

**Title 8—DEPARTMENT OF  
LABOR AND INDUSTRIAL RELATIONS  
Division 10—Division of Employment Security  
Chapter 3—Unemployment Insurance**

**PROPOSED RULE**

**8 CSR 10-3.160 Waiver of Recovery of Overpayments Under the Coronavirus Aid, Relief and Economic Security Act (CARES), as Amended**

*PURPOSE: This rule prescribes criteria for waiver of recovery of overpaid unemployment benefits under the CARES Act, as amended, that were not obtained through fraud. The intent of this rule is to allow those individuals with non-fraud overpayments under the federal coronavirus relief programs to request a waiver of recovery of overpayments and to set forth the criteria under which those requests will be evaluated. Such waivers are authorized by the federal coronavirus relief programs. See, e.g., CARES Act, Sects. 2104(f), 2107(e); Continued Assistance for Unemployed Workers Act, Sect. 201.*

(1) Any person who is overpaid unemployment benefits under the CARES Act, as amended, is liable for the amount overpaid unless, based upon an application to the division in a format prescribed by the division, the division determines that the claimant is entitled to a waiver of recovery of the overpayment, based on the following criteria:

- (A) The overpayment was received without fault of the claimant, and
- (B) The recovery of the overpayment would be against equity and good conscience.

(2) The application for waiver must be received by the division within thirty (30) calendar days after the mailing or other transmission to the individual of the notice of the overpayment, or of the notice of opportunity to apply for a waiver.

(3) Fault of the claimant.

- (A) In determining fault, the division shall consider the nature and cause of the overpayment.
- (B) A claimant who receives or retains benefits which he or she knew or reasonably should have known he or she was not lawfully entitled to receive is at fault.

(C) Fault shall include, but not be limited to, the following:

1. Fraud or misrepresentation regarding the claim (a representation of fact, in relation to the claim, that the claimant knew or should have known was false);
2. Failure to disclose (failing to disclose a fact, in connection with the claim, that the claimant knew or should have known was significant to the claim); and
3. Negligence (failing to exercise the care that a reasonable person of ordinary prudence would exercise in submitting the claim).

(D) What an individual should have known is determined from the perspective of a reasonable person of ordinary prudence in the same or similar circumstances. However, the division may consider an individual's age and physical or mental condition as mitigating factors against finding fault.

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(4) Equity and good conscience.

(A) In determining whether repayment would be against equity and good conscience, the division will consider the totality of the circumstances to include, but not limited to:

1. Detrimental Reliance. Whether the individual acted in reliance on the overpayment and gave up a valuable right because of the overpayment or changed his or her position for the worse because of the overpayment.

A. An individual gives up a valuable right when he or she gives up a valuable privilege, claim, entitlement, or benefit having monetary worth because of the overpayment; or

B. An individual has changed his or her position for the worse when he or she, in reasonable reliance on the overpayment, decides to do something that he or she otherwise would not have done. To establish a change in position for the worse, the individual must demonstrate a change in actions or behavior, not simply that the overpayment had been spent.

2. Undue Hardship. Whether circumstances exist, including health problems or disability of the claimant or a family member, in which collection would deprive the individual or household of basic necessities.

(5) Waiver of recovery of indebtedness is an equitable remedy and, as such, must be based on an assessment of the facts involved in the individual case under consideration.

(6) The burden is on the individual to demonstrate that waiver of recovery is appropriate.

(7) The division shall notify the claimant of its decision on the waiver request in writing by mail or other transmission.

(8) The claimant may appeal the division's decision on the waiver request by filing an appeal with the Appeals Tribunal within thirty (30) calendar days after mailing or other transmission of the division's decision to the individual. The provisions of Sect. 288.200 and 288.210, RSMo apply to further appeals.

*AUTHORITY: sections 288.070 and 288.220.5, RSMo 2016 and section 288.040 RSMo Supp. 2020. Rule filed July 2, 2021, effective Feb. 24, 2022.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions one million seven hundred seventy-eight thousand two hundred fifty-two dollars (\$1,778,252). Full federal reimbursement is expected.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the time the rule is effective.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Division of Employment Security, Attn: Spencer Clark, Acting Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*