

**Chapter 192-640 WAC  
OVERPAYMENT OF BENEFITS**

NEW SECTION

**WAC 192-640-005 Definitions.** For purposes of this chapter:

- (1) "Overpayment" means any or all of the following:
  - (a) Payment of any paid family or medical leave benefits to which the department determines the employee is not entitled;
  - (b) Penalties assessed under RCW 50A.04.045; or
  - (c) Interest accrued under RCW 50A.04.065.
- (2) "Equity and good conscience" means fairness as applied to each individual case after considering the totality of the circumstances.

NEW SECTION

**WAC 192-640-010 How are overpayments assessed on employees?** (1)

If the department determines an employee has an overpayment as defined in WAC 192-640-005, the department will provide the employee with an overpayment assessment. The overpayment assessment will include all of the following:

- (a) Whether the employee is found to be at fault;
- (b) The amount of the overpayment; and
- (c) The reason for the overpayment.
- (2) The employee must repay the amount overpaid unless the department waives the overpayment.
- (3) Any portion of the overpayment that was made on behalf of the employee to another entity is considered paid to the employee and will be included in the overpayment assessment.

NEW SECTION

**WAC 192-640-015 When can the department waive an overpayment?**

- (1) An employee who is determined to have an overpayment must repay the full amount of the overpayment unless a waiver is granted. The decision to waive an overpayment at all times rests with the department.
- (2) An employee may be eligible for a waiver of an overpayment when the employee is not considered at fault and it would be against equity and good conscience for the department to require the employee to repay the full amount.
- (3) When the department identifies an overpayment, the department will send an application for a waiver to any potentially eligible employees.
- (4) An employee may request an application for a waiver of an overpayment if one was not already provided by the department, and if

the employee's overpayment is not a result of fraud, conditional payment, or fault attributable to the individual.

(5) The waiver application will request information concerning the employee's financial situation or other circumstances which will help the department determine if the overpayment should be waived.

(6) The financial information requested may include, but is not limited to, documentation for the previous month, current month, and following month of the employee's household:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(7) The completed waiver application and supporting documents must be returned to the department by the response deadline indicated in the overpayment assessment, which will be no less than ten working days. Reasonable mailing time will be added when the overpayment assessment is sent via postal service. If information is not provided by the deadline, the department will make a decision about the employee's eligibility for a waiver based on the available information.

(8) Any waived overpayment amount is considered paid to the employee and will count against the employee's available leave. A waiver cannot exceed the total amount of leave available on a claim. The department will not waive an overpayment to allow the employee more leave than the employee was originally eligible to receive.

(9) If a waiver is approved based on information from the employee, or on behalf of the employee, that is later determined by the department to be false or misleading, the waiver could be void and the amount previously waived will be considered overpaid again. The determination to make a waiver void is subject to appeal.

#### NEW SECTION

#### **WAC 192-640-020 How will equity and good conscience be applied in overpayment waiver decisions?**

(1) It is against equity and good conscience to deny a waiver request when repayment of the overpayment would create hardship for an employee to provide for basic needs such as food, shelter, medicine, utilities, and related expenses. Except in unusual circumstances, the department will presume repayment would leave the employee unable to provide basic needs if total household resources in relation to household size do not exceed seventy percent of the applicable lower living standard income level (LLSIL) and circumstances are not expected to change within the next ninety days.

(2) 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) The employee's general health, including disability, competency, and mental or physical impairment;

(b) The employee's education level, including literacy;

(c) The employee's ability to repay the overpayment based on employment or financial resources;

(d) The employee's marital status and number of dependents, including whether other household members are employed;

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

(f) Other factors indicating that repayment of the full amount would cause the employee undue economic, physical, or mental hardship.

(3) 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 to the department timely or adequately without good cause. This subsection does not apply to negotiated settlements.

(4) 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 (1) through (3) of this section.

#### NEW SECTION

**WAC 192-640-025 What does the department consider "at fault" for an overpayment?** (1) The department will decide if the employee is at fault for an overpayment based on information provided by interested parties and from the department's records. The employee will always be considered at fault when the overpayment is the result of fraud or nondisclosure.

(2) The employee may be considered at fault, even though all relevant information was provided before a decision was issued, when the employee should reasonably have known the payment was improper. The department may determine the employee is at fault for an overpayment when, for example:

(a) It is determined that the employee worked during the same hours for which the employee claimed paid family or medical leave; or

(b) A lower-level decision reversed by the office of administrative hearings, the commissioner, or a court causes an overpayment because of information that the employee did not disclose to the department.

(3) In deciding if the employee is at fault, the department may also consider factors which may affect the employee's ability to report all relevant information to the department.

#### NEW SECTION

**WAC 192-640-030 Will the employee be notified of the right to appeal the overpayment?** The department will send all interested parties information about the overpayment assessment and the right to appeal. Employees have the right to appeal any of the following components of the assessment:

(1) The reason for the overpayment;

(2) The amount of the overpayment;

(3) The finding of fault; and

(4) If an employee submitted a waiver application under WAC 192-640-015, the reason the department did not determine the employee to be potentially eligible for a waiver under WAC 192-640-015(3).