

Model State Legislation: Overpayment Waivers

This model state legislation is part of the Unemployment Insurance Policy Hub created by the National Employment Law Project as a reference guide for state advocates to support efforts that will strengthen the economic security of workers and their families. For other Policy Hub resources, see www.uipolicyhub.org.

Introduction

Below is model state legislation that you can use to implement the policy recommendations from our [overpayments and waivers policy advocacy brief](#). The intent of the model is to create or strengthen a state overpayment waiver law so that workers will not be forced to repay overpaid benefits when the overpayment was not their fault and repayment would cause them harm. The model language is also intended to streamline the waiver process, so workers can easily access a waiver without having to deal with overly complicated application processes.

The model would establish a permanent overpayment waiver provision for regular state unemployment insurance (UI) and for the temporary federal pandemic programs. Specifically, it would mandate the state agency to waive recovery of any nonfraud overpayments where: (1) the claimant is without fault for the overpayment; and (2) recovery would be against equity and good conscience. Please see our [overpayments and waivers brief](#) for more information, context, and resources to support this model.

Please note that the process of drafting legislation can vary depending on state-specific legal and policy issues. For example, your state may already have an overpayment waiver statute and regulations. So, the model language would have to be adopted to fit current law and ensure you are expanding, not restricting, already established rights. Please contact uihelp@nelp.org for more information on how to adapt or customize the model. A downloadable text version of this model state legislation is available [\[LINK\]](#).

Model State Legislation

Section 1. Findings and Declarations

The Legislature finds and declares:

- (a) That ensuring equitable access to unemployment insurance (UI) for all jobless workers are matters of statewide concern.

- (b) UI overpayments are often the result of circumstances beyond a worker’s control, including mistakes due to confusing or changing agency guidance or forms, employer mistakes or delays in reporting, or delays or mistakes made by the agency.
- (c) Seeking recovery of overpaid benefits from individuals who did not commit fraud causes hardship on working families, creates additional burdens on scarce agency resources, and undermines the purpose of UI.
- (d) The United States Department of Labor strongly encourages states to waive nonfraud overpayments where recovery would be against equity and good conscience.

Section 2. Definitions [Note: State law may already define these terms. If so, reference the applicable state law definitions].

“Agency” means [Enter the name of the state agency that administers unemployment insurance].

“Public assistance benefits” means any federal or state program that provides income-based support or services to individuals making below a certain income. This includes, but is not limited to [Note: this is not an exhaustive list and should be customized to include your state’s public assistance programs]:

- (1) Supplemental Nutrition Assistance Program.
- (2) Temporary Assistance to Needy Families.
- (3) Federal Social Security Disability Insurance or Supplemental Security Income.
- (4) Means tested Legal Aid services.
- (5) Low Income Home Energy Assistance Program.
- (6) Federal or state Earned Income Tax Credit.
- (7) Public or Subsidized Housing or Voucher.
- (8) Medicaid.
- (9) Medicare.

“Ordinary living expenses” meanings costs associated with ordinary and necessary living expenses of the individual and any other person they are legally responsible for. This includes, but is not limited to, food and clothing, rent, mortgage payments, utilities, loans and credit card balances, childcare, accident and health insurance, taxes, transportation, and medical expenses.

Section 3. Overpayment Waivers

- (a) Notwithstanding any other provision to the contrary [Note: Make this more specific by citing to your specific state statute that deals with the collection of overpayments], the Agency shall waive recovery of nonfraud overpayments when:

- (i) The overpayment is through no fault of the individual [Note: Federal law only requires states to differentiate between fraud and nonfraud overpayments, not whether they are also without fault. However, many states also include this provision, so we have included it in the model]; and
 - (ii) Recovery of the overpayment would be against equity and good conscience.
- (b) The overpayment shall be through no fault of the individual if the individual provided, or attempted to provide correct information, but Agency or employer action or delay caused the overpayment. This includes, but is not limited to, when:
 - (i) The individual provided correct information as requested, but the agency failed to take appropriate action with that information or took delayed action when determining or redetermining eligibility.
 - (ii) The individual provided incorrect information due to conflicting, changing, or confusing Agency information or instruction.
 - (iii) The individual provided incorrect information after making a good faith effort to contact the agency to clarify what information was needed but was unable to reach the Agency.
 - (iv) The individual provided incorrect information due to language, education, literacy, or other similar barrier.
 - (v) The overpayment is due, at least in part, to agency error, mistake, or delay.
 - (vi) The overpayment is due, at least in part, to employer error, mistake, or delay.
 - (vii) The overpayment is due to a good faith mistake of fact by the individual.
- (c) Recovery of an overpayment shall be against equity and good conscience when:
 - (i) The individual or a member of the individual's household is receiving or has received any public assistance benefits in the year prior to their overpayment determination.
 - (ii) The individual's household income, exclusive of public assistance benefits, during the three months prior to the overpayment determination was at or below four times the federal poverty guidelines as published in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). [Note: In this model we use the federal poverty level as the standard to measure financial hardship. However, there may be better standards to measure against to meet the needs of your state's workers and ensure a high enough threshold to capture minimum wage workers working full-time. One option would be to set it to include anyone who makes below the state's average weekly wage].
 - (iii) The individual used the improperly paid benefits to meet ordinary living expenses.

- (iv) The individual needs most of their current income to meet ordinary living expenses.
 - (v) Due to the notice that such benefit payment would be made or because of the incorrect payment the individual either relinquished a valuable right or changed position for the worse, including, but not limited to:
 - (A). The individual incurred a financial obligation, such as a lease, based on benefit payments that they received.
 - (B). The individual relied on the benefit payment and took out a loan, in which they have already invested the benefit payment they received.
 - (C). The individual passed up other financial assistance or was ineligible for other financial assistance because they received the benefits.
 - (vi) The overpayment was caused, at least in part, by Agency error or the individual relied on the Agency's publicized information or guidance and that information or guidance was later determined to be erroneous.
 - (vii) Repayment defeats the purpose of benefits otherwise authorized.
 - (viii) Any other reason the Agency finds sufficient to establish that repayment would be unconscionable.
- (d) To establish the standards set forth in this section, the Agency shall accept all reasonable forms of proof, including, but not limited to, copies of relevant bills, receipts, award letters, and bank statements. If an individual has good cause for not being able to provide these forms of proof, the Agency shall accept a written statement signed by the individual seeking to waive the overpayment attesting to the facts at issue as sufficient proof. The agency shall not require unduly burdensome proof from the claimant.
- (e) To the extent possible, the Agency shall review and waive the repayment of an overpayment at the time the overpayment determination is made.
- (f) To the extent allowed by federal law, this section shall also apply to overpayments of any federal program to expand, supplement, or enhance state unemployment insurance benefits and the Agency shall grant waivers of these benefits to the fullest extent possible.

Section 4. Notice Requirements

- (a) The Agency shall provide notice of an individual's right to request a waiver in the notice of overpayment. This notice shall include both the individual's right to waiver and clear instructions on how the individual applies for the waiver.
- (b) If the Agency denies an individual's waiver application, it shall provide written notice of the denial that includes a statement in plain language that explains the reason for the denial so the individual can understand the basis for the denial. **[Note: If your state allows workers to enter repayment plans for overpayments, you should also ensure the**

denial notice includes information on how to enter a repayment plan].

- (c) Notices that do not comply with this section shall be treated the same as if no notice was provided.

Section 5. Recovery and Refunds

- (a) The Agency shall not attempt to recover an overpayment until there is a final determination that the debt is in fact owed and appeals are exhausted. The Agency shall not attempt to recover an overpayment when there is a pending waiver application and until there is a final determination that the person is not eligible for a waiver and all appeals are exhausted. This includes even if the appeal or waiver application is untimely.
- (b) If an overpayment becomes due, the Agency shall provide the individual with the option of entering into a repayment plan to satisfy the overpayment. The repayment plan shall consist of reasonable weekly, bi-weekly, or monthly payments that allow the individual to make the payment and still afford ordinary living expenses. If the individual has a change in life circumstances affecting their ability to comply with the repayment plan, the Agency shall allow them to adjust the plan.

Section 6. Reporting

- (a) By the end of the month following each completed calendar quarter, the Agency shall provide a written report regarding overpayments and waivers to the legislature and make the report publicly available in a prominent location on the Agency's website.
- (b) The report must include all the following information from the immediately preceding quarter deidentified and disaggregated by race, ethnicity, gender, location, poverty level, and type of benefit:
 - (i) The total number of overpayments established, broken down by fraud and nonfraud.
 - (ii) The total number of waiver applications received.
 - (iii) The total number of waivers granted and denied, broken down by the reasons for the denial.