

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE  
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

04/24/2024 3:32 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/03/2024 11:59 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Perla Brambila Arechiga  
503-947-1471  
oed\_rules@employ.oregon.gov

875 Union Street NE  
Salem, OR 97311

Filed By:  
Perla Brambila Arechiga  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/17/2024

TIME: 3:00 PM - 4:00 PM

OFFICER: Perla Brambila Arechiga

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-947-1471

NEED FOR THE RULE(S)

The Oregon Employment Department (OED) waives the recovery of non-fraud, non-claimant fault Unemployment Insurance (UI) benefit overpayments if it goes against "equity and good conscience." Historically, the definition of "equity and good conscience" has been based on Internal Revenue Service (IRS) Collection Financial Standards. The Department can also partially offset the recovery of these overpayments if the claimant meets certain income criteria.

During the COVID-19 pandemic, the intense demand for UI benefits resulted in numerous UI benefit overpayments as well as increased scrutiny over how OED addresses those overpayments. Advocates for UI claimants in Oregon and in other states using "equity and good conscience" standards called for changes to those standards.

SB 172 was passed in the 2021 Regular Legislative Session. It had an operative date of June 23, 2021. It allowed OED to deduct all or part of UI benefit overpayments against future weekly benefits within five years following final decision for overpayments that were the fault of the claimant but not due to willful misrepresentation by the claimant.

After the legislative session ended, OED leadership convened an informal workgroup consisting of worker advocates, business advocates and policymakers to determine the best way to update administrative rule to accommodate the

statutory changes from SB 172. One of the issues raised in these meetings, particularly among worker advocates, was the desire to update the “equity and good conscience” standards. Though those standards were not changed in the initial batch of rulemaking changes, OED remained committed to seriously reexamining the standards going forward.

The proposed rule changes are the result of collaboration with advocates for workers and employers as well as feedback from two listening sessions that OED hosted in November 2023.

---

#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, available online at [www.oregonlegislature.gov](http://www.oregonlegislature.gov) or from the agency; and Oregon Administrative Rules, available online at [sos.oregon.gov/archives/Pages/oregon\\_administrative\\_rules.aspx](http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx) or from the agency.

---

#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

By providing Unemployment Insurance benefits, the Oregon Employment Department will allow those who are unemployed or underemployed with critical financial support. This program provides a much-needed benefit to under-resourced and underserved populations and helps to combat the insidious impact of historical and current injustice and inequity that families of color face when trying to access government programs.

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

While amending the above outlined administrative rules for equivalent plans, the Department looked at the racial equity impact of the administrative rule and answered the below questions.

What are the racial equity impacts of this particular rule, policy, or decision and who will benefit from or be burdened?

In drafting the administrative rule amendments on overpayment waivers and offsets, the Department has been careful to think through racial inequities that may occur. The proposed rules should significantly benefit claimants that are suffering financial hardships that received overpayments through no fault of their own.

OED recognizes that racial disparities, discrimination and inequities across society is evidence of institutional racism that is often invisible and sometimes unintentional, but inherent elements of policy development. We recognize the importance of acknowledging and understanding racial and ethnic disparities in access to and use of UI is vital in developing inclusive administrative rules and policies. OED will continue to gather relevant data to address these disparities as the new eligibility requirements are implemented.

Are there strategies to mitigate the unintended consequences?

It is important to recognize that complex bureaucratic processes often have built-in barriers, such as the legal language used, that disproportionately impact those who are non-native English speakers and individuals who are socioeconomically disadvantaged. Furthermore, due to historical exclusion and systemic racism, communities of color, in particular Black, Latino/a/x or Indigenous persons in the U.S may not fully trust the legal system and government processes.

OED's goal is to ensure that there is equity for businesses and workers in Oregon. The UI division places a high priority on developing and maintaining a diverse and inclusive culture and ensuring there is equitable access to understanding

for businesses and workers. Below are some strategies the UI Division has implemented or plans to implement to mitigate unintended consequences:

- Providing instructions, guidebooks, and all other materials in plain language, in multiple languages, and in alternative formats such as video;
- Providing supplemental materials to guidebooks such as a “frequently asked questions,” section on our website, instructional videos, and other tools in order to accommodate different learning styles; monitoring usage to inform gaps in initial and continued messaging;
- Evaluating ongoing debt collection practices, once started, to determine what, if any, impact payment application practices and debt waiver policies are having on narrowing historic racial gaps within collections;
- Establishing and using an equity framework to standardize review processes to ensure that all new and ongoing processes, procedures, administrative rules, and related communications are furthering program equity;
- Collaborating with the division’s data team to gather and analyze information for any gaps or trends on groups impacted by contributions or self-employed;
- Monitoring a number of data elements related to UI in order to determine if and what disparate outcomes historically marginalized groups are facing;
- Continuously explore ways to make changes within the policy and technology sections should disparities begin to arise in the program;
- Committing to, and then provide, ongoing anti-racism and trauma-informed care training to assist staff in understanding, identifying, and eliminating negative impacts that UI policy, procedures, and rules may otherwise have on already marginalized groups.

---

#### FISCAL AND ECONOMIC IMPACT:

Due to lack of data on family size and TANF participation periods, the Department is unable to directly estimate the impact to the Unemployment Insurance Trust Fund from this rule change. However, the Department can assess the largest possible impact.

Over the last eight quarters, revenues from overpayment collections (excluding overpayments due to fraud), have been, on average, less than 0.5 percent of total quarterly revenues. Over that period, the Department collected slightly more than \$600,000 in quarterly overpayment recoveries (again, excluding collections from fraudulent overpayments).

Assuming that all non-fraudulent overpayment recoveries are forgiven because of this rule produces a reduction in the UI Trust Fund at the end of the 2025-27 biennium of approximately \$8.1 million. This is a reduction of 0.1 percent in the fund balance due to the rule change.

---

#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

None.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number and type of small businesses subject to the rule:

As of the first quarter of 2023, there were 160,218 employers with 49 or fewer employees that would be subject to the new rules.

b. Projected reporting, recordkeeping, and other administrative activities required for compliance, including costs of

professional services:

None.

c. Equipment, supplies, labor and increased administration required for compliance:

None.

---

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Describe how small businesses were involved in the development of these rule(s).

Small business representatives participated in the Rulemaking Advisory Council and also were invited to attend the two listening sessions. Small business representatives were also involved in the informal workgroup that was created after the passage of SB 172.

---

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

---

RULES PROPOSED:

471-030-0053, 471-030-0320

AMEND: 471-030-0053

RULE SUMMARY: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments.

CHANGES TO RULE:

471-030-0053

Waiving Recovery of Overpayments ¶¶

471-030-0053¶¶

(1) The effective date of this rule is June 23, 2021~~14~~.¶¶

(2) This rule addresses waiving recovery of overpayments pursuant to ORS 657.317.¶¶

(3) ~~Recovering overpaid~~Overpayments will be waived if recovery of benefits is against equity and good conscience if the individual requesting a waiver has no means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits. The Employment Department will use the IRS Collection Financial Standards to determine maximum allowable household expenses. ~~The Oregon Employment Department (OED) may al~~based on the following criteria¶¶

(a) Automatic waiver criteria, the individual has claimant non-fault overpayment and¶¶

(A) Has reported wages in the last four quarters that are less than or equal to 300% of the federal poverty level for a family of four. OR¶¶

(B) Is a recipient of Temporary Assistance for Needy Families (TANF) within the 60 days prior to establishing the overpayment.¶¶

(b) If automatic waiver criteria does not apply, claimants may request a waiver which will be allowed if¶¶

(A) The individual has claimant non-fault overpayment and¶¶

(i) Does not meet the automatic waiver criteria listed in subsection (a) and the size of their family, as defined in subsection (c) below, exceeds four persons and reported wages in the last 4 quarters that are less than or equal to 300% of the federal poverty level for the size of family listed by the claimant on the waiver request. OR¶¶

(ii) Was not receiving Temporary Assistance for Needy Families (TANF) at the time the overpayment was established and is receiving TANF at the time the waiver request is submitted.¶¶

(B) The individual has a claimant fault non-fraud overpayment and¶¶

(i) Has reported wages in the last four quarters that are less than or equal to 200% of the federal poverty level for a family of four. OR¶¶

(ii) The size of their family, as defined in subsection (c) below, expenses higher than those provided exceeds four persons and reported wages in the last 4 quarters that are less than or equal to 200% of the federal poverty level for in the IRS Collection Financial standards if the individual requesting a waiver provides documents showing that using those IRS Collection Financial Standards would leave the individual an inadequate means of providing for basic living expense size of family listed by the claimant on the waiver request. OR¶¶

(iii) Is a recipient of Temporary Assistance for Needy Families (TANF) within the 60 days prior to establishing the overpayment or is receiving TANF at the time the waiver request is submitted.¶

(c) For purposes of 471-030-0053 (b) (A) (i) and (B) (ii) "family" includes those individuals listed in OAR 471-030-0038(1)(f) that are financially supported by the claimant.¶

(d) All requests to waive a wage garnishment for claimant non-fault and claimant fault non-fraud overpayments will be considered to be requests to waive the overpayment and the criteria set forth in (3) (a) and (b) will be applied to the request.¶

(4) If a waiver is granted, the department will stop collection activity of the overpaid benefits that are waived. OED will give written notice of any waivers that are granted, indicating the amount of the overpaid benefits for which the waiver is granted.¶

(5) Any funds, which would otherwise have been restored to the balance of the claim impacted by the overpayment decision, will be removed if the overpayment is waived so the individual does not receive more than the claim's maximum benefit amount.¶

(6) Waivers are effective the Sunday of the week in which the request for waiver was filed with OED. OED shall apply the provisions under OAR 471-010-0040 in determining the date the request for waiver is received.¶

(7) If a request for waiver of recovery is denied, the individual will receive an administrative decision as defined in OAR 471-030-0039.¶

(8) Overpaid benefits that have been recovered prior to the filing of a waiver request will not be waived or refunded.¶

(9) If the individual is paid more than once for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.¶

(10) In applying ORS 657.315 when the individual is not eligible for a waiver under the provisions of this rule, the provisions under OAR 471-030-0320 shall apply for offsetting overpaid benefits.¶

(11) In applying ORS 657.317(3), a waiver will not be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215.¶

(12) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period pursuant to OAR 471-030-0049 will not be waived.¶

(13) The determination to waive recovery of overpayments under ORS 657.317 and this rule shall be made by employees authorized by the Director.

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657.267, 657.268, 657.315, 657.317

AMEND: 471-030-0320

RULE SUMMARY: Rule amendments modifying the criteria for waiving or offsetting the recovery of certain overpayments.

CHANGES TO RULE:

471-030-0320

Recovery by Offset of Overpaid Benefits and Recovery Periods

~~471-030-0320~~

Recovery by Offset of Overpaid Benefits and Recovery Periods

(1) The effective date of this rule is June 23, 2024.

(2) This rule addresses the percentage of future weekly benefits that may be offset pursuant to Oregon Revised Statute (ORS) 657.215, 657.310, and ORS 657.315.

(3) OED shall offset 100% of the benefits payable for each week claimed when the overpayment is due to misrepresentation under ORS 657.215.

(4) Effective June 23, 2024, OED shall offset 100% of the benefits payable for each week claimed when the overpayment is determined not liable for penalty under ORS 657.310(2)(a) except:

(a) If an individual meets the requirement for a waiver under OAR 471-030-0053 the overpayment is cancelled.

(b) If an individual's request for waiver submitted under OAR 471-030-0053 cannot be canceled under OAR 471-030-0053(23) and shows total allowable household expense has reported wages in the last 4 quarters that are less more than 200% but greater than or equal to 80% of the federal poverty level for a family of four but less than 300% of the total household income less unemployment insurance benefits federal poverty level for a family of four, the department shall offset 50% of the benefits payable for each week claimed for a period of six (6) months. After six (6) months, the offset will be at 100%.

(c) When the overpayment is the result of back pay as described in OAR 471-030-0017, the department shall offset 50% of the benefits payable for each week claimed.

(5) Effective June 23, 2024, OED shall offset 50% of the benefits payable for each week claimed when the overpayment is determined to have been paid erroneously under ORS 657.315 including when the overpayment is the result of back pay as described in OAR 471-030-0017, except:

(a) If an individual meets the requirement for a waiver under OAR 471-030-0053 the overpayment is cancelled.

(b) If an individual's request for waiver submitted under OAR 471-030-0053 cannot be canceled under OAR 471-030-0053(23) and shows total allowable household expense has reported wages in the last 4 quarters that are less more than 300% but greater than or equal to 80% of the total household income less unemployment insurance benefits of the federal poverty level for a family of four but less than 400% of the federal poverty level for a family of four, the department shall offset 0% of the benefits payable for each week claimed for a period of six (6) months. After six (6) months, the offset will be at 50%.

(6) OED will reconsider at any time the offset requirements provided in sections (4) and (5) of this rule if the individual's financial situation changes and the individual:

(a) Submits a new request for waiver; ~~and~~

(b) Submits a statement explaining the change in their financial situation; ~~and~~

~~(c) Submits supporting documentation showing the change in their financial situation.~~

(7) Offsetting overpaid benefits, as described in sections (4) and (5) of this rule, is limited to the five years following the week in which the decision establishing an overpayment became final. When a decision is issued under ORS 657.306 the five years begins immediately following the week the decision establishing an overpayment became final.

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657.215, 657.267, 657.268, 657.306, 657.310, 657.315, 657.317, 657.320