

NEW SECTION

WAC 192-100-015 Equity and good conscience defined. (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

(a) General health, including disability, competency, and mental or physical impairment;

(b) Education level, including literacy;

(c) Whether there is current income from work or a business;

(d) History of unemployment;

(e) Future earnings potential;

(f) Business structure, if appropriate;

(g) Marital status and number of dependents, including whether other household members are employed;

(h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;

(i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this section.

WAC 192-220-030 What does equity and good conscience mean in regard to overpayment waiver decisions?—RCW 50.20.190(2). (1) "Equity and good conscience" means fairness as applied to a given set of circumstances.

(2) It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required to provide for basic necessities including food, shelter, medicine, utilities, and related expenses. Unless there are unusual circumstances which would argue against waiver, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days.

(3) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:

(a) Your general health, including disability, competency, and mental or physical impairment;

(b) Your education level, including literacy;

(c) Whether you are currently employed and your history of unemployment;

(d) Your future earnings potential based on your occupation, skills, and the local labor market;

(e) Your marital status and number of dependents, including whether other household members are employed;

(f) Whether an error by department staff contributed to the overpayment;

~~(g) ((Whether the employer contributed to the overpayment by providing inaccurate information or failing to respond to the department's request for information within a reasonable period of time;~~

~~(h))~~ Whether you refused or were ineligible for other government benefits because you received unemployment benefits; and

~~((i))~~ (h) Other factors indicating that repayment of the full amount would cause you undue economic, physical, or mental hardship.

(4) When determining whether a waiver of benefit overpayments may be granted based on equity and good conscience, the department must consider whether the employer or employer's agent failed to respond timely or adequately without good cause to the department's written request for claim information. This subsection does not apply to negotiated settlements.

(5) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsections (2) ~~((and))~~, (3), and (4).

WAC 192-230-110 May I negotiate with the department to repay less than the full amount of my benefit overpayment?—RCW 50.24.020.

(1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection ~~((3))~~ (4) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered ~~((under subsection (2)(a)). Settlement offers may also be made by authorized department staff.~~

~~(a) The department will consider a settlement offer when it would be against equity and good conscience to require you to repay the full amount. The department may consider, but is not limited to, the following factors in making this decision:~~

~~(i) Your general health, including disability, competency, and mental or physical impairment;~~

~~(ii) Your education level, including literacy;~~

~~(iii) Whether you are currently employed and your history of unemployment;~~

~~(iv) Your future earnings potential based on your occupation, skills, and the local labor market;~~

~~(v) Your marital status and number of dependents, including whether other household members are employed; and~~

~~(vi) Other factors indicating that collection of the full amount would cause you undue economic, physical, or mental hardship and you are unable to provide for basic necessities as described in WAC 192-220-030(2).~~

~~(b))~~ when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

~~((c) If you previously applied for a waiver and were denied and your circumstances have significantly changed, such as catastrophic illness or loss of income, you may ask to negotiate a settlement for less than the full amount of the overpayment.~~

~~(3))~~ (4) A negotiated settlement for less than the full amount owed will not be considered when:

~~(a) ((The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));~~

~~(b))~~ The overpayment decision was issued by a state other than Washington; or

~~((e))~~ (b) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

~~((4))~~ (5) The department's decision to accept or reject a settlement offer is ~~((final))~~ not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-130 How do I make a negotiated settlement offer?

(1) You may contact the department's unemployment benefits collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(2) Settlement offers may also be made by authorized department staff.

NEW SECTION

WAC 192-330-120 May I negotiate with the department to repay less than the full amount of my contributions, interest and penalties? -RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) A negotiated settlement of contributions, interest, or penalties due and owing for less than the full amount owed will be considered when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering negotiated settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the debt, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(4) Settlement offers may also be made by authorized department staff.

(5) You may contact the department's unemployment tax collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(6) The department's decision to accept or reject a negotiated settlement offer is not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.