

## Unemployment Insurance: Overpayment **YOUR LEGAL RIGHTS**

1.

### What is an overpayment?

An “overpayment” of unemployment benefits occurs when the Employment Development Department (EDD) receives information that a “claimant”—the person claiming unemployment benefits—has received unemployment benefits at a time when s/he was not legally eligible to receive them. Overpayments tend to happen in one of 5 ways:

- a claimant innocently misuses the term “lay-off” during the claim-filing interview;
- a claimant is originally granted benefits but then loses a later appeal;
- a claimant cashes unemployment benefit checks mistakenly sent by the EDD;
- an employer reports earnings or employment information to the EDD that differs from the information given by the claimant; or,
- a claimant untruthfully completes the Continued Claim Form.

If an overpayment was caused by the loss of an appeal or a simple mistake on the part of the EDD or an employer, it does not necessarily create a large problem for the claimant. If, however, the overpayment was caused by untruthfulness on the part of the claimant, the claimant will be heavily penalized.

### Overview of Overpayment Procedure

If the EDD believes you have been overpaid, you will receive a Notice of Potential Overpayment and be given an opportunity to respond with information showing that an overpayment did not occur. If the EDD is not satisfied by your information, you will be sent a second notice, a Notice of Overpayment. You may choose to either repay the amount as described in this Notice or make an appeal. There are 3 possible levels of appeal. To succeed at any of them, you will have to show that you were not at fault in causing or receiving the overpayment and that asking you to repay it would cause you great economic hardship. If you do not succeed on appeal, and the overpayment becomes final, the EDD will begin the process of collecting the overpaid amount. The EDD may use various methods to collect this overpaid amount, but if the EDD does nothing (which is increasingly rare)—and you file no new claims for unemployment or disability benefits—the overpayment will automatically be waived after 3 years have passed. Each of these aspects of overpayment will be discussed in further detail below.

2.

### How will I know what the EDD thinks I have been overpaid?

The EDD will inform you of the details of a suspected overpayment by mailing a Notice of Potential Overpayment. The Notice of Potential Overpayment will list all of the weeks the EDD believes you have been overpaid benefits. The Notice will also tell you the way the EDD thinks the overpayment happened.

If the EDD believes you made false statements that caused the overpayment, a 30% penalty will be added to the repayment amount. The EDD will also disqualify you from receiving unemployment benefits for the next 2-10 weeks you would otherwise be eligible. The length of disqualification from future benefits depends on how many false statements the EDD believes were made.

If, however, the EDD believes you were not at fault in causing the overpayment, the EDD will usually send a Financial Statement form along with the Notice of Overpayment. This Financial Statement form helps the EDD decide how much money to ask you to repay. You should complete this Financial Statement form and return it to the EDD as soon as possible, because the EDD may use this information to reduce or forgive the repayment amount.

3.

### What can I do if the EDD thinks I have been overpaid?

The EDD's Notice of Potential Overpayment gives you 10 days to respond with information that would prove to the EDD you were not actually overpaid benefits or that, if an overpayment did occur, it was caused by some simple mistake or confusion. If you have any information that would help show the EDD that you were reporting your eligibility as accurately as possible, you should send this information to the EDD immediately.

For example, if the Notice of Potential Overpayment says you received benefits while also receiving unreported earnings from an employer, it would be helpful to send the EDD a photocopy of your final check or any other document that clearly indicates you reported to the EDD all earnings from that employer. Similarly, if the Notice of Potential Overpayment says you received benefits while you were physically unable to search for or accept potential employment, it would be helpful to send the EDD a photocopy of a note from your doctor clearly stating you actually have been physically able to search for and accept potential work. Likewise, if the Notice of Potential Overpayment says you untruthfully reported that you were looking for work when you actually were not, it would be helpful to send the EDD a photocopy of a list of all of your job contacts and interviews during the weeks in question.

If you do not respond to the EDD's Notice of Potential Overpayment, or if the EDD is not satisfied with your response, you will be sent a Notice of Overpayment. This means the EDD still believes you received unemployment benefits at a time when you were not legally eligible to receive them. The Notice of Overpayment will again list the weeks the EDD believes you were overpaid benefits and the reasons the overpayment occurred. The Notice of Overpayment will give you 2 options:

- repay the overpayment; or,
- request an appeal

If you completely agree with the EDD about the amount of overpayment and its cause, you should contact the EDD to arrange for repayment of the overpaid amount. If, however, you disagree with the EDD about the amount of overpayment or about its cause, you should request an appeal.

4.

#### How do I request an appeal?

To request an appeal, you must send an appeal letter to the EDD within 20 days of the mailing date of the Notice of Overpayment. The mailing date can be found in the upper right hand corner of the first page of the Notice. The address to which to send the appeal letter appears on the Notice.

The appeal letter must contain your current contact information, your Social Security Number, and a statement indicating you disagree with the EDD's Notice of Overpayment. You do not need to explain your reason(s) for disagreeing in the appeal letter. You will have an opportunity to thoroughly prepare and present your arguments during an appeal hearing. At this stage in the appeal process, it is best to keep your communication very brief.

5.

#### What will happen after I mail an appeal letter?

Once the EDD receives your appeal letter, all of the paperwork concerning your claim will be sent to the nearest office of the California Unemployment Insurance Appeals Board (CUIAB) for processing. The CUIAB is the State agency that handles all administrative stages of unemployment insurance appeals. Within a few weeks the CUIAB will schedule you for an appeal hearing in front of an Administrative Law Judge (ALJ.) This will be your opportunity to explain why you disagree with the EDD's Notice of Overpayment. Even though appeal hearings are fairly informal, they are still legal proceedings. The appeal will be decided based on how the ALJ sees the law as it applies to your particular situation. If you are not familiar with the law in this area, and sometimes even if you are, it can be difficult to represent yourself. (For more information about appeals and how to prepare for an appeal hearing, see our [Do-It-Yourself Guide to Unemployment Insurance Benefits](#).)

6.

#### What are my chances of winning an appeal?

To win an overpayment appeal, you must prove the overpayment did not happen or be able to show all of the following:

- the overpayment was not due to fraud, misrepresentation or willful omission; *and*
- the overpayment was received without any fault on your part; *and*
- it would be unfair for the EDD to force you to repay it.

In other words, if the ALJ believes you were not at fault in causing or receiving the overpayment, and repaying it would cause you great

economic hardship, the ALJ can excuse you from having to repay it. This is called a “waiver.” Once an overpayment has been waived it can never be collected by the EDD.

7.

#### How can I show the overpayment was not due to fraud, misrepresentation, or willful omission?

The best way you can show an overpayment was not due to fraud, misrepresentation, or willful omission is to show that you reported as truthfully as possible about your eligibility through the claim-filing interview and Continued Claim Forms.

Many overpayments are caused by confusion in the initial claim-filing interview. As part of this initial interview, the EDD asks each potential claimant how her/his most recent employment ended. To be eligible for unemployment benefits, a claimant’s most recent work has to have ended through no fault of her/his own. If it is clear that the claimant’s employment ended for reasons that have nothing to do with her/his performance or actions, then the EDD will not bother to have a detailed eligibility interview about the ending of the job.

If the situation is not so clear, the EDD will schedule a thorough initial interview to decide whether benefits should be paid. During that initial interview, the claimant sometimes innocently misuses the term “lay-off” and ends up being paid benefits when s/he may not be legally eligible for them. This is because, in technical terms, a “lay off” means an employer had a decrease in business or finances that caused the elimination of the job position. To the EDD, this means the claimant is immediately eligible for the payment of unemployment benefits, because the end of the employment clearly had nothing to do with the claimant’s performance or actions. Many claimants, however, use the term “lay-off” to describe a discharge or firing, without realizing the term has a different technical meaning. If this is what happened to cause your overpayment, you should explain to the ALJ that you did not intend to mislead the EDD by using the term “lay-off.”

Overpayments are also sometimes caused by confusion in answering questions on the Continued Claim Form. The EDD uses the Continued Claim Form to be sure that claimants are meeting all the requirements for continued payment of unemployment benefits. The Continued Claim Form asks a series of questions about ability to work, availability for work, work search and earnings. If a claimant answers these questions in a way that indicates s/he is able to work, available for work, seeking work and not earning more than her/his weekly benefit amount in current work, the claimant will be paid benefits. Sometimes a claimant forgets to report earnings, or temporary periods of absence or disability, and is paid some amount of unemployment benefits s/he should not have been paid. If this is what happened in your situation, you should explain to the ALJ that you did not intend to mislead the EDD by answering these questions wrongly or incompletely.

If it is clear that your overpayment was caused by the loss of an earlier appeal hearing, or a mistake on the part of the EDD or an employer, generally the ALJ will assume that it was not due to any fraud, misrepresentation or willful omission on your part.

8.

#### How can I show I received overpayment without any fault?

It can be difficult to prove that you received an overpayment without any fault, because the EDD and the ALJ expect you to understand the rules for eligibility and expect you not to cash any unemployment benefit checks you receive for a period of time in which you were not legally eligible. Some overpayments happen because the claimant is unaware of the rules and EDD’s methods for determining eligibility, but the EDD expects claimants to read and understand the rules in the handbook sent to claimants by EDD. If you did not understand the rules for eligibility because you did not receive this handbook from the EDD, or did not comprehend what was written there, you should explain this to the ALJ at the hearing. In other words, you will have to show that you believed you were entitled to any unemployment benefits you received and explain why your belief was reasonable.

9.

#### How can I show that having to repay the overpaid benefits would be unfair?

The best way to show that it would be unfair to have to repay the overpaid benefits is to show that repayment would cause you great economic hardship, because you believed you were entitled to the unemployment benefits checks and relied on them to meet your basic financial needs. For example, if you signed a lease for an apartment or a car that you otherwise could not afford, it would be unfair for the EDD to make you repay the benefits. It also helps prove economic hardship if you can show that you need all, or most, of your current income and/or savings to meet your basic living expenses. To show this to the ALJ clearly, you should bring to the hearing a monthly budget detailing all your income and expenses. If you know that you will soon have additional expenses, like a new child or medical bills, be sure and include these expenses in your budget.

10.

#### What happens if I lose the hearing?

If the ALJ refuses to waive your overpayment you can further appeal the decision to the CUIAB and, if necessary, to the County Court using the same procedures as in any other appeal. (For more information about further appeals, see our [Do-It-Yourself Guide to Unemployment Insurance Benefits](#).) If you do not appeal further, or you lose further appeals, the EDD will ask you to repay the overpaid amount. As mentioned earlier, if the EDD believes you were not at fault in causing the overpayment, the EDD will usually send a Financial Statement form.

This Financial Statement helps the EDD decide how much money to ask you to repay. You should complete this Financial Statement and return it to the EDD as soon as possible, because the EDD may use this information to reduce or forgive the repayment amount. If the EDD does not send you a Financial Statement form, you can expect the EDD to attempt to collect from you the entire overpaid amount.

The EDD usually collects overpayments in one or more of the following ways:

- arranging with you to make monthly payments; or,
- taking it from future unemployment or disability benefits checks; or,
- taking it from state tax refunds; or,
- filing a lawsuit in order to be allowed to take it from other income and assets.

The EDD can collect this overpaid amount by taking it from future unemployment/disability checks or state tax refunds for a period of time that can last up to 6 years. If the EDD wants to use more severe methods, like taking repayment from your other income or assets, the EDD must file a lawsuit against you within 1 year of the final overpayment decision. Otherwise, if the EDD takes no action and you do not file any new claims for unemployment or disability benefits, your overpayment will automatically be waived after a period of 3 years.

If you choose to arrange to make monthly payments to the EDD, you may be asked to sign a written agreement to confirm this. You do not need to sign this agreement and, in fact, signing it can work against you because signing an agreement will give the EDD additional time to file a lawsuit against you for failing to repay the amount as planned. If you do not sign an agreement, the EDD has only 1 year to file a lawsuit against you to collect repayment through more severe methods. If you do sign a repayment agreement, the EDD has 4 years from the signing of that agreement to file a lawsuit against you for repayment.

For further information about your employment rights, contact the [Workers' Rights Clinic](#).

#### Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

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