

D21-06
Departmental Error

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Departmental Error

1. Description of Proposed Change

Current law provides that the Department “shall waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error...”¹ “Departmental error” includes errors that the Department made “in computing or paying benefits which results exclusively from...a mathematical mistake, miscalculation, misapplication or misinterpretation of law or mistake of evidentiary fact, whether by commission or omission...”² But an amendment, modification, or reversal of a Department determination by an appeal tribunal, the commission, or a court is not departmental error for the purposes of waiving the overpayment.³

The Department disagrees with the Labor and Industry Review Commission’s interpretation of these statutes in determining when to waive benefit overpayments. To guard against erroneous interpretations of law the Department proposes to amend the definition of “departmental error” to confirm the Department’s interpretation of the statute. Under the proposed changes, a departmental error would include only certain errors made by the Department in issuing initial determinations, not appeal tribunals.

The Commission currently waives some overpayments if the Commission finds that an appeal tribunal allows benefits in error. The Commission considers appeal tribunals to be part of the Department because the administrative law judges are Department employees. Based on the Department’s review of the legislative history of the departmental error and overpayment waiver

¹ Wis. Stat. § 108.22(8)(c)1.a.

² Wis. Stat. § 108.02(10e)(am)1.

³ Wis. Stat. § 108.22(8)(c)2. (created by 1993 Act 373.)

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statutes, the Department believes that the intent of these statutes was originally to limit the finding of department error to errors made by Department staff, not appeal tribunals, the Commission, or the courts. So, the Department proposes a law change to clarify that an error by an appeal tribunal is not “departmental error.”

2. Proposed Statutory Change

Section 108.02 (10e) (c) of the statutes is created to read:

“Departmental error” does not include an error made by an appeal tribunal appointed under s. 108.09 (3).

3. Effects of Proposed Change

- a. **Policy:** The proposed change will result in the increased recovery of benefits that were erroneously paid to claimants.
- b. **Administrative:** This proposal will require training for benefits staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

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FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

UI Trust Fund Impact:

This law change proposal would save the UI Trust Fund approximately \$5,200 annually. The Trust Fund savings may be less going forward. This would be considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

This law change proposal would have no IT impact and a negligible one-time administrative impact.

Summary of Proposal:

This law change proposal is intended to clarify that an error by an appeal tribunal is not “departmental error.”

Trust Fund Methodology:

To determine the impact of the proposed change, 2015-2017 data was reviewed for LIRC determinations that found departmental error based on appeal tribunal determinations. There were no LIRC decisions that found departmental error in 2016 or 2017 and in 2015, there were approximately 10 determinations. The total overpayment for all affected determinations was approximately \$6,560, which claimants would now be required to pay back if departmental error could not be found on appeal tribunal determinations. At an 80% collection rate, this results in an average savings to the Trust Fund of \$5,200 annually. Since there were no LIRC decisions that found departmental error in 2016 or 2017, the Trust Fund savings may be less going forward.

IT and Administrative Impact Methodology:

This law change proposal would not have an IT impact. It may have a negligible administrative impact to train staff on these changes.