

Message: FW: Implementation of UC Program Integrity Amendments**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:08 PM
 Item ID: 40861241
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Implementation of UC Program Integrity Amendments**

From Wise, Steve [IWD] **Date** Monday, July 29, 2013 8:38 PM
To Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Cc

Tere,

This is response to your Lync conversation below. Based on all the correspondence below, I thought this was settled. Devon told me that UI Division had agreed that we would remand. Everything I did last week on the overpayment language to go into our decisions was based on this. My next step was to prepare a tutorial and schedule the training on handling this. The email sent by Devon was sent to both Ryan West and Dave Eklund and includes the whole history and reasoning why remand of those cases involving reversals of grants of benefits is the best approach. I'm not sure why we are revisiting this. My understanding is this was also discussed during the training.

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who made the decn that we would remand.

on op cases. dave e, who was out last week, seems to think that ff was going to make a decn on participation at ff. and then we would not remand, but make the decn

dave e has no follow up for bervid or wilkinson saying that we will not remand.

from bervid or wilinson

From: Lewis, Devon [IWD]
Sent: Wednesday, July 24, 2013 10:33 AM
To: West, Ryan [IWD]; Eklund, David [IWD]
Cc: Wise, Steve [IWD]; Hillary, Teresa [IWD]

Subject: FW: Implementation of UC Program Integrity Amendments

Dave and Ryan,

I'm heading out on vacation so want to put you in touch with Steve about the OP waiver/penalty language and FF training. I know you are holding back some FF decisions pending Appeals' action so we will move Steve's hearings if need be to accomplish this ASAP.

I now have access to work e-mail on my cell phone and will be available at 515-292-0712 if anyone needs to reach me. I plan to participate in our staff meeting by phone on August 1. I will be back at work on August 6.

Thanks,
Devon

From: Wise, Steve [IWD]

Sent: Wednesday, July 17, 2013 9:23 PM

To: Lewis, Devon [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]

Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]

Subject: RE: Implementation of UC Program Integrity Amendments

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Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]

Subject: RE: Implementation of UC Program Integrity Amendments

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Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]

Subject: RE: Implementation of UC Program Integrity Amendments

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To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does anyone have overpayment language for reasoning and conclusions so we can modify our shells????????????????? I want a one size fits all shell that hits all overpayment issues. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

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Subject: RE: Implementation of UC Program Integrity Amendments

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Subject: FW: Implementation of UC Program Integrity Amendments

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Let me know if you have other questions.

Steve

From: Wise, Steve [IWD]
Sent: Wednesday, July 03, 2013 9:51 AM
To: Walsh, Joseph [IWD]; Wilkinson, Michael [IWD]; Bervid, Joseph [IWD]; Eklund, David [IWD]
Subject: Implementation of UC Program Integrity Amendments

At the Director's request at our last staff meeting, I sent email inquiries about implementation of UC Program Integrity Amendments to other states. I sent emails to contacts in Kentucky, South Dakota, Maryland, Idaho, Alaska, Arkansas, New Hampshire, Nebraska, Oklahoma, Wisconsin, Minnesota, Georgia, Utah, Wyoming, and Washington. I am still getting responses back.

Many states who have responded have laws that won't go into effect until October 2013 and have laws stating an employer will be charged for an overpayment (1) due to Employer's failure to timely or adequately respond to requests for information **AND** (2) where that employer has a "pattern of failing to respond," which they intend to track for a period of time following the effective date of the law. States have various measures for patterns of failing to respond. The Maryland Chief Hearing Officer said "I will likely be contacting you in another month or two as we approach October to see how you guys got this up and running."

South Dakota is the state that has responded so far who has a statute with language similar to ours that does not require a "pattern of failing to respond" and a law that went into effect July 1, 2013.

Here's South Dakota's new law. "However, no relief of charges applies if the department determines that an erroneous payment has been made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the department's request for information relating to the payment of benefits. For the purposes of this section, an erroneous payment is a payment that would not have been made but for the failure of the employer or the employer's agent to fully respond to the

department's request pursuant to § 61-7-5.”

Administrative Law Judge Shannon George-Larson after consulting with UI Director Pauline Heier, stated:

We will hold hearings as usual when an employer appeals a determination granting benefits. We will list the usual issues of “Is Claimant disqualified from receiving benefits because Claimant voluntarily quit employment without good cause or was discharged for work-connected misconduct?” and “Is Employer’s experience-rating account subject to or exempt from charge?” If the ALJ decision reverses the Agency determination granting benefits, we will use the following language in the Conclusions and the Order to address the chargeability issue:

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The Agency will issue an overpayment determination to Claimant as usual if benefits have been paid. It will be up to the Agency to review the file and issue a determination finding Employer is subject to charge due to fault. If Agency does not issue a determination, our conclusion of no charge stands. If Agency issues a determination, the determination will go to Employer only with appeal rights. It would go to Employer only because in our view Claimant is not an interested party in this issue.

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Our UI department will be handling the issue of employer fault at the time we make a decision where an overpayment is created. The nonmonetary determination will include the following statement.
NOTICE TO EMPLOYER: Your experience rating account number {~15~} is charged for benefits paid from {beginning date} to {ending date} as you failed to respond timely or adequately to the department’s request for information. Your account is exempt from charge after {ending date}.

The difference between South Dakota and Iowa is that South Dakota has always had a general waiver of overpayment rule that an overpayment can be waived if a claimant requests a waiver of overpayment and establishes that claimant (1) was not at fault in receiving the overpayment, and (2) does not have the ability to repay the overpayment. That is why in South Dakota they say the claimant will not be an interested party on the employer charge issue. Also South Dakota has never included “whether the claimant was overpaid unemployment insurance benefits” as an issue in a separation appeal hearing. The reversal of an award of benefits by an ALJ in South Dakota always triggers the Overpayment unit to issue an overpayment determination.

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Policies:

No Policies attached

✉ RE: Implementation of UC Program Integrity Amendments

From Wise, Steve [IWD] **Date** Tuesday, July 30, 2013 8:39 AM
To Wilkinson, Michael [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc Wahlert, Teresa [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

 [OP Flowchart.pdf](#) (111 Kb HTML)  [Reference Code 41A Revised.doc](#) (47 Kb HTML)

As mentioned below, I'm prepared to present training to UI Appeals and UI Division staff on the overpayment process under Iowa Code 96.3-7-b, including training on the definition of participation. Toward that end, I'd created a flowchart that shows the process I thought had been agreed to. I've attached it.

I'd also drafted the language that UI Appeals will use in our decision to accomplish the remand and had submitted it to Tere , who turn shared it with Director Walhert. I've attached the language that I going to send out to the UI Appeals staff. Again, I think if you read through my explanation of the pros and cons on implementing the Iowa Code 96.3-7-b remanding is the best approach because you only have to address the issue when it is necessary.

I'm hoping that we can move forward and am willing to talk about this. I have hearings from 8:30 a.m. to 3 pm today, including an 11:30 hearing.

Steve

From: Wilkinson, Michael [IWD]
Sent: Tuesday, July 30, 2013 8:31 AM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Wise, Steve [IWD]; Wahlert, Teresa [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Subject: RE: Implementation of UC Program Integrity Amendments

This issue is not settled yet. Remand is just another word for "re-work". I brought this up with the Director late last week and we agreed that we did not think appeals and claims were on the same page. I will schedule a conference call for later today to discuss and make a decision.

From: Lewis, Devon [IWD]

Sent: Tuesday, July 30, 2013 8:00 AM

To: Hillary, Teresa [IWD]

Cc: Wise, Steve [IWD]; Wahlert, Teresa [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Subject: Re: Implementation of UC Program Integrity Amendments

At the 7/18 staff meeting during training we discussed this issue with RW and DE both present. I looked at them and asked them if they agreed we would have to remand. RW also said to me before PT-Q FF training that they were resigned to remands on the issue. There was some talk of the possibility of them handling it at the FF level but no one ever presented a plan a out how to handle that.

I'm available by phone today through Thursday if you want to conference me in to talk about this.
Dévon

On Jul 30, 2013, at 8:29 AM, "Hillary, Teresa [IWD]" <Teresa.Hillary@iwd.iowa.gov> wrote:

Because when I visited with both Mike W and Dave E yesterday both of them thought the issue had not been resolved. Mike W was not present for our training on July 18 and did not know that we discussed it at our staff meeting. When I was at the A-C meeting last Thursday, he still wanted to discuss what "participation" would mean and how we were going to handle the OP issue. When I talked to Dave E yesterday he said the last he knew of it was a July 3 meeting where he, Joe W, Joe B, you on the phone had a discussion and no decn was made. He did not stay for the staff meeting. I have no issue at all with the remand idea, but I do think in appeals we can do a better job of communicating what we are going to do.

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Sent: Monday, July 29, 2013 8:38 PM

To: Hillary, Teresa [IWD]; Lewis, Devon [IWD]

Subject: FW: Implementation of UC Program Integrity Amendments

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Image 1

**ALJ Remands
for OP Decision**

**No 96.3-7-b
Concerns**

Decision Final

**No 96.3-7-b
Concerns**

Appeals Bureau

Unemployment
Insurance Division

**Decision
Grants
Benefits?**

**Fact-finding
Interview
Separation
Issue**

Did

**Claimant
Receive
Benefits?**

**Appeal
Hearing**

**IWD issues
OP Recovery
and Charge
Decision**

**Employer
or
Claimant**

Appeals?

**Overpayment
Appeal
Hearing**

**Employer
Appeals?**

**Decision
Grants
Benefits?**

Yes

No

Yes

No

Yes

No

Yes

No

Yes

Overpayment Process Under Iowa Code 96.3-7-b

REFERENCE CODE 41A (revised):

Statute Paraphrased with remand language

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Full relevant part of Statute with remand language

Iowa Code § 96.3-7-a and 96.3-7-b(1) provide:

Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or

willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Message: FW: Implementation of UC Program Integrity Amendments

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:04 PM
Item ID: 40861125
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Implementation of UC Program Integrity Amendments

From Wise, Steve [IWD] **Date** Tuesday, July 16, 2013 2:59 PM
To Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]

Below is the email I sent to Joe W., Mike, Joe B. and Dave. There was a meeting after this that I attended by telephone conference that was inconclusive, although everyone agreed that the UI Division would have to have a process in place to handle remands on the issue of whether a claimant would be required to repay an overpayment and whether the employer's account would be charged for an overpayment because there are going to be cases where the fact finding materials would not be available. There was no conclusion that I am aware of that we absolutely could not remand these cases. UI Division was concerned about the computer programming issue of setting up a new ANDs decision or issuing a typed decision.

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Let me know if you have other questions.

Steve

From: Wise, Steve [IWD]
Sent: Wednesday, July 03, 2013 9:51 AM
To: Walsh, Joseph [IWD]; Wilkinson, Michael [IWD]; Bervid, Joseph [IWD]; Eklund, David [IWD]
Subject: Implementation of UC Program Integrity Amendments

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Many states who have responded have laws that won't go into effect until October 2013 and have laws stating an employer will be charged for an overpayment (1) due to Employer's failure to timely or adequately respond to requests for information **AND** (2) where that

employer has a “pattern of failing to respond,” which they intend to track for a period of time following the effective date of the law. States have various measures for patterns of failing to respond. The Maryland Chief Hearing Officer said “I will likely be contacting you in another month or two as we approach October to see how you guys got this up and running.”

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Here’s South Dakota’s new law. “However, no relief of charges applies if the department determines that an erroneous payment has been made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the department's request for information relating to the payment of benefits. For the purposes of this section, an erroneous payment is a payment that would not have been made but for the failure of the employer or the employer's agent to fully respond to the department's request pursuant to § 61-7-5.”

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The Agency will issue an overpayment determination to Claimant as usual if benefits have been paid. It will be up to the Agency to review the file and issue a determination finding Employer is subject to charge due to fault. If Agency does not issue a determination, our conclusion of no charge stands. If Agency issues a determination, the determination will go to Employer only with appeal rights. It would go to Employer only because in our view Claimant is not an interested party in this issue.

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Message: RE: Implementation of UC Program Integrity Amendments**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:05 PM
 Item ID: 40861153
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Implementation of UC Program Integrity Amendments**

From Wise, Steve [IWD] **Date** Wednesday, July 17, 2013 9:04 PM
To Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc Wise, Debra [IWD]; Hillary, Teresa [IWD]

The only time the double affirmance rule would kick in would be if (1) Agency Grants Benefits (2) ALJ affirms Grant, and case is remanded for some reason by EAB and District Court for a new hearing and (3) on remand the ALJ reverses Grant. I had one recently like that and District Court ruled that no matter the outcome on remand, the claimant would not be required to repay any overpayment because of the double affirmance rule.

In all other cases, no double affirmance rule because all the other cases involve (1) Agency Grants Benefits (2) ALJ Reverses Grant.

From: Mormann, Marlon [IWD]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lewis, Devon [IWD]; Donner, Lynette [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does the double affirmance rule apply to any of these cases?

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 5:19 PM
To: Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

I talked to Ryan West in Claims yesterday and he seemed resigned to remands on this issue. I think the discussion points are valid and we should proceed on that basis unless instructed otherwise. Steve and Lynette, would you please lead the discussion about this tomorrow? Could we develop a *very short* tutorial outline or flow chart for FF and DIA (and us) about this? Who would like to help provide training to FF and DIA?

From: Donner, Lynette [IWD]
Sent: Wednesday, July 17, 2013 12:53 PM
To: Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

The draft previously circulated had suggested overpayment ref. code and model paraphrased code language, hinged on the assumption that we were going to go ahead and do the determination on participation, and only focus on participation, not the other "hidden" issues, but until the policy decision is made, I don't know that it's ready to implement.

From: Mormann, Marlon [IWD]
Sent: Wednesday, July 17, 2013 12:40 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does anyone have overpayment language for reasoning and conclusions so we can modify our shells????????????????? I want a one size fits all shell that hits all overpayment issues. Please advise.

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515-265-3512

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 10:50 AM
To: Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

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Subject: FW: Implementation of UC Program Integrity Amendments

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Message: RE: Implementation of UC Program Integrity Amendments

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:05 PM
Item ID: 40861154
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Implementation of UC Program Integrity Amendments

From Wise, Steve [IWD] **Date** Wednesday, July 17, 2013 9:23 PM
To Lewis, Devon [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]
Cc Wise, Debra [IWD]; Hillary, Teresa [IWD]

Devon, I spoke to Teresa H and Teresa W about this at the end of the Monday meeting. I'm giving a presentation at the Municipal Professional Institute tomorrow in Ames, including a Skilled Iowa segment. Joe had approved this before and the director confirmed it. I am not sure when I will be back in town.

If the decision is to follow our current policy of remanding reversals of decisions granting benefits for the Agency to decide if the overpayment should be recovered and the employer charged for the overpayment—by the end of next week at the latest—I will have a tutorial or flow chart for everyone to use. I would agree to help train on this topic. I would also agree to produce a draft of the language that would go into decisions to accomplish this. I would try to get that draft done ASAP.

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 5:19 PM
To: Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

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Message: RE: Overpayment Language for ALJ Decisions

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:07 PM
Item ID: 40861220
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Overpayment Language for ALJ Decisions

From Hillary, Teresa [IWD] **Date** Friday, July 26, 2013 3:25 PM
To Wise, Steve [IWD]
Cc

Thanks looks good.

From: Wise, Steve [IWD]
Sent: Friday, July 26, 2013 3:18 PM
To: Hillary, Teresa [IWD]; Mormann, Marlon [IWD]
Cc: Donner, Lynette [IWD]; Lewis, Devon [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I've made some revisions that I think will work for the purpose of what you give to the director. In terms of what is sent to the ALJs to incorporate into decision, I think we just need to make it clear that what is proposed is just suggested language.

From: Hillary, Teresa [IWD]
Sent: Friday, July 26, 2013 9:03 AM
To: Mormann, Marlon [IWD]
Cc: Wise, Steve [IWD]; Donner, Lynette [IWD]; Lewis, Devon [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I would assume that you need to speak to the rest of your committee members. Did you provide them with alternate language you wanted used instead? Did you write up what you believe should be used. I am sure that LD and SW will be happy to talk to you about what specific language you have proposed. Devon is on vacation. I will be giving what LD and SW sent in to the Director by close of business on Monday if I do not hear back from either one of them before then.

From: Mormann, Marlon [IWD]
Sent: Friday, July 26, 2013 8:54 AM

To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I am not satisfied with the last 3 or four sentences. Will you consider revisions?

I would like to simplify into something an east sider would understand. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Thursday, July 25, 2013 3:57 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: Overpayment Language for ALJ Decisions

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis, Teresa Hillary
Cc: Lynette Donner, Marlon Mormann
From: Steve Wise
Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

The remand process eliminates the need to send out fact-finding documentation and address the claimant's willful misrepresentation issue in our appeal hearing. On remand, if the Agency requires repayment of the overpayment due to claimant's fraud or misrepresentation, I believe that a appealable decision should be issued that includes the 15 percent penalty.

Appeals from decisions on these issues would go to DIA.

Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.

Message: RE: Overpayment Language for ALJ Decisions

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:07 PM
Item ID: 40861215
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Overpayment Language for ALJ Decisions

From Hillary, Teresa [IWD] **Date** Friday, July 26, 2013 9:03 AM
To Mormann, Marlon [IWD]
Cc Wise, Steve [IWD]; Donner, Lynette [IWD]; Lewis, Devon [IWD]

I would assume that you need to speak to the rest of your committee members. Did you provide them with alternate language you wanted used instead? Did you write up what you believe should be used. I am sure that LD and SW will be happy to talk to you about what specific language you have proposed. Devon is on vacation. I will be giving what LD and SW sent in to the Director by close of business on Monday if I do not hear back from either one of them before then.

From: Mormann, Marlon [IWD]
Sent: Friday, July 26, 2013 8:54 AM
To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I am not satisfied with the last 3 or four sentences. Will you consider revisions?

I would like to simplify into something an east sider would understand. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Thursday, July 25, 2013 3:57 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: Overpayment Language for ALJ Decisions

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis and Teresa Hillary
Cc: Lynette Donner
From: Steve Wise
Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

The remand process eliminates the need to send out fact-finding documentation and address the claimant's willful misrepresentation issue in our appeal hearing. On remand, if the Agency requires repayment of the overpayment due to claimant's fraud or misrepresentation, I believe that a appealable decision should be issued that includes the 15 percent penalty. Appeals from decisions on these issues would go to DIA.

Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.

Message: Overpayment Language for ALJ Decisions

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:07 PM
Item ID: 40861211
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Overpayment Language for ALJ Decisions**

From Wise, Steve [IWD] **Date** Thursday, July 25, 2013
3:57 PM
To Lewis, Devon [IWD]; Hillary, Teresa
[IWD]
Cc Mormann, Marlon [IWD]; Donner,
Lynette [IWD]

 [Reference Code 41A Revised.doc](#) (48 Kb HTML)

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis and Teresa Hillary
Cc: Lynette Donner
From: Steve Wise
Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will

instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

The remand process eliminates the need to send out fact-finding documentation and address the claimant's willful misrepresentation issue in our appeal hearing. On remand, if the Agency requires repayment of the overpayment due to claimant's fraud or misrepresentation, I believe that a appealable decision should be issued that includes the 15 percent penalty. Appeals from decisions on these issues would go to DIA.

Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.

REFERENCE CODE 41A (revised):

Full relevant part of Statute

Iowa Code § 96.3-7-a and 96.3-7-b(1) provide:

Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Statute Paraphrased

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later determined ineligible for benefits, even if the claimant acted in good faith and was not at fault. But an overpayment will not be recovered when it occurred because an initial decision to award benefits on an employment separation issue was reversed on appeal if: (1) the benefits were not

received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding that award benefits. If recovery of an overpayment from a claimant is not required because the employer did not participate in the initial proceeding that resulted in an award of benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3 7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Message: RE: Overpayment Language for ALJ Decisions

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:07 PM
 Item ID: 40861214
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Overpayment Language for ALJ Decisions**

From Wise, Steve [IWD] **Date** Thursday, July 25, 2013 4:47 PM
To Donner, Lynette [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc Mormann, Marlon [IWD]

[And I agree that we pretty much have that take care of in terms of down-the-road hearing language for appeals from overpayment determinations.](#)

From: Donner, Lynette [IWD]
Sent: Thursday, July 25, 2013 4:40 PM
To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

[I agree. As far as the language down the road as to what to include on the hearing notices for the appeals from decisions on overpayment/chargeability, the hearing notice language that we'd been drafting to be used before it was agreed to continue with the remands would still be at least a good place to start.](#)

From: Wise, Steve [IWD]
Sent: Thursday, July 25, 2013 3:57 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: Overpayment Language for ALJ Decisions

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis and Teresa Hillary
 Cc: Lynette Donner
 From: Steve Wise

Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

The remand process eliminates the need to send out fact-finding documentation and address the claimant's willful misrepresentation issue in our appeal hearing. On remand, if the Agency requires repayment of the overpayment due to claimant's fraud or misrepresentation, I believe that an appealable decision should be issued that includes the 15 percent penalty. Appeals from decisions on these issues would go to DIA.

Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.

Message: RE: Overpayment Language for ALJ Decisions**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:07 PM
 Item ID: 40861216
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Overpayment Language for ALJ Decisions**

From Wise, Steve [IWD] **Date** Friday, July 26, 2013
 9:38 AM
To Hillary, Teresa [IWD]
Cc Mormann, Marlon [IWD]; Donner, Lynette
 [IWD]

I think what was proposed as a paraphrase was a huge improvement over the statutory language, but there is always room for improvement so I took another stab at it.

Before:

Statute Paraphrased

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later determined ineligible for benefits, even if the claimant acted in good faith and was not at fault. But an overpayment will not be recovered when it occurred because an initial decision to award benefits on an employment separation issue was reversed on appeal if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding that award benefits. If recovery of an overpayment from a claimant is not required because the employer did not participate in the initial proceeding that resulted in an award of benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3 7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

After

Statute Paraphrased

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. But a

claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to any fraud or willful misrepresentation, and (2) the employer did not participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer did not participate in the initial proceeding that awarded benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3 7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

From: Hillary, Teresa [IWD]
Sent: Friday, July 26, 2013 9:03 AM
To: Mormann, Marlon [IWD]
Cc: Wise, Steve [IWD]; Donner, Lynette [IWD]; Lewis, Devon [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I would assume that you need to speak to the rest of your committee members. Did you provide them with alternate language you wanted used instead? Did you write up what you believe should be used. I am sure that LD and SW will be happy to talk to you about what specific language you have proposed. Devon is on vacation. I will be giving what LD and SW sent in to the Director by close of business on Monday if I do not hear back from either one of them before then.

From: Mormann, Marlon [IWD]
Sent: Friday, July 26, 2013 8:54 AM
To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I am not satisfied with the last 3 or four sentences. Will you consider revisions?

I would like to simplify into something an east sider would understand. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Thursday, July 25, 2013 3:57 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: Overpayment Language for ALJ Decisions

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis and Teresa Hillary

Cc: Lynette Donner
From: Steve Wise
Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

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Message: RE: Overpayment Language for ALJ Decisions**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:07 PM
 Item ID: 40861219
 Policy Action: Not Specified

Mark History:



No reviewing has been done

Policies:

No Policies attached

✉ RE: Overpayment Language for ALJ Decisions

From Wise, Steve [IWD] **Date** Friday, July 26, 2013 3:18 PM
To Hillary, Teresa [IWD]; Mormann, Marlon [IWD]
Cc Donner, Lynette [IWD]; Lewis, Devon [IWD]

 [Overpayment Language Memo.doc](#) (36 Kb HTML)  [Reference Code 41A Revised.doc](#) (47 Kb HTML)

I've made some revisions that I think will work for the purpose of what you give to the director. In terms of what is sent to the ALJs to incorporate into decision, I think we just need to make it clear that what is proposed is just suggested language.

From: Hillary, Teresa [IWD]
Sent: Friday, July 26, 2013 9:03 AM
To: Mormann, Marlon [IWD]
Cc: Wise, Steve [IWD]; Donner, Lynette [IWD]; Lewis, Devon [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I would assume that you need to speak to the rest of your committee members. Did you provide them with alternate language you wanted used instead? Did you write up what you believe should be used. I am sure that LD and SW will be happy to talk to you about what specific language you have proposed. Devon is on vacation. I will be giving what LD and SW sent in to the Director by close of business on Monday if I do not hear back from either one of them before then.

From: Mormann, Marlon [IWD]
Sent: Friday, July 26, 2013 8:54 AM

To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Overpayment Language for ALJ Decisions

I am not satisfied with the last 3 or four sentences. Will you consider revisions?
I would like to simplify into something an east sider would understand. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Thursday, July 25, 2013 3:57 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: Overpayment Language for ALJ Decisions

IOWA WORKFORCE DEVELOPMENT

To: Devon Lewis, Teresa Hillary
Cc: Lynette Donner, Marlon Mormann
From: Steve Wise
Date: July 25, 2013
Re: Overpayment Language for ALJ Decisions

Comments: I've talked to Lynette about this recently. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I've attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. The email will instruct ALJs to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.

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Appeals from decisions on these issues would go to DIA.

Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.

IOWA WORKFORCE DEVELOPMENT	
To:	Devon Lewis, Teresa Hillary
Cc:	Lynette Donner, Marlon Mormann
From:	Steve Wise
Date:	July 25, 2013
Re:	Overpayment Language for ALJ Decisions
Comments:	<p>I've talked to Lynette about this. Because we are remanding cases back for an overpayment determination, including a determination as to whether the overpayment should be repaid by the claimant and charged to the employer, it is not necessary to change the issues on the hearing notice in separation cases where the employer is appealing an award of benefits. I have attached a revised Reference Code 41A, both in full relevant statute and paraphrase versions that ALJs can use when we get employer appeals from decisions granting benefits. I plan to send the revised Reference Code 41A to ALJ and Work Processors tomorrow unless someone objects. ALJ will need to look at when the fact-finding was held to decide whether the old Reference Code 41A or revised Reference Code 41A. Any case involving a fact-finding interview on July 1, 2013, or later will be subject to the new law.</p> <p>This eliminates the need to send out fact-finding documentation and address the claimant's willful misrepresentation issue in our appeal hearing. On remand, if the Agency requires repayment of the overpayment due to claimant's fraud or misrepresentation, I believe that a decision should be issued that includes the 15 percent penalty. Appeals from decisions on these issues would go to DIA.</p> <p>Appeals from Decisions issued on remands that conclude that an overpayment should or should not be repaid and employers should or should not be charged for an overpayment due to participation or non-participation would be heard by UI Appeals. We will work on language to use in the hearing notice and a form decision for ALJs to use for those cases, but we will not see appeals on this for a while so we have time.</p>

REFERENCE CODE 41A (revised):

Full relevant part of Statute

Iowa Code § 96.3-7-a and 96.3-7-b(1) provide:

Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Statute Paraphrased

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did

not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Message: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:10 PM
 Item ID: 40861280
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

From Wise, Steve [IWD] **Date** Thursday, August 08, 2013 2:18 PM
To Wilkinson, Michael [IWD]; Lewis, Devon [IWD]
Cc

 [OP_Flowchart2.pdf](#) (100 Kb HTML)

Just got back in town. I have tomorrow set aside to do DOL 2nd Q quality report but I am willing to take some time to meet during the same time as Devon indicates she is available. Maybe suggest 1 pm or 1:30 pm. I am attaching the draft of the flowchart I had sent to the ALJs who are working on the overpayment recoupment and employer charge issue. We would still be interested in seeing a draft of the summary decision.

From: Wilkinson, Michael [IWD]
Sent: Thursday, August 08, 2013 12:30 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Subject: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Steve, when are you available?

From: Lewis, Devon [IWD]
Sent: Wednesday, August 07, 2013 9:30 AM
To: Wilkinson, Michael [IWD]; Wise, Steve [IWD]
Subject: FW: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Mike and Steve,
 The Director would like the three of us to talk on Friday about how to resolve this. I have hearings from 8 – 11 but am available from about 11:30 through 2:45 by phone.
Devon

From: Wise, Steve [IWD]
Sent: Monday, August 05, 2013 8:30 PM
To: Wise, Debra [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc: Baughman, Myra [IWD]
Subject: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

I tried mapping out this process flow based on the guidance in the attached information from Mike Wilkinson and what Deb suggests below. See OP_Flowchart2.pdf attached. It is extremely difficult to map out and there are all kinds of questions left to

answer in my opinion. The chart has holes to fill.

I still like OP_Flowchart1.pdf attached better.

Deb and I will be out of town starting tomorrow afternoon and will return Thursday afternoon. I thought I would send this out as food for thought. I still haven't got the draft of the summary decision that will be sent out when the Agency determines the employer failed to participate.

From: Wise, Debra [IWD]

Sent: Saturday, August 03, 2013 7:42 AM

To: Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]

Cc: Baughman, Myra [IWD]

Subject: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

At the meeting on Thursday, Teresa asked me my opinion as to what issues needed to be on hearing notices. After giving this more thought, since I did not know exactly what Clams had proposed regarding nondisqualifying separation issues – the **easiest way** for Appeals to address issues on hearing notices is to put all issues on the Employer appealed separation issues. (ie separation, ov, participation, chargeability and recovery of overpayment) I do **not** believe this is technically or legally correct, but it is the easiest. (Note these are my thoughts and opinions only.)

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Deb.

Image 1

**ALJ Decides No
Employer
Charge &
Claimant Must**

Repay

Overpayment

**No 96.3-7-b
Concerns**

Decision Final

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**Informal
Disposition of
Participation
How Handled?**

**Separation
Decision**

No

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Decision**

**Do We
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**ALJ Decides
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Repayment by**

Claimant

Appeals Bureau

Unemployment
Insurance Division

**Decision
Grants
Benefits?**

**Fact-finding
Interview
Separation
Issue**

Did

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Benefits?**

**Appeal
Hearing**

**IWD Issues
OP Decision**

**Claimant
Appeals?**

**Overpayment
Appeal
Hearing**

**Did the
Employer
Participate
?**

**Employer
Appeals?**

**Decision
Denies
Benefits?**

**Employer
Appeals?**

**IWD Issues
Employer
Charge
Decision**

**Did the
Employer
Participate
?**

**Employer
Appeals?**

**Employer
Charge
Hearing?**

Yes

No

Yes

No

No

No

Yes

Yes

Maybe

No

No

Yes No

Yes

No

Yes

Yes

No

Yes

Message: FW: Summary

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:08 PM
 Item ID: 40861258
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Summary**

From Wise, Steve [IWD]

Date
 Thursday,
 August 01, 2013
 12:35 PM

To Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD];
 Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD];
 Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck,
 Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise,
 Debra [IWD]; Wise, Steve [IWD]

Cc

 [SUMMARY OF PROCEDURES.docx](#) (19 Kb HTML)

For people at home with will be the background document for my Agenda topic.

From: Wilkinson, Michael [IWD]
Sent: Wednesday, July 31, 2013 9:05 AM
To: Eklund, David [IWD]; West, Ryan [IWD]; Wise, Steve [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Subject: Summary

Attached is a summary of the procedures to follow for the determination of the employer's participation in a fact finding interview and the 15% penalty. Please review and be critical. I would like to use something like this as a guide for training.

SUMMARY OF PROCEDURES

1. Employer participation in fact finding interviews:
 - a. The determination of employer participation in the fact finding interview will occur when the fact finding interviewer issues a favorable decision to the claimant on their separation from work.
 - i. If it is determined by the fact finding interviewer that the employer failed to meet the criteria for participation (as described in the ALJ procedures manual Reference Code 226) a decision will be issued notifying both the employer and claimant that should the separation decision be overturned at appeal, the claimant will not be held responsible for the overpayment, the employers account will be charged.
 - ii. If the fact finding interviewer determines that the employer met their responsibility for participation but will still issue a favorable decision to the claimant, no decision on the issue of the employer's participation will be issued.
 - iii. Both parties have the opportunity to appeal
 - b. If appealed, a copy of the fact finding documents will be mailed to both parties.
 - i. The ALJ will review the file in a hearing and determine if there was adequate participation on the part of the employer.
 - ii. If the issue on the employer's participation is reversed then the account would not be charged if the ALJ also rules in favor of the employer on the separation issue.
 - iii. The claimant will have the right to appeal the issue of the employer's participation to the Employment Appeal Board.
 2. Fifteen percent penalty on fraudulent overpayments.
 - a. On any overpayment determined to be fraudulent, the investigator will apply a 15% penalty to the total overpayment.
 - b. The claimant will be notified at that time of the investigation that a penalty would be applied if the overpayment is fraudulent and again through the determination and decision of the investigator. There will not be a separate decision regarding the 15% penalty; it will be included in the decision of the investigator that determines the overpayment to be fraudulent.
 - c. The penalty cannot be offset against future unemployment insurance benefits but can be collected through state and federal income tax, lottery winnings, and cash payments.
 - d. The overpayment decision can be appealed to DIA. IWD will notify DIA of their desire to participate in each hearing.
-

Message: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:09 PM
 Item ID: 40861262
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon**

From Wise, Steve [IWD] **Date** Monday, August 05, 2013 8:31 PM
To Wise, Debra [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc Baughman, Myra [IWD]

 [OP_Flowchart2.pdf](#) (100 Kb HTML)  [OP_Flowchart1.pdf](#) (59 Kb HTML)  [SUMMARY OF PROCEDURES.docx](#) (19 Kb HTML)

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I still like OP_Flowchart1.pdf attached better.

Deb and I will be out of town starting tomorrow afternoon and will return Thursday afternoon. I thought I would send this out as food for thought. I still haven't got the draft of the summary decision that will be sent out when the Agency determines the employer failed to participate.

From: Wise, Debra [IWD]
Sent: Saturday, August 03, 2013 7:42 AM
To: Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Cc: Baughman, Myra [IWD]
Subject: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

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Overpayment

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Interview
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Appeals?**

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Appeal
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Appeals?**

**IWD Issues
Employer
Charge
Decision**

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Participate
?**

**Employer
Appeals?**

**Employer
Charge
Hearing?**

Yes

No

Yes

No

No

No

Yes

Yes

Maybe

No

No

Yes No

Yes

No

Yes

Yes

No

Yes

Image 1

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Insurance Division

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Yes

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Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:10 PM
 Item ID: 40861280
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon**

From Wise, Steve [IWD] **Date** Thursday, August 08, 2013 2:18 PM
To Wilkinson, Michael [IWD]; Lewis, Devon [IWD]
Cc

 [OP_Flowchart2.pdf](#) (100 Kb HTML)

Just got back in town. I have tomorrow set aside to do DOL 2nd Q quality report but I am willing to take some time to meet during the same time as Devon indicates she is available. Maybe suggest 1 pm or 1:30 pm. I am attaching the draft of the flowchart I had sent to the ALJs who are working on the overpayment recoupment and employer charge issue. We would still be interested in seeing a draft of the summary decision.

From: Wilkinson, Michael [IWD]
Sent: Thursday, August 08, 2013 12:30 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Subject: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Steve, when are you available?

From: Lewis, Devon [IWD]
Sent: Wednesday, August 07, 2013 9:30 AM
To: Wilkinson, Michael [IWD]; Wise, Steve [IWD]
Subject: FW: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Mike and Steve,
 The Director would like the three of us to talk on Friday about how to resolve this. I have hearings from 8 – 11 but am available from about 11:30 through 2:45 by phone.
Devon

From: Wise, Steve [IWD]
Sent: Monday, August 05, 2013 8:30 PM
To: Wise, Debra [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc: Baughman, Myra [IWD]
Subject: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

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Sent: Saturday, August 03, 2013 7:42 AM

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Cc: Baughman, Myra [IWD]

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Image 1

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Employer
Charge &
Claimant Must**

Repay

Overpayment

**No 96.3-7-b
Concerns**

Decision Final

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**Employer
Appeals?**

**Employer
Charge
Hearing?**

Yes

No

Yes

No

No

No

Yes

Yes

Maybe

No

No

Yes No

Yes

No

Yes

Yes

No

Yes

Message: RE: issues regarding new overpayment law implementation - this needs to be finalized by Appeals soon

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:09 PM
 Item ID: 40861262
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

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**Employer
Charge
Hearing?**

Yes

No

Yes

No

No

No

Yes

Yes

Maybe

No

No

Yes No

Yes

No

Yes

Yes

No

Yes

Image 1

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 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:10 PM
 Item ID: 40861284
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Summary letter regarding participation**

From Wise, Steve [IWD]

Date Friday, August 09,
2013 12:58 PM

To Eklund, David [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]; Wilkinson, Michael [IWD]

Cc

 [UIPL_2_12_Chg1_Att.pdf](#) (90 Kb HTML)  [image001.jpg](#) (3 Kb HTML)

This is from the attached [uipl_2_12_acc.pdf](#) p. 3-4.

Employer Notification of Charges

Question: What type of notification must states provide to the employer when the state determines that the employer, or the employer's agent, was at fault for failing to respond timely or adequately to a request for information relating to a claim, which caused an overpayment?

Answer: A state must follow its own law concerning notification of charges to an employer, or its agent. This notice must provide identifying claimant information such as the claimant name, social security number, and the reason(s) for the determination.

I wonder if the summary letter as drafted meets what DOL wants since it does not mention employer charges if an overpayment occurs due to a failure to participate.

Thanks
Steve

From: Eklund, David [IWD]

Sent: Thursday, August 08, 2013 5:51 PM

To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]; Wise, Steve [IWD]; Wilkinson, Michael [IWD]

Subject: Summary letter regarding participation

If we would opt for the fact finder issuing a summary letter regarding the employers failure to participate the verbiage would be close to what is in the attachment.

It would be in the standard ANDS format with the legal reference and appeal rights.

This is a draft....

David Eklund
 Regional Operations Manager
 UI Benefits Services
 Iowa Workforce Development
 Ph: 515/281-5792
 Cell: 515/229-4482
 Fax: 515/281-9033
david eklund@iwd.iowa.gov

titlegraphic

- [Image 1](#)
- [Image 2](#)
- [Image 3](#)
- [Image 4](#)
- [Image 5](#)
- [Image 6](#)

Image 1

Attachment to UIPL 02-12, Change 1

1

Unemployment Compensation (UC) Program Integrity Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)

Questions and Answers

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Image 2

Attachment to UIPL 02-12, Change 1

2

Unemployment Compensation (UC) Program Integrity Amendments made by the Trade Adjustment Assistance Extension Act of 2011 Questions and Answers

A.

1. Appeals

Mandatory Penalty Assessment on Fraud Claims/Overpayments

Question: May an individual appeal the mandatory “penalty” on fraud overpayments?

Answer: Yes. While an individual may appeal a penalty assessment, the percentage of the penalty is not an issue on which an appellate authority has any discretion since it is set by Federal law. The individual may, however, raise an issue concerning whether the amount on which the penalty is assessed was correct. Under all state UC laws, individuals may also appeal an overpayment determination, and whether or not it constituted fraud. If the decision changes the overpayment determination from fraud to non-fraud, the mandatory Federal penalty would not be applicable. This requirement applies to any fraud overpayment determination made after October 21, 2013, or earlier if the state enacts legislation with an earlier effective date, as one of the conditions for the state to continue to receive UC administrative grants.

2. Federal UC Programs

Question: Does the requirement that states immediately deposit receipts of the Federally-mandated penalties on fraud overpayments into the unemployment fund of the state apply to the Federal UC programs (i.e., Disaster Unemployment Assistance (DUA); Trade Readjustment Allowances (TRA); UC for Federal Employees (UCFE); UC for ExServicemembers (UCX); Federal Additional Compensation (FAC); and Emergency Unemployment Compensation (EUC))?

Answer: Yes. Although the repayment of the amount of the actual overpayment must be made to the fund from which the payment was made, the penalty mandated under TAAEA must be deposited into the state's account in the Unemployment Trust Fund (UTF) and used for the payment of UC. This is because section 251(b)(1) of the TAAEA requires that the state must "deposit any such penalty received in the same manner as the State ... deposits such penalties under the provisions of State law implementing section 303(a)(11)" of the Social Security Act (SSA).

3. Reporting for Federal UC Programs

Question: Are states required to report the penalty amount on a fraud overpayment for Federal UC claims on the Employment and Training Administration (ETA) 2112, *Unemployment Insurance (UI) Financial Transaction Summary*?

Answer: Yes. States must report any recovered penalty amounts deposited into the state's account in the UTF on line 12 of the ETA 2112 report (OMB No. 1205-0154). Instructions for the completion of the ETA 2112 report are contained in UI Reports Handbook No. 401, Section II-1-1.

Image 3

Attachment to UIPL 02-12, Change 1

3

4. Overpayment Waivers

Question: May the state waive the Federally-mandated penalty?

Answer: No. Section 303(a)(11) of SSA has no provision allowing for a waiver of this penalty. However, if the state has a fraud penalty in its statute greater than the 15 percent Federally-mandated penalty, any amount above the 15 percent may be waived in accordance with the state UC law.

B.

1. Combined Wage Claims (CWC)

Prohibition on Noncharging Due to Employer Fault

a. **Question:** When an out-of-state employer on a CWC is determined to be at fault for failing to respond timely or adequately to a request for information about a claim, how will the paying state notify the transferring state that this (out-of-state) employer must be charged?

Answer: The paying state must transmit a copy of the employer's charge notice to

the transferring state or include notification of the charges in the comments section of the IB-6, Statement of Benefits Paid to Combined-Wage Claimants, sent to the transferring state. We are also exploring other options to facilitate this needed exchange of information between states.

b. Question: What if the separating employer is an out-of-state employer with no base period wages to transfer on a CWC (i.e., the wages are outside of the base period of the CWC), and this employer, or the employer's agent, is determined to be at fault for failing to respond timely or adequately to the agency's request for information relating to a claim?

Answer: The noncharging prohibition applies only when an employer is potentially chargeable. In the example cited above, there would be no charging of benefit payments because the employer is not subject to the paying state's law and is not chargeable under the transferring state's law. If feasible, such employer's account may be "flagged" in the event a later claim for UC is filed and the wages from this separating employer are used in establishing a new claim.

2. Employer Notification of Charges

Question: What type of notification must states provide to the employer when the state determines that the employer, or the employer's agent, was at fault for failing to respond timely or adequately to a request for information relating to a claim, which caused an overpayment?

Answer: A state must follow its own law concerning notification of charges to an employer, or its agent. This notice must provide identifying claimant information such as the claimant name, social security number, and the reason(s) for the determination.

Image 4

Attachment to UIPL 02-12, Change 1

4

3. Employer Appeals

a. Question: In the case of a CWC, if an out-of-state employer from the transferring state (i.e., the state that transfers wages to the paying state) files an appeal about charges from a CWC, which state (the paying state or the transferring state) is responsible for conducting the appeals hearing?

Answer: The employer may appeal the chargeability of the overpaid benefits and the appeal would be heard by the paying state, since the paying state is using the wages and has responsibility under its law to charge or non-charge the employer's account for the CWC.

b. **Question:** May an employer appeal the state's determination that the employer (or its agent) is at fault for failing to respond timely or adequately to the agency's request for information relating to a claim?

Answer: Yes. The employer may appeal the determination by the state that the employer was at fault for "failing to respond... timely and adequately...." However, the remedy, that is, the prohibition on noncharging, is not an issue on which an appellate authority has any discretion since it is set by Federal law. This requirement relates to any overpayment determination made after October 21, 2013, or earlier if the state enacts legislation with an earlier effective date, as one of the conditions for the state to continue to receive administrative grants.

4. Reimbursing Employers

a. **Question:** If a reimbursing employer has been determined to be at fault for failing to respond timely or adequately to a request for information resulting in an overpayment (and this fault was part of a pattern) but the state later recovers the overpayment, may the state apply a credit to the reimbursing employer?

Answer: No, if a pattern has been established the state may not apply a credit to the reimbursing employer.

As with contributory employers, the reimbursing employer may appeal the state's determination that the employer was at fault. If the appellate authority upholds the determination, the appellate authority is required under Federal law to deny the credit to the reimbursing employer. This requirement applies to any overpayment determination made after October 21, 2013, or earlier if the state enacts legislation with an earlier effective date, as one of the conditions for the state to continue to receive administrative grants.

b. **Question:** Are section 501(c)(3) non-profit organizations, governmental agencies, or Indian Tribes that elect to be contributory employers instead of reimbursing employers treated any differently than for-profit employers determined to be at fault for failing to respond timely or adequately to information requests by the agency (resulting in a UC overpayment)?

Answer: No. Employers that "elect" to be treated as contributory employers must be treated the same as all other employers for this purpose, because all employers must be rated over the same time period using the same factor(s) (including noncharging) which bear a direct relation to the employers' experience with unemployment.

Image 5

Attachment to UIPL 02-12, Change 1

5

5. Pattern of Failing to Respond Timely and Adequately to Requests for Information

Question: If a state decides to adopt a standard that includes a “pattern” of failing to respond timely and adequately to information requests, what period of time does the state need to evaluate?

Answer: Each state must develop its own definition of what it means to establish a pattern of failing to respond timely and adequately to requests for information including the period of time involved.

6. Employer Agents

Question: Is the state’s evaluation of an employer’s agent failing to respond timely or adequately to the agency’s requests related to the agent’s overall pattern for all of its client employers or related to each individual client employer the agent represents?

Answer: A state may evaluate the agent’s overall pattern, or at its option, the agent’s pattern related to each individual client employer that it represents. NOTE: The Department has modified its initial interpretation provided in section 5.D of UIPL No. 02-12. Because the statute does not explicitly require charging of benefits if the agent has a pattern overall and a particular client employer does not have a pattern, we have changed our interpretation to permit states maximum flexibility.

7. Monetary Determinations

Question: The state agency uses an affidavit of earnings/wages submitted by the claimant when the employer does not file a timely contribution report or fails to report the claimant on the contribution report. If it is later determined that the affidavit of wages was incorrect, causing an overpayment, would the prohibition on noncharging be applicable?

Answer: The employer’s failure to file a timely contribution report or to include a claimant on a timely filed contribution report, by itself, is not subject to the prohibition on noncharging. However, if, for example, because of a contribution report delinquency, the state agency requests information from an employer (or the employer’s agent) and the employer or agent fails to respond timely or adequately to that request, the prohibition on noncharging may apply depending on whether the state law requires a pattern of such failure and whether such pattern has been established.

C.

1. **Question:** Why will the Department of Health and Human Services (HHS), as opposed to the Department, provide guidance to those states that may need state statutory changes to address the expanded scope of individuals reported to the State Directory of New Hires?

Reporting of Rehired Employees to the Directory of New Hires

Answer: The statute makes HHS responsible for determining if statutory changes are required in the state.

Image 6

Attachment to UIPL 02-12, Change 1

6

2. **Question:** Are states permitted to establish a penalty for an employer that fails to report properly or timely to the Directory of New Hires?

Answer: Yes. Section 453A(d) of the SSA (42 U.S.C. 653A(d)) allows states to impose the following penalties for an employer failing to properly or timely report new hires. See below:

(d) Civil money penalties on noncomplying employers—

The State shall have the option to set a State civil money penalty which shall not exceed -

- (1) \$25 per failure to meet the requirements of this section with respect to a newly hired employee; or
- (2) \$500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a

false or incomplete report.

D.

1. **Question:** What are the consequences if a state fails to implement the mandatory penalty for fraud overpayments?

Consequences for Failure to Implement the Program Integrity Changes

Answer: A state's failure to implement the penalty would be grounds for initiating conformity proceedings to deny certifying the state for grants for the administration of the state UC law until such time as the law conformed to the requirements of Section 303(a)(11), SSA.

2. **Question:** What are the consequences if a state fails to provide that an employer's account will not be relieved of charges relating to a payment from the state unemployment fund as required by Section 3303(f)(1), FUTA?

Answer: A state's failure to prohibit relief from charging would be grounds for initiating proceedings to withhold the certification that permits all contributing employers to take the "additional" credit provided for in Section 3302(b), FUTA. The withholding of certification would remain until such time that the state passes legislation conforming

with Section 3303(f), FUTA.

Message: RE: my final draft for In Person Procedure

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:57 PM
Item ID: 40862417
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: my final draft for In Person Procedure**

From Mormann, Marlon [IWD] **Date** Friday, March 21,
2014 1:30 PM
To Lewis, Devon [IWD]; Wahlert, Teresa [IWD];
Hillary, Teresa [IWD]
Cc

 [In Person tip sheet.docx](#) (75 Kb HTML)

[This one has the attachment.](#)

Marlon Mormann
Administrative Law Judge
515 265 3512

From: Mormann, Marlon [IWD]
Sent: Friday, March 21, 2014 1:29 PM
To: Lewis, Devon [IWD]; Wahlert, Teresa [IWD]; Hillary, Teresa [IWD]
Subject: my final draft for In Person Procedure

I expanded the project to both the outside office and the ALJs due to the hiring of the two new judges.

Marlon Mormann
Administrative Law Judge
515 265 3512

In-person hearings tip sheet

LOCAL OFFICE PROCEDURE

1. Upon arrival ask the Administrative Law Judge for a business card and after hours contact information in case a party comes in late after the ALJ has left.
2. Inform the ALJ of the local office contact person's name, location and telephone numbers for computer and room setup help.
3. Ask for the hearing schedule if you don't have one and make a copy for the front desk personnel. Take appropriate precautions as this schedule has social security numbers.
4. When parties arrive early have parties wait outside of hearing room and the ALJ will call when ready.
5. If the hearing has started, escort the late arrival into the hearing room.
6. Inform local office personnel of the ALJ arrival and the opportunity to sit in on hearings. Enter and leave the room quietly if hearing is in progress.

Review local office security procedure with Administrative Law Judge in case of a hearing room threat. <R:\Desk Manual\IWD Offices' Safety & Security Policies>

7. Keep your eyes open for troublesome behavior on the part of litigants.

ALJ IN PERSON HEARING PROCEDURE

1. See scheduling clerk a month prior to road trip to obtain file folders.
2. Examine each file to determine hearing time required. Call parties if necessary to discuss hearing time and witness participation. Carefully review one party cases to see if they can be resolved before scheduling.
3. Schedule cases based on travel time and hearing time. Give to scheduling clerk to schedule at least three weeks out to give lawyers time to fit into their schedule. Consider late filed cases, which can be fit in some 10 days before the road trip.
4. Make hotel reservations, double check for state rate. Do not believe the hotel as they may give discount saying it is a state rate that is not the same state rate allowed.
5. Obtain travel reimbursement form to complete as you travel rather than when you return.
6. Make note of the local office field operations manager's name and number on your itinerary. Send email to the appropriate regional field operations manager(s) similar to the following:

“Dear Sara and Marla:

I am traveling to your offices to hear cases next week. The schedule is set forth below, (attached). Mason City on Monday and Ft Dodge Tuesday, Wednesday.

We are using a new hearing recording system that requires both a telephone and computer for recording the hearing.

I will bring a unique speakerphone attachment for the telephone. I will need to know the telephone number in the hearing room, including the extension if there is one. If you give me that number, we can keep track of it for other ALJs traveling to Fort Dodge and Mason City, if the room used for hearings is always the same. If not, let me know that too and I will add that information to our in-person file. I need to make sure that I can connect the laptop to the Ethernet cable in the room as I cannot record the hearing without an internet connection.

Steven Wise is our tech support and can be reached at 515-473-2533, 515-281-3747 if you have any questions.

7. Obtain a Konftel telephone recording interface box with instructions. Steve Wise will have the Konftel or locate the last ALJ to make a road trip. Review instructions with a knowledgeable tech support person. Check to see if the one page instruction sheet is in the box.
8. Add the local office number to the clear 2 there my profile and **click update**. You must update your profile before the hearing start time otherwise you will need to manually edit at the time of hearing.
9. Remember that the Clear 2 There program does not allow calling of extension numbers when on a road trip. Review the clear 2 there 800 number procedure in case you have an extension number in the hearing room. On the hearing control screen click HO Call Systems (1 800). Click on your name and click dial. A pop up occurs with an 800 number and 7 digit pin. Then dial the 800 number and pin shown to initiate the call from the hearing room that has an extension. Make a test call and playback the recording before your first hearing to make certain you have connections and it is turned on properly. **It is imperative you test before the first hearing starts.**
10. We've had some situations where C2T does not call the office phone when you dial yourself (or takes forever). To handle this, just click on HO calls System, dial the 800 number, and when prompted, provide the pin. This is the same procedure used for extension lines.
11. Prepare your traveling office with reference codes and opening statement forms. Prepare your computer for travel with mouse and any other accessories. Bring paper, pens, stapler, calculator, exhibit stamp and other necessary supplies.
12. View current road conditions, weather and travel reports just prior to leaving. Always give yourself extra time. With the new recording system you generally need a minimum of 30 minutes set up time to get ready for your first hearing. Review the "Safety Security Policy" for that region which can be found in the desk manual. **R:\Desk Manual\IWD Offices' Safety & Security Policies**
13. Remind your clerk of your travel and telephone numbers.
14. Upon arrival at the local office introduce yourself, provide your

- itinerary if necessary and contact information. Review security protocol even if they have none.
15. Inform local office when you are finished with hearings.
 16. Offer to consult with and train local office personnel. "If I am not in hearing the help desk is open."
 17. After the last hearing of the week thank the office personnel for their hospitality. Remember to submit your expense report after you arrive home.
 18. Consider writing a thank you letter to the field operations manager expressing your gratitude. Add in things that might help in the future and reinforce positive experiences. If a serious deficit is observed, contact management and have them deal with it.
-

Message: RE: "5 Minute Rule"**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861030
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: "5 Minute Rule"

From Hillary, Teresa [IWD]

Date
 Friday, June
 21, 2013
 11:36 AM

To Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Alexander, Marty [IWD]; Anderson, Donnell [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Ziegler, Vanessa [IWD]

I just want to make sure I understand the "five minute rule" and the "ten minute rule" The 5 rule is what the clerks tell the participants when they call in to provide their names and phone numbers for the hearing. As an alj I wait 10 minutes after the start time of the hearing before I close the record if the appealing party was not available to begin the hearing. I think we (alj's) should all wait the same amount of time before closing the record so that no matter who the alj is, each participant is getting treated the same way.

If someone calls in late, then I think the alj needs to make a recording of why the participant was not available to participate when called to begin the hearing. In my review of decn from the EAB they routinely note that there was "no recording of a late call" If an alj does not make a recording of the "late call" and then rule either for or against reopening the record, the EAB is remanding for a new hearing.

My concern with adding so much information to the hearing notice is that there is so much there, no one reads the important information. By barraging the parties with such a crammed full of written material hearing notice, everything gets lost.

From: Walsh, Joseph [IWD]

Sent: Friday, June 21, 2013 10:16 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Scott, Cheryll [IWD]; Shroyer, Paula [IWD]; Alexander, Marty [IWD]; Anderson, Donnell [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Ziegler, Vanessa [IWD]

Subject: "5 Minute Rule"

I want to come to some consensus at our next meeting on the 5 minute "rule." I think we need information about this "rule" on our website and perhaps even the hearing notice. I have attached a draft of the five minute rule. What is missing at this point is telling the person exactly when the ability to reopen the record (except for good cause) ends. Do we close record at 10 after 15 after? What is reasonable given circumstances. Everyone who wants to weigh in on this issue must do so before next meeting.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov