

**To:** Unemployment Insurance System

**From:** Indiana Department of Workforce Development (DWD)

**Date:** March 18, 2022

**Subject:** DWD Policy 2021-12  
Employer Pattern of Failure to Respond to DWD UI Program Information Requests

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## Purpose

To provide an explanation of Indiana Code § 22-4-11-1.5 when the experience account of an employer will not be relieved of erroneous payments if employer establishes a pattern of failure to respond to the DWD UI programs information requests.

## Rescission

DWD Policy 2020-03 *Employer Pattern of Failure to Respond to DWD UI Program Information Requests*

## References

Indiana Code § 22-4-11-1.5

## Content

The Indiana Department of Workforce Development (DWD) is responsible for administering Indiana Code § 22-4-11-1.5, which states:

### **IC 22-4-11-1.5**

#### **Experience account not relieved of erroneous payments if employer establishes pattern of failure to respond to department information requests.**

##### **Sec. 1.5**

- a) As used in this section, "erroneous payment" means a payment that would not have been made but for the failure by an employer or a person acting on behalf of the employer with respect to a claim for unemployment benefits to which the payment relates.
- b) As used in this section, "pattern of failure" means a repeated and documented failure by an employer or a person acting on behalf of an employer to respond to requests for information made by the department, taking into consideration the number of failures in relation to the total number of requests received by the employer or the person acting on behalf of an employer.
- c) The experience account of an employer may not be relieved of charges for a benefit overpayment from the state's unemployment insurance benefit

fund established by IC 22-4-26-1, if the department determines that:

- 1) the erroneous payment was made because the employer or a person acting on behalf of the employer was at fault in failing to respond in a timely or adequate manner to the department's written request for information relating to the claim for unemployment benefits; and
- 2) the employer or a person acting on behalf of the employer has established a pattern of failure to respond in a timely or adequate manner to department requests described in subdivision (1).

### **Definitions**

“Requests for information made by the department” means a request for information regarding a claim for unemployment insurance benefits, a notice of liability, or a document sent by DWD to the employer or a person or entity acting on behalf of the employer that requests or requires a response.

“Failure to respond” means a failure by the employer or a person or entity acting on behalf of the employer to respond to a request for information within the deadlines set by DWD, or a response within the deadlines set by DWD indicating that the employer or a person or entity acting on behalf of the employer declines to provide information.

DWD will determine that a benefit overpayment “was made because the employer or person acting on behalf of the employer was at fault in failing to respond in a timely or adequate manner to the department’s written request for information relating to the claim for unemployment benefits” if the employer or a person or entity acting on behalf of the employer failed to respond to a request for information made by DWD about the claim upon which the benefit overpayment was established.

A “repeated and documented failure . . . taking into consideration the number of failures in relation to the total number of requests received by the employer or the person acting on behalf of an employer” that constitutes a “pattern of failure” where:

- 1) The employer or the employer’s representative failed to adequately respond within the established response period; and
- 2) The claimant’s entitlement to benefits is determined to have resulted in an improper payment which could have been prevented by the employer or the employer’s representative submitting a timely, adequate, response; and
- 3) Both conditions 1 and 2 have been met repeatedly by the employer. Repeatedly is defined as 3 incidents for employers with less than 12 payable claims and as 25% of the total payable claims for employers with more than 12 payable claims in the most recently completed 365-day period where the employer that failed to respond is the separating employer.

DWD will apply this requirement no less than one time each calendar year and will administer the policy by directly decreasing the employer’s experience balance for merit rating purposes by an amount equivalent to the charges that were relieved when the improper claimant payment was established.

### ***Applicability***

Indiana Code § 22-4-11-1.5 and this Policy apply to all employers that have or are required to establish employer experience accounts with DWD under Indiana Code § 22- 4-11-1 *et seq.*

Indiana Code § 22-4-11-1.5 and this Policy do not apply to an employer that legally does not have or is not required to establish an employer experience account with DWD.

### **Action**

Indiana's Unemployment Insurance system will follow the guidance contained in this policy. Directors and managers will ensure that employees who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.

### **Effective Date**

Immediately.

### **Ending Date**

Upon rescission.

### **Additional Information**

Questions regarding the content of this publication should be directed to DWD Policy: [policy@dwd.in.gov](mailto:policy@dwd.in.gov).