**12 DEPARTMENT OF LABOR**

**172 BUREAU OF UNEMPLOYMENT COMPENSATION**

**Chapter 20: UNEMPLOYMENT FRAUD OR MISREPRESENTATION BY CLAIMANTS**

**1. Unemployment fraud or misrepresentation**

Unemployment fraud or misrepresentation exists where a claimant has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in the claimant's application to receive benefits.

A finding of unemployment fraud or misrepresentation shall be made based on a preponderance of the evidence.

**2. Investigation of cases of potential unemployment fraud or misrepresentation**

The following procedures shall be used in the investi­gation of claims involving potential unemployment fraud or misrepresentation.

A. Obtaining documentary evidence. Prior to interviewing the claimant, the deputy shall obtain all available documentation.

B. Scheduling the interview. The deputy shall notify the claimant in writing of the date and time that the fact-finding interview will be held. Such notice shall be sent to the claimant's last known or given address, and shall include the following information: date, time and location of the interview; the facts which are known to the bureau; the claimant's right to request a postponement; the claimant's right to provide written information; the amount of any potential overpayment; and the consequences of a finding of unemployment fraud or misrepresentation. The interview will be scheduled no earlier than ten (10) days after the mailing date of the notice. If the notice is returned to the deputy because it cannot be delivered by mail, the deputy shall review all available records in order to determine if the address on the notice is the correct one. If another address is found, a new notice will be mailed to the claimant at such other address.

1. In-person interview. If the interview will be conducted in person, the notice will include the location of the interview.

2. Telephone interview. If the interview will be conducted by telephone, the notice will include the telephone number at which the claimant will be called, the time frame during which the claimant will be called, and the deputy's telephone number. In addition, a copy of all documentary evidence which the deputy has related to the potential unemployment fraud or misrepresentation will be forwarded to the claimant prior to the interview.

**3. Period of ineligibility**

For purposes of subsection 6 of section 1193 of the Employment Security Law, where the deputy determines that unemployment fraud or misrepresentation has occurred, and it is the first or second occurrence, the period of ineligibility will be not less than six (6) months nor more than one (1) year from the mailing date of the determination. In the case of a third occurrence, the claimant shall be disqualified from receiving benefits for a period of time to be determined by the Commissioner of Labor. The ineligibility for a third occurrence shall be for an indefinite time period unless the claimant submits a written request to the Commissioner seeking that the period of ineligibility be shortened or rescinded. The Commissioner will render a written determination. The length of the period of ineligibility is discretionary, and will be determined after a total consideration of all factors which are involved in the case, including but not limited to, the following:

A. Number of weeks of violation.

B. Amount of earnings which were unreported.

C. Whether the claimant failed to report any earnings at all, or under-reported his or her earnings.

D. Reason for failure to report any earnings.

E. Whether an unreported separation or false report of the reason for separation was involved.

F. The amount of the overpayment.

G. The existence of any previous final determina­tion(s) of unemployment fraud or misrepresentation involving the claimant.

**4. Redeterminations**

If a determination which is rendered under subsection 6 of section 1193 of the Employment Security Law is redetermined in order to correct the period of ineligibility, then the period of ineligibility will be changed in order to make the correction. If the redetermination is not the result of an incorrect period of ineligibility, then the period of ineligibility will not be changed in the redetermination.

**5. Overpayment not due to unemployment fraud or misrepre­sentation**

For purposes of subsection 10 of section 1194 of the Employment Security Law, the term "error" may include, but will not be limited to, the following situations which shall not constitute unemployment fraud or misrepresentation:

A. An error in identity.

B. In the absence of evidence of knowledge of falsity or knowing failure to disclose, a claimant's erroneous report of his or her earnings amount.

C. An error in computing the amount payable.

D. A claim that was paid which should not have been paid until a determination of the claimant's eligibility for that payment had been made.

E. Payment of a full or reduced benefit check due to a data entry error.

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