

Pandemic-era Overpayments

ESD implemented new rules and expanded existing policies and procedures for waiving overpayments from the COVID-19 pandemic era — between Feb. 2, 2020, to Sept. 4, 2021. Due to historic unemployment caused by the shutdown orders during the pandemic, ESD implemented multiple new federal and state benefit programs with complex interactions. A large backlog of overpayments resulted, creating hardship for many of those affected.

Equity and good conscience

Under federal guidance, CARES Act overpayments can be waived for the following reasons of equity and good conscience, if the claimant is not at fault in causing the overpayment:

- **Financial hardship.** The claimant needs their income to meet ordinary living expenses.
- **Detrimental reliance.** The claimant relied on getting benefits when making financial decisions.
- **Unconscionable under the circumstances.** Requiring repayment would be =unfair.

Note: State policy for all overpayments of unemployment benefits during the pandemic has also been updated. It now emphasizes additional equity and good conscience factors to align with federal guidance and our agency's values.

How ESD is handling pandemic-era overpayments

Automatic waivers: On March 29 & 30, 2023, we issued blanket waivers and administrative write-offs for some types of overpayments, as allowed by law. More automatic waivers and write-offs may be issued later in 2023. In most circumstances, ESD will also refund people who have repaid some or all of their overpayment and who are approved for a waiver.

A new waiver request form: Starting April 7, 2023, claimants can request a waiver online at esd.wa.gov and by calling 800-318-6022 Monday through Friday from 8 a.m. to 4 p.m. except holidays. We will manually review waiver requests we receive and their claim file information. We may also contact claimants or employers for more information. This process will take time. Claimants will be notified if they qualify for a waiver or not. If denied, we will notify them of other options they can pursue.

If we waive an overpayment, we will also waive any interest associated with that overpayment. Claimants who do not qualify for a waiver will need to pay interest on any overpayment of regular state unemployment benefits, but not on their federal benefits.

Status and statistics

Additional budget received was \$11.7 million for the backlog and \$21 million to maintain current work.

The backlog of pandemic-era overpayment cases is 136,000. With the additional funding from the Legislature and U.S. Department of Labor, this may take six to 12 months to process.

The total number of claimants getting waivers is unknown. It depends on the number of waiver requests, which must be individually reviewed. About 22,000 will get blanket waivers and write-offs.

ESD staff to adjudicate the waiver requests will partly come from existing resourcing. ESD currently has 239 full-time positions that provide direct assistance to claimants, but 26 are vacant. More staff will be added now that the project has received additional funding.

Unemployment Claims Center call volumes in January 2023 had an answer rate of 27.62% with a 39-minute average wait time for all incoming calls of people trying to speak to an agent. This was during peak season. Wait times and calls answered are typically lower outside of peak season, after April.

Automatic waiver recipients

Approximately 22,000 claimants in the following situations could receive a blanket waiver:

- **Administrative write-offs:** Claimants with overpayments less than \$1,000 during the pandemic-era and never made a repayment will get an automatic write-off of their overpayment.
- **COVID-19 reasons:** Claimants told us they did not have an approved COVID-19 reason to claim Pandemic Unemployment Assistance (PUA). We paid them benefits, causing an overpayment.
- **Able and available:** Claimants told us they were not able and available to work. We paid them while we decided if they were eligible for benefits. This resulted in an overpayment.
- **High to low weekly benefit amount:** Claimants were paid on a federal pandemic benefit claim. But we later determined they were no longer eligible for those benefits because they were eligible for a new state unemployment claim. We moved the claimants to a new claim, but the weekly benefit amount on this new claim was lower than their previous claim. When we transferred the weeks, it caused an overpayment.
- **PUA weekly benefit amount:** The state had to correct earnings information on PUA claims' base year. This led to a recalculation of claimants' weekly benefit amounts. These recalculations resulted in lower weekly benefit amounts, which caused overpayments.

Learn more

- Pandemic-era overpayment waiver update at esd.wa.gov/overpayments
- General information about overpayments at esd.wa.gov/unemployment/overpayments

Questions and answers

Q: What is an overpayment?

Overpayments occur when claimants get unemployment benefits they were later found to not be eligible for and must pay back.

Q: Who will be eligible for a waiver?

Claimants with overpayments from weeks during the COVID-19 pandemic (from Feb. 2, 2020, to Sept. 4, 2021) may be eligible, if they are not at fault and repaying would be unfair.

Q: What should claimants do if we deny their waiver request?

We can help the claimant set up a payment plan to ease the burden of repaying it. If they disagree with the decision to deny the waiver request, they can file an appeal.

Q: What if an overpayment is from outside the pandemic era?

If someone has an overpayment from a week outside of the pandemic era, they can request:

- A payment plan if they cannot afford to repay the overpayment all at once.
- An appeal if they believe they should not have an overpayment and they submit the appeal within 30 days of when the overpayment was issued. If they can show good cause, a late appeal may be considered.

Q: How will claimants know if they qualify?

We will review the information we have now and from waiver requests we receive to determine if a claimant qualifies. We may also contact claimants or employers if we need more information. After we complete the review, we will contact the claimants through their preferred choice of communication if their application shows that they qualify for a waiver or not. If their request is denied, we will notify them about the other options they can pursue.

Q: Should claimants still be making payments?

While they wait to hear about their waiver request, a claimant can set up a payment plan to start repaying their overpayment. They can set up a repayment plan by calling the Employment Security Collections Unit at 866-697-4831.

Q. If a large overpayment is waived, will the amount forgiven be subject to federal income tax?

Yes. Waiving an overpayment of any amount does not affect the benefits' taxability. All benefits received are subject to federal income tax. The 1099-G for the year the claimant originally received benefits will remain valid even after an overpayment for those benefits is waived. But if any part of an overpayment is repaid, claimants can report this when filing their taxes. Repayment of benefits received reduces the taxable benefits. Please consult a tax professional for particular advice.

Q: What if claimants already started paying, or fully repaid, their overpayment?

They will receive a refund if they already made payments on their pandemic-era overpayment and we waive it. The refund will go to the payment method we have on file. ESD will refund repayments that are later waived, including any interest paid. Claimants who reported in an earlier tax year that they made a repayment of unemployment benefits may need to check with the IRS to see if a refund will have tax implications.

Q. If a refund is created as a result of a waived overpayment, where will the funds come from to refund claimants?

Potential refunds for waived CARES Act overpayments come from federal CARES Act funds, as will costs for implementing such waivers. Costs for implementing administrative write-offs are from state unemployment compensation (UC) funds, even if the overpayment was for a CARES Act program. But no refunds will be issued to claimants who receive administrative write-offs. The write-off is done because it is not cost-effective to pursue collection of the amount due and the debt is considered uncollectible, as allowed by law.

Q. If an overpayment is waived, will the corresponding employers see a reduction in their experience rating for future premium assessments?

Waived overpayments should not affect an employer's experience rating because:

- Most overpayments that will be waived are from fully federally-funded CARES Act programs.
- There is no charge to employers if a claimant is not eligible for unemployment benefits.

However, [reimbursable employers](#) may be affected. Unless claimants repay their overpayment, these employers must reimburse the department for the amount of any state benefits paid, including the overpaid amount. If a claimant repaid an overpayment and later receives a waiver and refund of the repayment, the employer will again need to reimburse ESD for those benefits refunded. These employers can appeal the waiver. All interested parties would be included in the appeal process. However, reimbursable employers are not affected if the waived overpayment was for federally-funded benefits. Reimbursable employers are not responsible for reimbursing us for federal benefits.

Q: Why did the waiver request form release in April and not in the first quarter of 2023?

We developed the waiver request form and the automatic waiver process at the same time. During this process, we navigated highly complex legal, technical, and financial requirements at the federal and state levels, as well as within ESD's different systems. But we can confirm that the pandemic-era overpayment waiver request form is now available online.

Q: What if a claimant wants to reverse their waiver?

If a claimant is granted a waiver of their pandemic-era overpayment, they can request that we reverse our decision and reinstate the overpayment. They can fill out and submit a waiver reversal form. But, if they already repaid the overpayment and received a refund, they will be required to pay us back again.