REASONS FOR ADOPTING RULES

RCW 50.20.190 permits the department to waive an overpayment of unemployment benefits when collection would be against equity and good conscience. RCW 50.24.020 authorizes to compromise benefit overpayments when collection of the full amount would be against equity and good conscience. The department adopted rules in 1985 establishing the circumstances under which overpayments could be waived. The Court of Appeals, in the case of *Delagrave v. ESD*, 127 Wn.App. 596, issued a published opinion holding that the department’s definition of the term “equity and good conscience” was narrower than intended by the statute. The department was instructed to use the standard of “fairness” when deciding if an overpayment should be waived or a compromise accepted. These regulations redefine the term “equity and good conscience” consistent with the Court’s opinion, and specify the conditions under which a waiver or compromise will be granted. Existing overpayment rules are revised to clarify other provisions relating to the recovery of benefit overpayments.

DIFFERENCES BETWEEN PROPOSED RULES AND ADOPTED RULES

- WAC 192-230-100(1) – A scrivener’s error resulted in this section of the proposed rules incorrectly identifying the additions and deletions to the existing rule. Underscores and strikethroughs were added to the final rule. There was no change in the text of the rule.
- WAC 192-230-100(3)(b) – The words “note that” were removed from the final sentence.
- WAC 192-230-130 – The words “unemployment benefits” were added to the first sentence to identify the correct collection unit.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

**Comment:** In determining the factors that should be considered when deciding whether an overpayment should be waived or compromised, the department should take a “panoramic view that encompasses all factors” including age, education, literacy, transportation, student status, employment history, family size, etc.

**Incorporated in Final Rules:** The final rules include a non-exclusive list of the factors the department will weigh to determine whether an overpayment will be waived, including many of the factors that were suggested for inclusion. A modified version of this list is used to determine whether the overpayment should be compromised.

**Comment:** The department should consider whether collection of the full amount of the overpayment is cost effective.

**Incorporated in Final Rules:** The final rules provide that, in deciding whether a settlement (compromise) should be accepted, the emphasis will be on the financial advantage to the department, including the costs of collection compared to the amount of the overpayment.

**Comment:** The rules should find a middle ground between the needs of the department to recover as much as they can and the needs of the claimant to receive unemployment benefits. Waiver of “all or none” is too harsh. Claimants should be entitled to at least a partial waiver under certain circumstances.
Incorporated in Final Rules: The final rules provide that payment of the “full amount” is required unless waiver is granted, allowing the department to consider waiving the overpayment in full or in part.

Comment: At the end of WAC 192-230-110(2)(b), take out the phrase “other information relevant to your ability to repay.”

Reasons Not Incorporated in Final Rules: The phrase is included to permit the department to consider factors in addition to those listed in the rule when deciding whether a settlement should be accepted.

Comment: An offer in compromise should not be accepted when the overpayment results from fraud, misrepresentation, or willful nondisclosure. It is not allowed for misconduct overpayments which aren’t as serious as those resulting from fraud.

Reasons Not Incorporated in Final Rules: RCW 50.24.020 does not restrict the types of overpayments for which compromise may be granted. The misconduct statute, RCW 50.20.066, specifies that no waiver or compromise may be granted for overpayments resulting from a discharge for misconduct. There is no similar provision in the statute for overpayments resulting from fraud. Therefore, the department does not have the authority to refuse to compromise fraud overpayments under any circumstances.

Comment: The claimant’s education level should not be relevant to the decision to allow or deny waiver. The fact that a claimant is highly educated does not necessarily mean they are able to repay the overpayment.

Reasons Not Incorporated in Final Rules: A claimant’s education level may be relevant in some situations to the decision to allow or deny waiver. However, no single factor is dispositive and the department will weigh all factors before making a decision.

Comment: Whether the employer contributed to the overpayment by providing inaccurate information or failing to respond to a request for information should not be a factor in allowing or denying a waiver request. The decision should be limited to the claimant’s financial situation and whether requiring repayment of the full amount would leave them financially destitute.

Reasons Not Incorporated in Final Rules: The court’s decision requires the department to look beyond financial considerations and determine whether, considering all factors, waiver should be granted. The rules provide for errors or omissions by the claimant and the department, and now apply to the third party involved, the employer.

Comment: The employer’s contribution to the overpayment should be considered. Frequently the employer fails to respond to requests for information from the department. They provide this information for the first time at the appeal hearing. If benefits are denied, the claimant has an overpayment which would not have occurred if the employer had responded before the department issued its decision.

Incorporated in Final Rules: See previous response.