

## **HAVE YOU BEEN OVERPAID UNEMPLOYMENT INSURANCE (UI) BENEFITS?**

### **1. How does an overpayment happen? (or, why does DUA think that I owe them \$)?**

An overpayment is caused when DUA (Division of Unemployment Assistance), the Board of Review or a court reverses a claim for unemployment benefits which had been approved. It can also occur when your benefit rate is reduced, or because you did not timely report information that affects your eligibility, such as wages from a new job, or that you were not available for work. And recently (October, 2009), DUA sent out checks in error to over 4,000 claimants. You can challenge DUA's decision that you were overpaid, or the amount of the overpayment. Even if you agree that you were overpaid, you may not have to pay it back if you meet certain conditions for the overpayment to be forgiven, or "waived".

### **2. What happens when DUA decides I've been overpaid?**

DUA sends a written notice of overpayment and, if you do not appeal or request a waiver, begins to collect the overpayment out of your UI benefits. DUA does not usually try to collect out of other income or money you have, so when your UI eligibility ends, the overpayment collection will probably stop. Often, however, DUA will intercept money that is owed to you from your tax filing and recover the money that way. Additionally, if the overpayment has not been fully recovered and you need UI again in the future, DUA will collect the rest then. You can apply for a waiver of the overpayment at any time during this process (see Q. 8 and 9).

### **3. What do I have to show in order to get a waiver of an overpayment?**

In order to have the overpayment waived, you have to show that: (1) you were not at fault in creating the overpayment **and** (2) it would cause financial hardship or would somehow be unfair for you to have to pay it back. For the 4,000 claimants who were sent checks in error, the lack of fault should be assumed if you thought you were entitled to the money.

### **4. What is "fault" in causing the overpayment?**

Fault is making a statement to DUA that you knew was untrue or incomplete. This includes failing to tell DUA information which you knew or should have known would affect eligibility or benefits, or accepting a UI benefit check you knew or should have known was incorrect.

Example: If you began working and did not report these wages to DUA, you would be considered "at fault" in causing the overpayment. However, DUA should not consider you "at fault" if DUA initially approved your UI benefits and then reversed its decision on appeal. Be sure to submit to DUA whatever proof you have to show you were not at fault.

### **5. How do I show financial hardship?**

In addition to showing you were not at fault in creating the overpayment, you must show that paying back the UI benefits would cause you or your family financial hardship. You need to show that paying the money back would leave you (and your family) without enough money for daily living expenses. These expenses may include food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses for yourself and your family. Be sure to submit copies of receipts for your expenses.

### **6. Can I still qualify for a waiver if I can't show financial hardship?**

Yes, if you can't show financial hardship, you may be able to show that paying the money back to DUA would be "against equity and good conscience." This simply means it would be unfair. For example, if you relied on DUA's determination that you were entitled to these benefits and went out and made a purchase you would not have made (e.g. bought a new truck with the money and now can't return it), or you passed up an opportunity to get benefits from another source (such as food stamps or welfare), then requiring you to repay the money would

be unfair.

**7. How do I apply for a waiver?**

You can get a waiver request form from your local DUA office, by calling the DUA telephone claims Center or at [masslegalservices.org](http://masslegalservices.org), under "Employment," then "Unemployment Insurance." Fill it out as completely as possible, with supporting documents.

**8. How do I get DUA to stop collecting the overpayment while I ask for a waiver?**

You need to file the waiver request within 15 days of your notice of overpayment in order to stop collection (also called recoupment). No recovery will take place until the waiver denial becomes final. This means that you have used all levels of administrative and judicial review, or that you missed the deadline for requesting further review. (See question #10 below.)

**9. If I don't file the waiver request within 15 days, can I still file one later?**

Yes, a waiver request can be filed at any time. In fact, you may want to wait to file your waiver request until you will meet the "financial hardship" test. (See, Q.3) However, filing a waiver request after the 15th day will not stop DUA from recovering the money while it considers your waiver request.

Example: Joe is told he was overpaid benefits because the initial decision approving his benefits was reversed on appeal. By the time Joe receives a notice of overpayment, he is working again and would not meet the financial hardship test. A year later, Joe is laid off from his new job. He applies for UC benefits and files a waiver request on the overpayment based on lack of fault and financial hardship.

**10. What are my appeal rights if my waiver request is denied?**

You have a right to request a hearing and to present evidence at the hearing. DUA must receive your appeal within 10 days of the date on the denial notice, or 30 days if you have good cause, or 60 days or more if your failure to timely do so is because DUA did not provide you with information in your primary language. If you lose at the hearing, you can ask the Board of Review to review your case. If the Board does not agree to review or reverse the waiver denial, you can appeal to District Court. Finally, you make a written request within one year of the original decision to the DUA Director Edward Malmborg, Division of Unemployment Assistance, 19 Staniford Street, Boston, MA 02114 to redetermine the decision under Section 71 of the law. There are strict time limits for all of these appeals. Consult a legal services office for information on these appeal deadlines.

**11. If I do have to pay the money back, how fast must I pay it back?**

If you are currently collecting UI benefits, DUA assumes you must pay the overpayment back by getting **no** benefits until you have repaid. However, DUA should adjust this rate of recovery by considering: your financial circumstances, the amount of the overpayment, how much at fault you were in creating the overpayment, and whether you and your family have any other means of financial support.

Prepared by Attorney Patti Prunhuber for the Employment Rights Coaliton. **This information is general in nature and not intended as legal advice.** The income eligibility limit for legal aid is 125% of the federal poverty line (or \$530 per week for a family of four), although there are exceptions (e.g. elders). Federal poverty guidelines are revised each year. **Because their funding is limited, legal aid programs cannot serve all eligible callers. For representation, contact your legal services office – information is available at [www.masslegalhelp.org](http://www.masslegalhelp.org)** Revised 11-2-09.