

|->

Title 22@ Social Security

|->

Division 1@ Employment Development Department

|->

Subdivision 1@ Director of Employment Development

|->

Division 1@ Unemployment and Disability Compensation

|->

Part 1@ Unemployment Compensation

|->

Chapter 10@ VIOLATIONS

|->

2113-1 Restitution for Overpayment of Benefits

Section 2113-1@ Restitution for Overpayment of Benefits

(a)

Policy. It shall be the policy of the Employment Development Department to maximize recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the department to seek prosecution of persons whom the department believes have committed serious crimes against the Unemployment or Disability Funds.

Pursuant to the direction of the Legislature in Unemployment Insurance Code Section 2113, it shall be the department's policy to offer restitution to those persons who are first offenders, whose violations may be considered less serious, and who have not previously been offered restitution in lieu of prosecution.

(b)

Serious Criminal Offenses. If the department has probable cause to believe a person has conspired to defraud the department, or used a fictitious name or social security number, or established a fictitious employer account, or forged or counterfeited any department document or other document, for the purpose of obtaining or increasing benefits, the department shall promptly investigate such person. If, after investigation, the evidence so warrants, the department shall seek a complaint under the appropriate Penal Code or Unemployment Insurance Code provisions. The department shall not offer restitution in lieu of prosecution to such person.

(c)

Other Criminal Offenses. If the department has probable cause to believe a person has willfully made a false statement or representation or knowingly failed to disclose a material fact in order to obtain or increase benefits, and the department has probable cause to believe, as a result of such false statement or representation or failure to disclose, such person received an overpayment of benefits of more than \$1,000.00, the department shall promptly investigate such person. If, after investigation, the evidence so warrants, the department shall seek a complaint pursuant to Section 2101 or 2102 of the code. The department shall not offer restitution in lieu of prosecution to such person.

(d)

Persons Eligible for Restitution. If the department has probable cause to believe a person has willfully made a false statement or representation or knowingly failed to disclose a material fact in order to obtain or increase benefits, and the department has probable cause to believe, as a result of such false statement or representation or failure to disclose, such person received an overpayment of benefits of more than \$250.00 but not more than \$1,000.00, the department shall promptly investigate such person. If, after investigation of any person pursuant to this section, all of the following conditions exist, the department shall offer restitution in lieu of prosecution to such person: (1) The overpayment is more than \$250.00 but not more than \$1,000.00. (2) Such person has not previously been granted restitution in lieu of prosecution pursuant to Section 2113 of the code. (3) Such person has not been convicted of an offense under Section 2101 of the code within three years preceding the mailing or personal service of a notice of intent to file criminal complaint pursuant to Section 2113 of the code. (4) The department has determined that such person has not accumulated more than 10 points under

subdivision (e) of this section.

(1)

The overpayment is more than \$250.00 but not more than \$1,000.00.

(2)

Such person has not previously been granted restitution in lieu of prosecution pursuant to Section 2113 of the code.

(3)

Such person has not been convicted of an offense under Section 2101 of the code within three years preceding the mailing or personal service of a notice of intent to file criminal complaint pursuant to Section 2113 of the code.

(4)

The department has determined that such person has not accumulated more than 10 points under subdivision (e) of this section.

(e)

Disqualifying Points--Disposition. (1) The following factors and corresponding points shall be considered in each case where restitution is otherwise appropriate: (A)

Number of Weeks of Overpayments Received As a Result of False Statement:

Points	4.....	1	5.....	2
	6.....	3	etc.....	1 for

each additional week (B) Overpayment Amount Points

\$251--\$500.....	1
-------------------	---

\$501--\$750.....	2
-------------------	---

\$751--\$1,000.....	3
---------------------	---

(C) Prior Section 2101 or Section 2102 U.I.C. Conviction Points Within 6 yrs. of current

offense.....	1	Within 5 yrs. of current
--------------	---	--------------------------

offense.....	2	Within 4 yrs. of current
--------------	---	--------------------------

offense..... 3 (D) Prior False Statement
 Disqualification Based Upon Unreported Earnings Points Within 3 yrs. of current
 offense..... 1 Within 2 yrs. of current
 offense..... 2 Within 1 yr. of current
 offense..... 3 (2) If the department determines that
 an individual has accumulated more than 10 points, and if the evidence so
 warrants, a complaint shall be sought pursuant to Section 2101 or 2102 of the
 code. If, however, prosecution is, for some reason, not feasible, the case shall be
 sent to the appropriate field office for overpayment determination and collection
 and possible administrative penalties.

(1)

The following factors and corresponding points shall be considered in each case where
 restitution is otherwise appropriate: (A) Number of Weeks of Overpayments Received As

a Result of False Statement: Points 4..... 1

5..... 2 6..... 3

etc..... 1 for each additional week (B) Overpayment

Amount Points \$251--\$500..... 1

\$501--\$750..... 2

\$751--\$1,000..... 3 (C) Prior Section 2101 or Section

2102 U.I.C. Conviction Points Within 6 yrs. of current

offense..... 1 Within 5 yrs. of current

offense..... 2 Within 4 yrs. of current

offense..... 3 (D) Prior False Statement Disqualification

Based Upon Unreported Earnings Points Within 3 yrs. of current

offense..... 1 Within 2 yrs. of current

offense..... 2 Within 1 yr. of current

offense..... 3

(A)

Number of Weeks of Overpayments Received As a Result of False Statement: Points

4..... 1 5..... 2

6..... 3 etc..... 1 for each
additional week

(B)

Overpayment Amount Points \$251--\$500..... 1

\$501--\$750..... 2 \$751--\$1,000.....
3

(C)

Prior Section 2101 or Section 2102 U.I.C. Conviction Points Within 6 yrs. of current

offense..... 1 Within 5 yrs. of current

offense..... 2 Within 4 yrs. of current

offense..... 3

(D)

Prior False Statement Disqualification Based Upon Unreported Earnings Points Within 3 yrs.

of current offense..... 1 Within 2 yrs. of current

offense..... 2 Within 1 yr. of current

offense..... 3

(2)

If the department determines that an individual has accumulated more than 10 points, and if the evidence so warrants, a complaint shall be sought pursuant to Section 2101 or 2102 of the code. If, however, prosecution is, for some reason, not feasible, the case shall be sent to the appropriate field office for overpayment determination and collection and possible administrative penalties.

(f)

Administrative Collection of Overpayments. If the department has probable cause to believe a person has willfully made a false statement or representation or knowingly failed to disclose a material fact in order to obtain or increase benefits and the department has probable cause to believe such person has obtained \$250.00 or less, as a result of such false statement or representation or failure to disclose, the department shall promptly transfer such case to a field office for an overpayment determination and collection and possible administrative penalties, except that: (1) The department shall seek prosecution if such person has been previously granted restitution in lieu of prosecution pursuant to Section 2113 of the code, or has been convicted of an offense under Section 2101 or 2102 of the code within three years preceding the current offense. (2) The department shall require restitution in lieu of prosecution if such person has been assessed a false statement disqualification based upon unreported earnings within three years preceding the current offense. If restitution is refused, the department shall seek prosecution.

(1)

The department shall seek prosecution if such person has been previously granted restitution in lieu of prosecution pursuant to Section 2113 of the code, or has been convicted of an offense under Section 2101 or 2102 of the code within three years preceding the current offense.

(2)

The department shall require restitution in lieu of prosecution if such person has been assessed a false statement disqualification based upon unreported earnings within three years preceding the current offense. If restitution is refused, the department shall seek prosecution.

(g)

Restitution Procedures. If, in the case of any person described in this section, restitution is determined appropriate, the department shall so inform such person and refer his or her case file to the appropriate field office so that an arrangement for restitution can be made. An arrangement for restitution shall be in effect, within the meaning of Section 2113 of the code, upon the signing of a restitution plan by an eligible individual. Each restitution plan shall be realistically based upon the economic ability of each individual so as to allow him or her to comply with the plan. A plan may provide for lump sum payment prior to an agreed upon date, or reasonable installment payments. If the initial interviewer and the individual are unable to agree upon a restitution plan, the case shall be reviewed within two working days by the field office manager, who shall prescribe a reasonable plan. If the individual believes that either the office manager's prescribed plan or the agreed upon plan is unreasonable, the individual may appeal that issue in the manner provided by Sections 1328, 1334, or 2707.2 of the code. If the individual appeals, no lump sum payment or installment payment shall be due until the decision on the appeal is final.

(h)

Administrative Penalties. In every case where restitution is determined appropriate, the department shall also assess an appropriate administrative penalty pursuant to subdivision (a) of Section 1257 and subdivision (d) of Section 1260 of the code, or Section 2675 of the code. Formal notice of such administrative penalty shall be mailed to or personally served upon the individual upon the signing of a restitution plan.

(i)

Refusal to Sign or Failure to Comply with Restitution Plan. If an individual refuses to sign an agreed upon restitution plan, or an office manager's prescribed plan, the

department shall seek prosecution. If an individual fails to comply with a restitution plan, he or she shall be mailed a notice to contact a designated department employee. If such person does not reply to said notice within fifteen (15) days, a second notice, requiring him or her to appear at the office, shall be mailed. If he or she has not complied with the requirements of the second notice within ten (10) days, prosecution shall be sought. If the individual responds to either notice, a personal interview shall be conducted. At the interview the department shall attempt to determine why he or she has not complied with the plan and what course of action, including modification of the plan or the seeking of a criminal complaint, is proper. If noncompliance is not the fault of such person the department shall modify the plan accordingly. However, if such person, through words or conduct, clearly indicates an intent not to comply with the restitution plan, the department shall seek prosecution.

(j)

Non-reviewable Determinations. All determinations made pursuant to this section are final and not appealable except for those determinations made expressly appealable by this section or the Unemployment Insurance Code.