

SECTION 9 FRAUD, OVERPAYMENT AND RESTITUTION

A. OVERPAYMENT OF BENEFITS AND RESTITUTION

During every stage of your application process and any appeals or hearings that may follow, it is important to be truthful when answering the Agency's questions. It is also important to **report all earnings** during your period of unemployment. This is true even if the job is casual, part-time and/or temporary. Otherwise you may have to pay back benefits you received and possibly even pay a steep penalty under the law's **fraud** provisions.

If you are charged under the Agency's fraud provisions, the **burden of proof** is on the UIA to establish fraud by "competent evidence." They are allowed to issue search warrants, subpoenas, and call witnesses against you. Even if this process does not lead to a conclusion that you intentionally committed fraud, if you received overpayment you will most likely have to make restitution by paying back the benefits you received.

The state demands restitution in almost every circumstance where the employer ends up prevailing. For example, even if you win at every stage below: Determination, Redetermination, ALJ Hearing, etc., but lose at a higher level of appeal, you still will be asked to pay back any benefits you received.

B. WAIVER OF RESTITUTION / HARDSHIP APPLICATION

There are a few circumstances in which you may not have to pay Restitution (or only have to pay partial Restitution):

- The UIA may waive restitution for a **clerical error**. However, if you knew that you should not have been receiving benefits, it won't matter that the mistake was a clerical error and restitution will still be required.
- If you received benefits and the employer submits a protest or new information **after the 20-day protest period deadline**, you will not have repay the benefits you received before the employer's late protest.
- If you do not have the money to pay the benefits back and are in extreme financial hardship, you may have your payments waived or reduced. You can fill out an **Affidavit of Financial Condition** to declare that you would not be able to make the required payments. To get this form, go to <http://goo.gl/p5Y1w> or call 1-866-500-0017 and select option 3 to request a waiver (Form 1795 Affidavit of Financial Condition). If you are able to make even partial payments over time, the Agency will likely work with you to develop a payments plan based on your income.
- In certain cases, the Agency may also waive restitution if the improper payment of benefits was **not the fault of the individual** and if repayment would be **contrary to equity and good conscience**. This option is *not* available in cases where there was an intentionally false statement, misrepresentation, or concealment of material information.
- The UIA has three years to determine (or Re-determine) that restitution is required and to bring a civil suit. If it has been longer than three years, they cannot demand that you pay restitution.