

When time is of the essence



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Unemployment beneficiaries at-risk under new law

by Michelle Wrona Fox, managing attorney

Unemployment compensation is a critical safety net benefit providing short-term income to workers who lose their jobs through no fault of their own and are actively seeking work. These benefits help working individuals and families when they are down - ensuring they have the means to keep food on the table and rent paid. Essentially, unemployment compensation means they can stay on their feet until they find a new gainful employment opportunity. Further, when the unemployed keep spending, negative impact on the economy is minimized as is a potential spiral of continued job loss and decline. Throughout the pandemic, thousands of Ohioans relied on this critical financial support through turbulent times.

Unfortunately, after much-needed enhanced unemployment assistance throughout the pandemic, the pendulum is swinging the other way for many unemployed or formerly unemployed Ohioans in 2023. The age-old challenge of interacting with the [unemployment compensation \(UC\) system is expected to get worse with the passage of Senate Bill 302](#) - signed by the governor and effective as of April 3, 2023.

This change to the state's unemployment law significantly increases the time the Ohio Department of Job and Family Services (ODJFS) has to look back and make a "corrective determination" on past UC payments and force Ohio workers to pay money back. Corrective determinations can occur when there is a typographical or clerical error in a previous determination, when an employer made a mistake in information it provided, or incorrect salary information is received. Under the new law, the time for making corrective actions increases from 52 calendar weeks to 208 calendar weeks.

Allowing ODJFS up to four years to make corrective actions and claw back money may have a devastating impact on working Ohioans. While some corrective actions determine there was an underpayment and result in a worker getting more money, most corrective determinations find that workers received too much money. This means that unemployed workers who received what they believed were rightful UC payments up to four years ago could be held liable to pay that money back. These are often exorbitant amounts - sometimes as much as \$40,000 - given the supplemental weekly benefits awarded under Federal Pandemic Unemployment Compensation (FPUC). Every notice these unemployed workers received said they were due this money. They relied on it when it was paid - and didn't plan their current household budgets around repayment of this new debt.

Worst of all, many may not even know a corrective determination was made - effectively violating due process rights and preventing their timely response to the decision. In the whirlwind of life, and especially in the face of myriad struggles that can come with being a member of the working poor, a few years ago may seem like a lifetime ago. Many may have moved, maybe even more than once, and notices

from ODJFS may not have followed. Others may be receiving notifications in their online UC accounts or over email, but don't check these due to lack of internet access or the assumption that these matters are long resolved. To make matters worse, unemployed workers who actually do become aware of these troubling determinations only have 21 days to challenge the decision. Compare this with the over 1,400 days the agency has to issue the corrective determination under the new law.

The trouble is, this extended lookback period coupled with dramatically higher UC support during the pandemic years is poised to create a perfect storm for many members of the working poor and middle class. Imagine receiving an unexpected overpayment notice for thousands or tens of thousands of dollars from a period of unemployment years ago. You are working hard to make ends meet, and suddenly this unexpected and major hurdle appears. You may even have evidence to prove the overpayment ruling is wrong, but you're unsure how to proceed. These overpayments can cause a new kind of financial peril to a recently restabilized household. This unforeseen financial obligation could result in stress, health problems, inability to pay rent or purchase groceries, taking much-needed and relied upon tax refunds, or even the inability to receive a new round of unemployment compensation until resolved.

As is so often the case, a system that was designed to help has become harmful.

This is not a new issue in the UC arena, but the new law is likely to exacerbate an existing issue dramatically. With the new lookback period and the probable level of error during the pandemic, we are expecting a wave of these overpayment corrective determinations. This reality calls for broad community education. Anyone who has received UC benefits in the past four years should be vigilant. Just because you think it's over, it may not be over. Community partners should advise their clients to log into their UC accounts periodically and ensure they provide an updated mailing address and email address. For those who can't regularly access the internet, consider requesting paper communications via regular mail. If claimants are within their 21 day appeal period, they should take steps to appeal. If the period

has lapsed, they can still attempt to file a late appeal by showing “good cause” or a good reason for filing late. Unfortunately, a strict test applies to qualify for this exception. Additionally, there is a new process that allows a worker to request that the overpayment be waived or canceled if it was not their fault and it’s against equity and good conscience to collect. Workers can request the form online through the state system or call customer service and have the form mailed.

As is so often the case, the best strategy to protect yourself and your family is to keep your eyes open, read your email and mail, and ask a lot of questions.

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