



To: Senate Committee on Economic Development, Housing and General Affairs
From: Vermont Legal Aid, Susan Garcia Nofi, Staff Attorney
Re: H.55, Waiver of Nonfraud Unemployment Insurance Overpayments
Date: April 11, 2024

Thank you for the opportunity to testify in support of modifying Vermont's unemployment laws to give the Vermont Department of Labor authority to waive (forgive) nonfraud unemployment overpayments.

Vermont should follow the lead of the federal government and most other states by adding a waiver provision to Vermont's unemployment laws.

What is a nonfraud overpayment?

An overpayment happens when a person collects unemployment benefits, and the Department later determines the person was not eligible for the benefits they received.

Some overpayments are the result of fraud - this legislation would NOT apply to fraudulent overpayments. But many overpayments are not due to fraud. They happen because of a mistake by the claimant, their former employer, or the Department. For example:

- The employer incorrectly reported the person's wages used to calculate their benefit eligibility.
- The employer did not properly respond when the Department of Labor initially asked for information needed to decide a claim.
- The Department made an error processing the person's claim.
- The unemployed person made an honest mistake filing their claim.
- The unemployed person didn't understand the questions on the claimant portal and responded incorrectly or made a mistake using DOL's technology.

The unemployment eligibility rules are complicated, and it is not an easy process to navigate. The process is even more difficult to navigate for workers with disabilities, with limited literacy, who do not have good internet access and computer technology, or whose primary language is not English.

Non-fault Overpayments Cause Ongoing Financial Harm to Economically Vulnerable Vermonters

When the Department first detects an overpayment, and notifies the person, it can be weeks, months, or sometimes years after the person received the benefit. By then, most people will have already spent the benefits on their basic living needs while they were unemployed.

After putting the person's account into overpayment, the Department sends monthly bills via U.S. Mail to claimants with overpayments. Some people can afford to make payments toward the overpayment, but many are financially unable to do so. The Department expends staff time and resources trying to recover debts from some people who lack the means to repay.

The main ways VDOL collects the money are:

- Taking state income tax refunds; and
- Taking **100%** of the person's benefits the next time they are unemployed until the overpayment repaid.

Vermonters with a non-fault overpayment are left without the safety net of unemployment benefits in the event of a future layoff. This defeats the purpose of unemployment benefits. Recovery of nonfraud overpayments causes ongoing financial hardship to Vermont workers and their families.

Current Vermont law does not give the Department a mechanism to affirmatively waive nonfraud overpayments. Waiver provisions like the one in H.55 are very common.

All New England states except Vermont have waiver provisions in their laws. The majority of states in the U.S. – all but 11 - also have waiver provisions in their unemployment laws.¹

¹ See *U.S. Dept. of Labor Comparison of State Unemployment Laws 2023*, p. 6-2, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/overpayments.pdf>

There is already a parallel waiver process for federally-funded CARES Act benefits that were paid during the pandemic. Congress authorized states to waive nonfraud CARES Act benefits. The Vermont Department of Labor has adopted a policy and procedures for waiving federal overpayments that were not the person's fault if repayment would be "against equity and good conscience."² This can include where repayment would cause severe financial hardship because the person's prospects of future employment have been limited by a disability or health condition; or they earn less than 185% of the federal poverty level or currently rely on some other public benefit. There is a waiver request form claimants can fill out to provide the necessary information and have the overpayment forgiven.

However, this only applies to overpayments of the pandemic CARES Act benefits and does not allow the Department to forgive overpayments of regular, state unemployment benefits.

The U.S. Department of Labor – which funds the administration of Vermont's unemployment benefit program – strongly encourages states to adopt policies that allow waiver of non-fault state unemployment overpayments when recovery of the overpayment would be contrary to equity and good conscience."³ Vermont should follow this guidance and join the majority of other states in adopting an overpayment waiver provision.

Summary of Proposed Language Changes to H. 55

Based on discussion with the Vermont Department of Labor, we propose language changes that we believe would meet the needs of both the Department and our clients:

1. Removing much of the definitional language from the statute and moving it to rulemaking, which should be initiated no later than November 1, 2024.

² See Vermont Department of Labor website, *CARES Act Overpayment Waiver* <https://labor.vermont.gov/cares-act-overpayment-waiver>

³ See [Unemployment Insurance Program Letter 01-16, Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures](#), p4.

2. Capping the amount of benefits the Department can withhold from a person's benefits to recover an overpayment at a flat 50%, rather than requiring an individualized determination of the recovery amount.
3. When a person applies for a waiver, collection activities are paused only while the Department decides the waiver application and while any internal appeals within the Department (referee or Employment Security Board) have finished. Attempts to recover the overpayment would not be paused during any further appeal to the Vermont Supreme Court.