

Testimony of Amy M. Traub

National Employment Law Project

In support of HB 4202: An Act Relative to Waivers for Non-Fault Overpayments

Hearing before the Massachusetts General Court

Joint Committee on Labor and Workforce Development

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Waiving Non-fraud Overpayments Supports Massachusetts Workers

Thank you, Chair Jehlen, Chair Cutler, and members of the Committee for the opportunity to submit written testimony. I am Amy Traub, a Senior Researcher and Policy Analyst with the National Employment Law Project (NELP). I am submitting this testimony in support of HB 4202 because waiving non-fraud overpayments of unemployment insurance benefits supports Massachusetts workers.

NELP is a nonprofit research, policy, and capacity building organization that for more than 50 years has sought to strengthen protections and build power for workers in the U.S., including people who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural racism, and ensure economic security for all.

Workers Forced to Repay Benefits When They Were Not at Fault

Enhanced and expanded unemployment insurance benefits have been a lifeline for workers thrown out of work by the COVID-19 pandemic. According to the Census Bureau, unemployment benefits prevented 4.7 million people nationwide, including 1.4 million children, from falling into poverty in 2020, and alleviated economic hardship for millions of others.¹ Unemployment benefits also sustain state and local economies, boosting consumer spending and supporting local businesses, preventing further layoffs.² The expansion of federal unemployment insurance benefits sent \$26.1 billion in federal funds to Massachusetts workers and families experiencing unemployment as of October 2021.³

The federal government's enhanced unemployment insurance programs terminated on September 6, 2021, yet workers and their families are still facing economic hardship. Now, Massachusetts workers are being compelled to repay tens of thousands of dollars in unemployment insurance benefits that were erroneously paid to them through no fault of their own.

Over the many years that the National Employment Law Project has worked on unemployment insurance issues nationally, the vast majority of overpayment assessments against workers claiming unemployment benefits resulted from innocent confusion, mistakes by claimants or their employers, or errors made by the administering agency itself. Yet innocent claimants are still obligated to repay the benefits in many cases. Many workers no longer have access to funds to repay the overpayments, as they spent the benefits on necessities while unemployed. To make matters worse for claimants, overpayment assessments frequently occur months or years after the initial benefit payments, long after the benefit payments have been spent. Workers who cannot immediately afford to repay the benefits, or never receive the notice in the first place, may be confronted with aggressive overpayment collection procedures that result in debilitating garnishment of wages and assets.

The COVID-19 pandemic produced an unprecedented volume of unemployment claims, including many claims by people who had never applied for unemployment benefits before and were unfamiliar with the system. At the same time, pandemic unemployment programs were new and federal guidance on eligibility standards was constantly evolving. These circumstances made it particularly difficult for claimants to understand what they should be eligible for and for the Department of Unemployment Assistance to make determinations. Recognizing the challenge, Congress specifically granted states the ability to waive overpayments.

Massachusetts Must Streamline the Process to Waive Overpayments

In order to quickly relieve workers who were overpaid through no fault of their own and to alleviate the burden placed on the Department of Unemployment Assistance by the extraordinary volume of waiver applications, Massachusetts must act to simplify and streamline overpayment waiver decisions. Most states have similarly determined that, if an overpayment is not the result of fault or fraud by the claimant, workers may not be liable to repay the amount overpaid under certain circumstances.⁴

HB4202 sets a common sense standard defining cases when it would be against equity and good conscience for the Department of Unemployment Assistance to recover an overpayment of unemployment benefits, including cases when where the claimant “used the unemployment benefits to meet their ordinary living expenses; where the department made programming, technological or automated system errors or where individuals relied upon the department’s publicized information later determined to be erroneous” as well as cases where the department failed to make a timely determination or notify claimants in a timely fashion. The bill also sensibly restricts overpayments based on redeterminations made beyond a one-year deadline and requires the agency to reconsider previously denied waiver applications under the updated standards.

Considering that many Massachusetts workers have limited English proficiency and/or face barriers in accessing or using technology, the bill’s provisions mandating that the Department of Unemployment Assistance provide telephone assistance or in-person assistance where available to apply for waivers is vital.

The National Employment Law Project urges the Joint Committee on Labor and Workforce Development to favorably report HB4202. We further urge that the fair and reasonable standards for waiving overpayments established by this bill for unemployment insurance benefits that were accrued in 2020 and 2021 be established as a permanent standard going forward.

Endnotes

1. Frances Chen and Em Shrider, “Expanded Unemployment Insurance Benefits During Pandemic Lowered Poverty Rates Across All Racial Groups,” September 14, 2021, <https://www.census.gov/library/stories/2021/09/did-unemployment-insurance-lower-official-poverty-rates-in-2020.html>.
2. Wayne Vroman, “The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession,” U.S. Department of Labor, July 2010, http://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf.
3. “Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through October 16, 2021,” U.S. Department of Labor Employment and Training Administration, October 2021, https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html.

4. "Comparison of State Unemployment Laws," U.S. Department of Labor Employment and Training Administration, 2020, 6-1, <https://oui.doleta.gov/unemploy/pdf/uiilawcompar/2020/complete.pdf>.

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