

CHAPTER 282
FORMERLY
HOUSE BILL NO. 160

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE DIVISION OF UNEMPLOYMENT COMPENSATION.

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, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter. The person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto. If the person becomes eligible for benefits before such sum is completely repaid, the Department shall deduct the remaining balance of such sum from such benefits. Except where the person obtained the overpayment by fraud, the Department may, in its discretion, elect not to require repayment of such sum in cash, and elect to only deduct such sum from subsequently awarded benefits. For nonfraud overpayments, the deduction from subsequently awarded benefits shall 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. Discretionary decisions by the Department of how or by what means it elects to collect nonfraud overpayments, that is, either by cash or 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, Title 30 of the Delaware Code, § 5402 of the Federal Internal Revenue Code (26 U.S.C. § 5402), § 503(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under Federal or State law.

The Department shall issue a notice of overpayment and an order for recoupment, stating its grounds therefor, before initiating action to collect the overpayment. Unless the person files an appeal to an Unemployment Insurance appeals referee within 10 days after such order was mailed to the person at the person's last known address, the order shall be final and recoupment shall be made in accordance with such order. 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 from the Unemployment Insurance Appeal Board decision to Superior Court may be made in the same fashion as an appeal of the 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, the Department determines that a claimant who is liable to repay any sum committed fraud in order to obtain benefits, the claimant shall be required to repay the sum 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 § 3357 of this title and Department of Labor Regulation No. 45. 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 this section shall be paid into the Unemployment Compensation Fund as referenced in § 3161 of this title.

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 award, shall be

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

The Department may write off in whole or in 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 written off its accounts instead of being carried indefinitely as an uncollected debt. No action shall be taken by the Department to 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 a civil action in a court of competent jurisdiction against the claimant. 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, principal on fraud overpayments in oldest to newest outstanding indebtedness order; second, interest on fraud overpayments; third, monetary penalty on fraud overpayments; fourth, principal on nonfraud overpayments in oldest to newest outstanding indebtedness order; and, fifth, court costs. 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 § 303(a)(5) of the Social Security Act (42 U.S.C. § 303) and § 3304(a)(4) of the Federal Unemployment Tax Act (26 U.S.C. § 3304). Such offsets shall be credited first to fraud overpayment principal and second to non-fraud overpayment principal in oldest to newest outstanding indebtedness order.

Section 2. Amend § 3360, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3360 Assessments, penalties and interest as debt to Fund; reduction to judgment; other means of collection.

(a) The assessments, penalties and interest due from the employer under this chapter, from the time they become due, shall be a debt of the employer to the Unemployment Compensation Fund and may be reduced to judgment in accordance with §§ 3358 and 3361 of this title, except that the interest and penalty from the employer under this title after September 30, 1967, and the additional emergency assessment required under § 3391 of this title shall be a debt of the employer to the Special Administration Fund of the Department of Labor.

(b) In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due from any employer under this chapter as provided in § 545, Title 30 of the Delaware Code, § 5402 of the Federal Internal Revenue Code (26 U.S.C. § 5402), § 503(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under Federal or State law.

Section 3. Amend § 3384, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3384 Receipt of benefits by misrepresentation.

Whoever, by reason of the nondisclosure or misrepresentation by that person or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in that person's case or while that person was disqualified from receiving benefits shall, in the discretion of the Department, either be liable to have such sum deducted from any future benefits payable to that person under this chapter or shall be liable to repay to the Department for the Unemployment Compensation Fund a sum equal to the amount so received by that person, and such sum shall be collectible in the manner provided in § 3358 of this title for the collection of past-due assessments, or shall be liable to have such sum collected by the Department as provided in § 545, Title 30 of the Delaware Code, § 5402 of the Federal Internal Revenue Code (26 U.S.C. § 5402), and § 503(m) of the Social Security Act (42 U.S.C. § 503(m)).

Approved June 28, 2016