state.**