



# Overpayment of Benefits

## What is an overpayment?

An overpayment occurs when you receive Unemployment Insurance benefits that you were not entitled to. This could occur for a number of reasons. These may include:

- You made a mistake when claiming weekly benefits.
- You were not ready, willing and able to work.
- You did not complete the required work search activities for a week or weeks.
- You knowingly gave the DOL false or misleading information when filing a claim or claiming weekly benefits.

## What if I receive an overpayment determination?

If you were overpaid, you will receive a written notice in the mail. The Notice of Determination to Claimants for Overpayment gives instructions on how to send a check or money order to pay the total amount due. It also gives instructions on how to request a payment plan. Overpaid benefits and monetary penalties can also be collected by taking your state or federal tax refund. Additionally, if you collect benefits in the future, those benefits can be offset to recover any remaining overpayment that you have not repaid. Any partial payment received from you will be applied first to any monetary penalties and then to the balance of the overpayment. Failure to pay the monetary penalty may result in legal action against you. If you disagree with the overpayment determination, you have the right to request a hearing.



## **What is a monetary penalty?**

A monetary penalty is assessed if the Department of Labor determines that you willfully made false statements or representations, or purposely withheld pertinent information, in order to obtain benefits.

## **Can you appeal the overpayment determination?**

Yes, if you disagree with the overpayment determination, you have the right to request a hearing. The hearing will take place over the phone. The hearing will be conducted by an impartial judge who is employed by the Unemployment Insurance Appeal Board. If you are present at the hearing and lose all or part of the case, you may file an appeal to the Appeal Board. If the Appeal Board does not rule in your favor, you have 30 days from the date of the Appeal Board's decision to apply to the Appeal Board for a reconsideration of the decision, or appeal to the Appellate Division of the State Supreme Court, Third Department. The DOL will try not to collect payments from you while your appeal is in progress. Any payment you made will be refunded if you are found eligible for benefits.

## **What is the difference between an overpayment and a monetary penalty?**

An overpayment is benefits you were not entitled to.

A monetary penalty is a fine assessed on the full amount of overpaid benefits when the Department of Labor determines that you willfully made false statements or representations, or purposely withheld pertinent information, in order to obtain benefits.



## What is a forfeit day penalty?

A forfeit day (or days) are days in the future for which you cannot receive Unemployment Insurance benefits. Forfeit days are assessed if you willfully made a false statement or representation to get benefits. A forfeit day penalty can be for one day, or it can be for several days. For every forfeit day that is assessed, you lose 25% of your benefits for that week. If you have four forfeit days, you would receive no benefits for that week. This is because there is a maximum of four effective days of benefits in a week. If you have more than four forfeit days, the additional forfeit days are carried over to the following week.

## How can a forfeit day penalty affect any future claims I may file?

If your forfeit day penalty has not expired, any payments you may be eligible for on future claims will first be used to satisfy your forfeit day penalty. This will reduce the amount of money you receive in future UI benefit payments.

## How do I request a payment plan?

Call:

Collections Unit at 800-533-6600

OR

Write to:

Unemployment Insurance Division

NYS Department of Labor

P.O. Box 1195

Albany, NY 12201

Be sure to only write the last four digits of your Social Security number on your request.



# Common Overpayment Issues

## Voluntary Quit

The Unemployment Insurance Law requires that a claimant who voluntarily separates from employment is disqualified if the separation is “without good cause.” The term “voluntary separation” as used in the statute means leaving employment of one’s own free will. It includes resignations other than those submitted at the employer’s insistence and failure to return to work following a temporary layoff or leave of absence. A claimant discharged because of volitional acts which leave the employer no choice but to terminate the employee, pursuant to law, governmental regulations or contract is also considered to have voluntarily separated from employment.

Once it is established that a claimant's separation is voluntary, the judge must determine whether the circumstances of the separation were with or without good cause.

If the separation is voluntary, it must then be determined whether the reason for the claimant’s separation is compelling. The ALJ will analyze whether you took reasonable steps to protect your employment prior to quitting. This is because although a claimant may have a compelling reason to leave employment, you are required to take reasonable steps to protect your employment prior to leaving and must give your employer a reasonable opportunity to address any concerns.



- **Statutory Good Cause**

In addition to other circumstances that may be found to constitute good cause, the statute sets forth specific situations which provide good cause to voluntarily separate from employment: where circumstances arise which would have allowed the claimant to refuse the employment when first offered as provided for in Labor Law §593.2; 4 where a collective bargaining agreement or written employer plan permits an employee to elect to take a temporary layoff when there is a slowdown in work and the employer has consented to that election; where the claimant separates from employment due to a compelling family reason, including, but not limited to, where a claimant reasonably believes that continued employment would jeopardize his or her safety or the safety of any member of the immediate family due to domestic violence; and where the claimant resigns in order to provide care to an ill or disabled member of the immediate family. A claimant is disqualified from receiving benefits if the separation from employment was due to the claimant's marriage.

If the DOL determines that you voluntarily quit your job without "good cause", depending on the facts of your case, you may argue that:

- You had "good cause" to quit under one of the qualifying reasons
- You did not quit your job



- **Misconduct**

The term “misconduct” is not defined in the statute however, the Appellate Division has held that “misconduct” is behavior that is detrimental to the employer’s interests on in violation of a reasonable work condition. The claimant’s actions need not be willful to rise to the level of misconduct. Misconduct may be found in cases of gross negligence, indifference, or a pattern of recurrent carelessness. Circumstances which would not justify the imposition of a disqualification for misconduct, include: mere inefficiency, inadequate performance as the result of inability or incapacity, inadvertence or ordinary negligence in isolated instances, or good faith errors in judgment or discretion. Board and Court decisions have indicated that “misconduct” may include acts or omissions off the job as well as on the job, if adverse effect on the employer is demonstrated. Additionally, there must be a direct relation in point of time between the final incident and the termination, and the final incident must be proved to be the direct cause of termination.

### **The Statute**

- Labor Law §593 (3) addresses the issue of misconduct. It states: “No days of total unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate.” Labor Law §527 indicates that a claimant cannot use wages from employment that ended due to misconduct in establishing a claimant for benefits.



If the DOL determines that you were fired due to misconduct, depending on the facts of your case, you may argue that:

- Your actions did not rise to the level of misconduct
- For criminal conduct, you may argue that the alleged conduct does not have a sufficient nexus to your job
- You did not know that your actions could lead to termination/were misconduct
- The actions of misconduct were not sufficiently tied to your termination, i.e., the misconduct occurred months before termination, or you were terminated for other reasons

## Additional Resources

- UIAB Bench Manual: <https://uiappeals.ny.gov/bench-manual>
  - This can be used to find more information on your particular legal issue, and assist you in formulating your legal argument.
- Appeal Decisions: <https://uiappeals.ny.gov/searchdecisions>
  - This can be used to search for cases similar to yours in which the appeal board decided in the claimants favor. You may cite these cases as grounds for a favorable decision in your case. Although the ALJ is not bound by the appeal boards decision, it can be used as persuasive evidence in your favor.