

Final Cost-Benefit Analysis

Overpayment Waiver Permanent Rulemaking

Introduction

Pursuant to RCW 34.05.328, the Employment Security Department (Department) hereby analyzes the costs and benefits of amending rules regarding overpayment waivers. Specifically, the proposal would permanently adopt the Department's emergency rules on overpayment waivers and would also allow waiver of overpayments for claimants who were discharged for misconduct during the pandemic period, from February 2, 2020, through September 4, 2021.

Costs

This rulemaking makes permanent the Department's emergency rules regarding overpayment waivers. The emergency rules have been in effect since March 29, 2023. As of November 27, 2023, the Department has waived over \$28.7 million in overpayments. In addition to the amount of overpayments that have already been waived under the emergency rules, there is a total of \$879,473,820 in additional overpayments that could potentially be waived if all currently eligible claimants with overpayments applied for waiver and were found to qualify for waiver. The new rules also allow overpayment waivers for qualifying claimants who were discharged for misconduct during the period of February 2, 2020, to September 4, 2021. If all claimants with such overpayments applied for waiver and were found to qualify for waiver, an additional \$83,475,986 in overpayments could be waived. Therefore, the maximum total overpayment amount that could be waived under the new rules would be \$962,949,806; however, it is likely that not all claimants would apply for waiver, and not all who apply for waiver would be eligible to have their overpayments waived, and the total will be less than that amount.

As of October 31, 2023, the Department had spent \$2,332,373 in administrative costs for overpayment waivers, including such expenses as technology upgrades, outreach, training, and staffing. Currently, the Department has 765 pending applications for overpayment waivers from claimants who were discharged for misconduct during the pandemic period. The Department will need 0.6 FTE, job classification ES Benefits Specialist 2, to process those applications, for a total cost of \$70,302.43. There are 10,525 additional claimants who were discharged for misconduct during the pandemic period who could apply for waiver. If all of those claimants applied for waiver, the Department would need eight additional FTEs, job classification ES Benefits Specialist 2, for a total cost of \$937,365.89, to process those applications.

The Department has already received \$11,976,000 from the Legislature (see ESSB 5187) to create a dedicated team of staff to process the unemployment insurance overpayment caseload backlog.

Benefits

Due to the drastic rise in unemployment insurance claims during the COVID-19 pandemic, the Department has seen unprecedented overpayments for claimants. When the Department's emergency rules first went into effect, there were more than 137,000 claimants with overpayments accounting for more than \$1.2 billion that had accrued from February 2, 2020, through September 4, 2021. These

overpayments were comprised of both federally funded benefit programs and the state's regular unemployment benefits. Of those overpayments, more than 67,000 claimants, accounting for more than \$258 million, were conditionally paid and, before the emergency rules were enacted, were not eligible for waivers. This permanent rulemaking is necessary to allow the Department to process the remaining overpayment applications and to allow claimants with overpayments due to a discharge for misconduct during the pandemic period to also be eligible for waiver.

In March 2020, the Department signed an agreement with the United States Department of Labor (USDOL) to administer certain federally funded pandemic era benefit programs, including Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Pandemic Unemployment Compensation, and Mixed Earner Unemployment Compensation. In Unemployment Insurance Program Letter Number 20-21, Change 1, the USDOL provided scenarios where certain overpayments may be waived on a blanket basis. This rulemaking makes permanent the emergency rule that authorized the use of these USDOL blanket waivers. For overpayments of regular unemployment benefits, this rulemaking would make permanent the emergency rule that allowed benefits that were paid conditionally to be potentially eligible for waiver, as Department backlogs during the pandemic period substantially increased the number of benefits that were paid conditionally.

Given the volume of benefit overpayments and the increased complexity of state and federal unemployment programs during the pandemic period and as the Department has expanded consideration of whether it would be against equity and good conscience for the claimant to repay the overpayment, this rulemaking is necessary to provide claimants with an expanded opportunity to request and receive overpayment waivers from the pandemic period, even if a previous overpayment waiver request had been denied. This rulemaking will have economic and equity benefits to claimants, and in turn, economic benefits to the state's economy.

Conclusion

The benefits of the rulemaking to claimants outweigh the cost of implementing this rulemaking.