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# Emergency Rules

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**Title 8—DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS  
Division 10—Division of Employment Security  
Chapter 3—Unemployment Insurance**

**EMERGENCY RULE**

**8 CSR 10-3.160 Waiver of Recovery of Overpayments Under the  
Coronavirus Aid, Relief and Economic Security Act (CARES), as  
Amended**

*PURPOSE: This rule prescribes criteria for waiver of recovery of overpaid unemployment benefits under the CARES Act, as amended, that were not obtained through fraud. The intent of this emergency rule is to allow those individuals with non-fraud overpayments under the federal coronavirus relief programs to request a waiver of recovery of overpayments and to set forth the criteria under which those requests will be evaluated. Such waivers are authorized by the federal coronavirus relief programs. See, e.g., CARES Act, Sects. 2104(f), 2107(e); Continued Assistance for Unemployed Workers Act, Sect. 201.*

*EMERGENCY STATEMENT: This emergency rule implements a process whereby those claimants with non-fraud overpayments under the CARES Act, as amended, can request a waiver of recovery. There are some claimants in this situation due to some ambiguities in the federal coronavirus relief laws. The CARES Act, as amended, permits these waiver of recovery requests. There is a compelling governmental interest in relieving those eligible Missourians from these overpayments under the CARES Act, as amended, and in doing so as quickly as possible.*

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Division of Employment Security believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed July 2, 2021, becomes effective July 19, 2021, and expires February 24, 2022.*

(1) Any person who is overpaid unemployment benefits under the CARES Act, as amended, is liable for the amount overpaid unless, based upon an application to the division in a format prescribed by the division, the division determines that the claimant is entitled to a waiver of recovery of the overpayment, based on the following criteria:

(A) The overpayment was received without fault of the claimant, and

(B) The recovery of the overpayment would be against equity and good conscience.

(2) The application for waiver must be received by the division within thirty (30) calendar days after the mailing or other transmission to the individual of the notice of the overpayment, or of the notice of opportunity to apply for a waiver.

(3) Fault of the claimant.

(A) In determining fault, the division shall consider the nature and cause of the overpayment.

(B) A claimant who receives or retains benefits which he or she knew or reasonably should have known he or she was not lawfully entitled to receive is at fault.

(C) Fault shall include, but not be limited to, the following:

1. Fraud or misrepresentation regarding the claim (a representation of fact, in relation to the claim, that the claimant knew or should have known was false);

2. Failure to disclose (failing to disclose a fact, in connection with the claim, that the claimant knew or should have known was significant to the claim); and

3. Negligence (failing to exercise the care that a reasonable person of ordinary prudence would exercise in submitting the claim).

(D) What an individual should have known is determined from the perspective of a reasonable person of ordinary prudence in the same or similar circumstances. However, the division may consider an individual's age and physical or mental condition as mitigating factors against finding fault.

(4) Equity and good conscience.

(A) In determining whether repayment would be against equity and good conscience, the division will consider the totality of the circumstances to include, but not limited to:

1. Detrimental Reliance. Whether the individual acted in reliance on the overpayment and gave up a valuable right because of the overpayment or changed his or her position for the worse because of the overpayment.

A. An individual gives up a valuable right when he or she gives up a valuable privilege, claim, entitlement, or benefit having monetary worth because of the overpayment; or

B. An individual has changed his or her position for the worse when he or she, in reasonable reliance on the overpayment, decides to do something that he or she otherwise would not have done. To establish a change in position for the worse, the individual must demonstrate a change in actions or behavior, not simply that the overpayment had been spent.

2. Undue Hardship. Whether circumstances exist, including health problems or disability of the claimant or a family member, in which collection would deprive the individual or household of basic necessities.

(5) Waiver of recovery of indebtedness is an equitable remedy and, as such, must be based on an assessment of the facts involved in the individual case under consideration.

(6) The burden is on the individual to demonstrate that waiver of recovery is appropriate.

(7) The division shall notify the claimant of its decision on the waiver request in writing by mail or other transmission.

(8) The claimant may appeal the division's decision on the waiver request by filing an appeal with the Appeals Tribunal within thirty (30) calendar days after mailing or other transmission of the division's decision to the individual. The provisions of Sect. 288.200 and 288.210, RSMo apply to further appeals.

*AUTHORITY: sections 288.070 and 288.220.5, RSMo 2016, and section 288.040, RSMo Supp. 2020. Emergency rule filed July 2, 2021, effective July 19, 2021, expires Feb. 24, 2022. An emergency rule and a proposed rule covering this same material will be published in the August 16, 2021, issue of the Missouri Register.*

*PUBLIC COST: This emergency rule will cost state agencies or political subdivisions one million seven hundred seventy-eight thousand two hundred fifty-two dollars (\$1,778,252) in the time the emergency is effective. Full federal reimbursement is expected.*

*PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.*

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**FISCAL NOTE  
PUBLIC COST**

- I. Department Title: Title 8 – Department of Labor and Industrial Relations  
Division Title: Division 10 – Division of Employment Security  
Chapter Title: Chapter 3 – Unemployment Insurance**

<b>Rule Number and Name:</b>	8 CSR 10-3.160 Waiver of Recovery of Overpayments Under the Coronavirus Aid, Relief and Economic Security Act (CARES), as Amended
<b>Type of Rulemaking:</b>	Emergency

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
<b>Department of Labor and Industrial Relations</b>	<b>\$1,778,252 (to be fully reimbursed by federal government)</b>

**III. WORKSHEET**

25 Benefit Program Specialist FTE, 2 Benefit Program Supervisors and 2 Senior Hearing/Appeals Referees FTE

**IV. ASSUMPTIONS**

The estimated total cost for this would be \$1,778,252 for salary and fringe benefits that would be paid out of federal funding within the Division of Employment Security budget.