

268.18 UNEMPLOYMENT BENEFIT OVERPAYMENTS.

Subdivision 1. **Nonfraud overpayment.** (a) Any applicant who (1) because of a determination or amended determination issued under section 268.07 or 268.101, or any other section of this chapter, or (2) because of an appeal decision or order under section 268.105, has received any unemployment benefits that the applicant was held not entitled to, must promptly repay the unemployment benefits to the trust fund.

(b) If the applicant fails to repay the unemployment benefits overpaid, the commissioner may offset from any future unemployment benefits otherwise payable the amount of the overpayment. Except when the overpayment resulted because the applicant failed to report deductible earnings or deductible or benefit delaying payments, no single offset may exceed 50 percent of the amount of the payment from which the offset is made. The overpayment may also be collected by the methods allowed under state and federal law.

(c) If an applicant has been overpaid unemployment benefits under the law of another state, because of a reason other than fraud, and that state certifies that the applicant is liable under its law to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment, except that no single offset may exceed 50 percent of the amount of the payment from which the offset is made.

Subd. 2. **Overpayment because of fraud.** (a) Any applicant who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud. After the discovery of facts indicating fraud, the commissioner must make a determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund. In addition, the commissioner must assess a penalty equal to 40 percent of the amount fraudulently obtained. This penalty is in addition to penalties under section 268.182.

(b) Unless the applicant files an appeal within 20 calendar days after the sending of the determination of overpayment by fraud to the applicant by mail or electronic transmission, the determination is final. Proceedings on the appeal are conducted in accordance with section 268.105.

(c) If the applicant fails to repay the unemployment benefits, penalty, and interest assessed, the total due may be collected by the methods allowed under state and federal law. A determination of overpayment by fraud must state the methods of collection the commissioner may use to recover the overpayment. Money received in repayment of fraudulently obtained unemployment benefits, penalties, and interest is first applied to the unemployment benefits overpaid, then to the penalty amount due, then to any interest due. 62.5 percent of the payments made toward the penalty are credited to the contingent account and 37.5 percent credited to the administration account.

(d) If an applicant has been overpaid unemployment benefits under the law of another state because of fraud and that state certifies that the applicant is liable to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment.

(e) Unemployment benefits paid for weeks more than four years before the date of a determination of overpayment by fraud issued under this subdivision are not considered overpaid unemployment benefits.

Subd. 2a. [Renumbered subd 3a]

Subd. 2b. **Interest.** (a) On any unemployment benefits fraudulently obtained, and any penalty amounts assessed under subdivision 2, the commissioner must assess interest at the rate of 1-1/2 percent per month on any amount that remains unpaid beginning 30 calendar days after the date of the determination of overpayment by fraud. A determination of overpayment by fraud must state that interest will be assessed.

(b) If the determination did not state that interest will be assessed, interest is assessed beginning 30 calendar days after notification, by mail or electronic transmission, to the applicant that interest is now assessed.

(c) Interest payments under this section are credited to the administration account.

Subd. 3. [Renumbered 268.182]

Subd. 3a. **Offset of federal unemployment benefits.** The commissioner is authorized to enter into reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of unemployment benefits as determined under federal law, may be recovered by offset from unemployment benefits otherwise payable and unemployment benefit overpayments under subdivisions 1 and 2 may be recovered by offset from unemployment benefits otherwise payable under a federal program.

Subd. 4. **Cancellation of overpayments.** (a) If unemployment benefits overpaid under subdivision 1 are not repaid or offset from subsequent unemployment benefits as provided for in subdivision 1 within six years after the date of the determination or decision holding the applicant overpaid, the commissioner must cancel the overpayment balance, and no administrative or legal proceedings may be used to enforce collection of those amounts.

(b) If unemployment benefits determined overpaid under subdivision 2 including penalties and interest are not repaid within 15 years after the date of the determination of overpayment by fraud, the commissioner must cancel the overpayment balance and any penalties and interest due, and no administrative or legal proceeding may be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time any overpayment, including penalties and interest, that the commissioner determines is uncollectible because of death or bankruptcy.

Subd. 4a. **Court fees; collection fees.** (a) If the commissioner is required to pay any court fees in an attempt to enforce collection of overpaid unemployment benefits, penalties, or interest, the commissioner may add the amount of the court fees to the total amount due.

(b) If an applicant who has been determined overpaid unemployment benefits because of fraud seeks to have any portion of the debt discharged under the federal bankruptcy code, and the commissioner files an objection in bankruptcy court to the discharge, the commissioner may add the commissioner's cost of any court fees to the debt if the bankruptcy court does not discharge the debt.

(c) If the Internal Revenue Service assesses the commissioner a fee for offsetting from a federal tax refund the amount of any fraud overpayment, including penalties and interest, the

amount of the fee may be added to the total amount due. The offset amount must be put in the trust fund and that amount credited to the total amount due from the applicant.

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 5. **Remedies.** (a) Any method undertaken to recover an overpayment of unemployment benefits, including any penalties and interest, is not considered an election of a method of recovery.

(b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter under section 176.361 is not considered an election of a remedy and does not prevent the commissioner from determining any unemployment benefits overpaid under subdivision 1 or 2 or taking action under section 268.182.

Subd. 6. [Renumbered 268.184]

Subd. 6. **Collection of overpayments.** (a) The commissioner may not compromise the amount that has been determined overpaid under this section including penalties and interest.

(b) The commissioner has discretion regarding the recovery of any overpayment under subdivision 1. Regardless of any law to the contrary, the commissioner is not required to refer any amount determined overpaid under subdivision 1 to a public or private collection agency, including agencies of this state.

(c) Amounts determined overpaid under subdivision 1 are not considered a "debt" to the state of Minnesota for purposes of any reporting requirements to the commissioner of management and budget.

(d) A pending appeal under section 268.105 does not suspend the assessment of interest, penalties, or collection of an overpayment under this section.

(e) Section 16A.626 applies to the repayment by an applicant of any overpayment, penalty, or interest under this section.

History: (4337-36) *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 71-73,79; 1998 c 265 s 36,45; 1999 c 107 s 55,66; 2000 c 343 s 4; 2001 c 175 s 46; 1Sp2003 c 3 art 2 s 16,17,20; 2004 c 183 s 78-81; 2004 c 206 s 52; 2005 c 112 art 2 s 36-38; 2007 c 128 art 1 s 19; art 2 s 12-14; art 6 s 88,89; 2009 c 78 art 3 s 14; art 4 s 43,44,50; 2009 c 101 art 2 s 109*