

**CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-5(b) and 41-22-6(c) (2)
a. and b.)

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 10th day of August 2022.

AGENCY NAME: Alabama Department of Labor

RULE NO. AND TITLE: 480-4-4-.07 Waiver of Requirement to Repay Overpayments

EFFECTIVE DATE OF RULE: August 19, 2022

EXPIRATION DATE (If less than 120 days): _____

NATURE OF EMERGENCY: Alabama's current administrative rule allows waivers of overpayments of unemployment benefits in extremely rare and narrow circumstances, but only if the overpayment is not the result of a loss on appeal by a claimant. This requirement is onerous, and its practical effect is that only a tiny fraction of waivers may be granted, if any. Compounding this situation, as a result of the COVID-19 Pandemic beginning in March 2020, ADOL was inundated with claims made on CARES Act programs. Many of these claims are now resulting in non-fraudulent overpayment determinations being sent to Alabama's most vulnerable citizens, some of which may be due to agency error or other criteria that has recently been approved by US DOL to be considered for waiver. The adoption of this emergency rule will allow ADOL the flexibility it needs to consider waivers of overpayment in cases where it is not the fault of the claimant, and when repayment of that overpayment would be contrary to equity and good conscience. It is a matter of public emergency that ADOL be granted this flexibility until such time that a final rule can be implemented.

STATUTORY AUTHORITY: §§25-2-7, 25-2-8, 25-4-111, 25-4-145

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS X YES NO

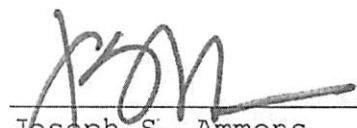
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REC'D & FILED

AUG 19 2022

LEGISLATIVE SVC AGENCY



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FILING DATE
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ALABAMA DEPARTMENT OF LABOR
ADMINISTRATIVE CODE

CHAPTER 480-4-4
INVESTIGATION AND COLLECTION

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480-4-4-.07 Waiver of Requirement to Repay Overpayments

(1) An individual shall be required to repay an overpayment of unemployment compensation unless a written waiver application is filed with the department and approved by the Secretary or the Secretary's designee.

(2)(1) The requirement for an individual to repay an a final determination of overpayment resulting from other than a false statement, misrepresentation of fact or failure to report or disclose a material fact and the determination of such overpayment has become final, may be waived by the Secretary Director, at his or her discretion using the criteria listed in paragraphs (2) through (13) of this Rule, when it has been determined that the payment of such benefits occurred without fault constituting the overpayment was without fault on the part of the individual, and collection of such overpayment would be contrary to equity and good conscience. receiving the benefits except Tthe Director Secretary shall not waive overpayments due to back pay awards pursuant to under Code of Ala. 1975, §25-4-78(b)(6) and overpayments created by a reversal on appeal and overpayments resulting from Java decisions pursuant to Code of Ala. 1975, §25-4-91(d)(1)a, except as permitted by paragraph 12(b) herein.

(32) In determining whether the individual receiving benefits constituting the over payment was without fault, on the part of the individual the following factors shall be considered:

(a) Whether an inaccurate ~~a~~ statement or representation of a material nature was made by the individual in connection with the application for unemployment compensation that resulted in the overpayments, and whether the individual knew or should have known that the statement or representation was inaccurate.

(b) Whether the individual failed, or caused another to fail, to disclose a material fact in connection with an application for unemployment compensation that resulted in an overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew, or ~~could~~ should have been expected to know, that the individual was not entitled to the receipt of such benefit payments.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action, commission or omission, of the individual or of which the individual had knowledge, and which the individual knew to be ~~was~~ erroneous, ~~or~~ inaccurate, or ~~was~~ otherwise incorrect.

(e) Whether the overpayment was the result of a decision on appeal, and whether the Secretary ~~Director~~ had given notice to the individual that the case had been further appealed and the individual may be required to repay the overpayment in the event of the reversal of the appeals decision.

(f) Whether the Agency's decision resulting in the overpayment was incorrect, and whether the U.S. Department of Labor has issued guidance advising that waiver is appropriate in the circumstances leading to the establishment of the overpayment.

(~~43~~) In the event of an affirmative finding on any of the factors contained in (~~32~~) (a)-(d) of this rule, recovery of the overpayment shall not be waived, and further determination of any factors will not be necessary.

(~~54~~) When an overpayment results from payment of benefits based on exempt or non-covered wages erroneously reported by an employer, such overpayment may be waived by the Secretary ~~Director~~ without application of the foregoing criteria.

~~(65)~~ The decision of the Secretary as to a waiver of overpayment findings of the Director in regard to the waiver of the repayment of an overpayment is an appealable decision. However, the only issue to be considered on such an appeal that results from an appeal on an overpayment is whether ~~or not~~ the Secretary Director abused his or her discretion in denying the waiver in accordance with the other provisions of this rule.

~~(76)~~ This rule will apply equally to regular state unemployment compensation benefits, extended benefits, and any other special programs of benefits where there are no separate and distinct waiver provisions.

~~(87)~~ A waiver of overpayment under the provisions of this rule that which affects the account of a reimbursing an employer who is required, or elects, to make payments in lieu of contributions will not result in a credit to their account unless such credit is specifically provided for by statute.

~~(98)~~ The amount of any overpayment, repayment of which is waived in accordance with this rule, will not be restored to the individual's maximum benefit amount.

~~(109)~~ Applications for waiver by an individual shall be in writing or electronically as provided by the Agency, and shall set forth the facts constituting grounds for waiver, including why the individual was without fault in the cause of the overpayment, and why repayment would be contrary to equity or good conscience, including supporting documentation.

~~(110)~~ The Secretary Director may, acting upon his or her own motion, and without application by the individual, waive recovery of any overpayment upon discovery of information found to constitute grounds for waiver as set forth in this rule. When authorized by federal law and regulations, and when it would not create a federal conformity issue, the Department may approve blanket waivers for groups of similarly situated individuals.

~~(124)~~ COVID-19 Pandemic Overpayment Provision

(a) Any waiver applications by individuals with eligible overpayments of CARES Act Programs that were denied prior to the effective date of this rule will be subject to a redetermination in light of this rule; provided, however, that only overpayment

weeks ending February 2, 2020, through June 16, 2021, shall be eligible for redetermination.

(b) Benefits overpaid under any CARES Act Program, including those such determinations created by a reversal on appeal pursuant to §25-4-91(d)(1)a, may be waived pursuant to the provisions of this rule.

(13) The provisions of this rule shall apply to all overpayments existing on or after the effective date of this rule that which were established on or after January 27, 2020. February 24, 1983 except that Section 480-4-4-.07(5) shall be effective December 1, 1992.

Authors: George Cocoris, John Benton, Alysonne O. Hatfield.

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Emergency Rule Effective: November 8, 1983. Permanent Rule Effective: February 27, 1984. This rule is intended to implement Code of Ala. 1975, §25-4-145 as amended through February 24, 1983. Emergency Amendment Effective: February 12, 1993, Permanent Amendment Effective May 17, 1993. Emergency Rule Effective: August 19, 2022.