

CHAPTER 82
FORMERLY
HOUSE BILL NO. 149

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE RECOUPMENT OF OVERPAYMENT OF BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3325, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

~~Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment,~~

(a) If it is finally determined that an individual received benefits under this chapter for which the individual was not entitled, the individual shall repay, in cash, the amount of the overpayment to the Department for the Unemployment Compensation Fund, ~~or to have such sum deducted from future benefits payable to the person under this chapter. Fund.~~ The ~~person shall be so~~ individual is liable regardless of whether ~~such sum~~ the overpayment was received through fraud or mistake, or whether ~~that person~~ the individual was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto.

(b) Nonfraud overpayments are collected as follows:

(1) If the person becomes eligible for benefits before ~~such sum~~ the amount of the overpayment is completely repaid, the Department shall deduct the remaining balance of ~~such sum~~ the overpayment from ~~such~~ the benefits. ~~Except where the person obtained the overpayment by fraud, the~~

a. The Department ~~may, in its discretion,~~ has the discretion to elect not to require repayment of ~~such sum~~ the overpayment amount in cash, and elect to only deduct ~~such sum~~ the overpayment amount from subsequently awarded benefits. ~~For nonfraud overpayments, the~~

b. The deduction from subsequently awarded benefits ~~shall~~ can be only 50% of the payable weekly benefit amount until the overpayment is completely repaid, ~~while 100% of the payable weekly benefit amount shall be deducted from subsequently awarded benefits until the overpayment is completely repaid when the overpayment was the result of fraud.~~ repaid.

(2) Discretionary decisions by the Department of how or by what means ~~it~~ the Department elects to collect nonfraud overpayments, ~~that is, either~~ including by cash or ~~cash,~~ deduction from subsequently awarded benefits, or by any other means, are administrative collections decisions made by the executive branch of government and are not subject to review by quasi-judicial or judicial tribunals of this State. ~~In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or state law.~~

(3) The Department may not collect interest on a nonfraud overpayment.

(c)(1) When the Department determines that a claimant who is liable to repay any ~~sum~~ overpayment amount committed fraud in order to obtain benefits, the claimant shall be required to repay the ~~sum~~ overpayment amount due to the Department as well as interest thereon. Benefit overpayments paid to a claimant as the result of fraud shall be repaid with interest at the same rate as provided for past due assessments and reimbursement payments in lieu of assessments ~~in~~ under § 3357 of this title and ~~Department of Labor Regulation No. 45. § 1202-18, Title 19 of the Delaware Administrative Code.~~ Interest collected pursuant to this section shall be paid into the Special Administration Fund. In addition, a monetary penalty of 15.0% of the amount received by a claimant as the result of fraud shall be assessed. The monetary penalty collected ~~pursuant to~~ under this section shall be paid into the Unemployment Compensation Fund ~~as referenced in~~ under § 3161 of this title.

(2) When the Department determines that an individual obtained an overpayment by fraud, in addition to any disqualification under § 3314(6) of this title, the individual is disqualified from receiving benefits for any week of unemployment, including the week in which the determination of fraud is made, until the Department determines that all of the following have occurred:

a. The total amount of the fraud overpayment has been repaid in full.

b. The monetary penalty, including interest, under this subsection has been paid in full.

(3) For fraud overpayments established by final decision before the [the effective date of this Act], paragraph (c)(2) of the section does not apply and the Department may choose to deduct the remaining balance of the fraud overpayment due to the Department from future benefits payable to the individual under this chapter, with 100% of the payable weekly benefit amount being deducted from the subsequent awarded benefits until the fraud overpayment established before [the effective date of this Act] is completely repaid.

(d) The Department shall issue a notice of ~~overpayment~~ overpayment that includes the grounds for the overpayment, and an order for recoupment, ~~stating it's the grounds therefor,~~ before initiating action to collect the overpayment. Unless ~~the person~~ an individual files an appeal to an Unemployment Insurance appeals referee within 10 days after ~~such~~ the order for recoupment was mailed to the ~~person~~ individual at the ~~person's~~ individual's last known ~~address,~~ address or otherwise delivered to the individual by the Department, the order ~~shall be~~ for recoupment is final and recoupment shall be made in accordance with ~~such~~ the order. ~~Appeal~~ An appeal from an Unemployment Insurance appeals referee decision to the Unemployment Insurance Appeal Board must be filed within 10 days after such decision was mailed to the ~~person.~~ Appeal individual or otherwise delivered to the individual by the Department. An appeal from the Unemployment Insurance Appeal Board decision to Superior Court may be made in the same fashion as an appeal of the Unemployment Insurance Appeal Board's benefit decisions.

~~In the absence of fraud, in any case under this section in which a claimant is liable to repay to the Department any sum for the Unemployment Compensation Fund, such sum shall be collectible without interest in the name of the Department. Where, however,~~

(e) Any employer who makes a deduction from a back wage award to a claimant because of the claimant's receipt of unemployment benefits, for which the claimant has become ineligible by reason of ~~such~~ the award, shall be

liable to pay into the Unemployment Compensation Fund an amount equal to the amount of ~~such~~ the deduction. When the employer has made ~~such~~ the payment into the Unemployment Compensation Fund, the amount of ~~such~~ the payments shall be considered when determining, if applicable, ~~said~~ the employer's entitlement to rehire credit.

(f)(1) The Department may ~~write off~~ do any of the following when an individual has an overpayment debt:

a. Write off, in whole or in ~~part~~ part, an overpayment debt after a period of 3 years, when it has ascertained after investigation and after reasonable attempts at collection that the overpayment debt is wholly or partly uncollectible. The Department may prescribe the appropriate accounting methods by which the uncollected portion of the debt ~~shall be~~ is written off its accounts instead of being carried indefinitely as an uncollected debt. ~~No action shall be taken by the Department to collect~~

b. Collect an overpayment of benefits ~~to any person after a period of 5 years from the end of the benefit year, as defined in § 3302(3) of this title, with respect to which such benefits were paid, unless during this 5-year period, the Department has brought~~ by bringing a civil action in a court of competent jurisdiction against the claimant.

(2) ~~Any~~ The Department shall credit any payment on account by a claimant on an overpayment, by any means, except the offset of subsequently awarded benefits, ~~by the Department shall be credited~~ against the outstanding indebtedness of the claimant in the following ~~manner; first,~~ manner:

a. First, principal on fraud overpayments in oldest to newest outstanding indebtedness ~~order; second,~~ order.

b. Second, interest on fraud ~~overpayments; third,~~ overpayments.

c. Third, monetary penalty on fraud ~~overpayments; fourth,~~ overpayments.

d. Fourth, principal on nonfraud overpayments in oldest to newest outstanding indebtedness ~~order;~~ and, fifth, order.

e. Fifth, court costs.

(3) ~~Any~~ The Department shall credit any collection of an overpayment by the offset of subsequently awarded benefits by the Department ~~shall be credited~~ only against the principal of the outstanding indebtedness of the claimant ~~in accordance with~~ under § 303(a)(5) of the Social Security Act (42 U.S.C. § 503) and § 3304(a)(4) of the Federal Unemployment Tax Act (26 U.S.C. § 3304). The Department shall credit an offset of subsequently awarded benefits in the following manner:

a. First, to fraud overpayment principal in oldest to newest outstanding indebtedness order.

b. Second, to nonfraud overpayment principal in oldest to newest outstanding indebtedness order.

(g) In addition to the methods of collection authorized under this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or State law.

Section 2. This Act takes effect 60 days after its enactment into law.

Approved June 30, 2019