

Bus Driver Unemployment Insurance Informational Bulletin

September 2021

School support personnel, including bus drivers, may be eligible for overpayment forgiveness. The 2021 General Assembly enacted House Bill 2040, which allows the Virginia Employment Commission (VEC) to forgive overpayments for Unemployment Insurance recipients during the COVID-19 pandemic. The VEC has begun sending waiver applications during and after the appeals process to determine eligibility.

A person is eligible for overpayment forgiveness if the payment was made:

- 1) through no fault of the employee and
- 2) it would be against equity and good conscience to require a worker to pay back the funds.
 - Per the Code, "no fault of their own" includes administrative error, inducement, solicitation, or coercion on the part of the employer, or an employer's failure to respond timely to VEC's request for claim information. It does not include fraud, a larger programming or IT failure that overpaid a group of individuals, or a reversal of the appeals process.
 - Per the Code, "against equity and good conscience" means that requiring repayment would deprive them of income to provide for basic necessities (food, housing, medicine, childcare, etc.)

The law requires the VEC to review each claim individually to determine if an employee is eligible for overpayment forgiveness.

We anticipate there will be some clear-cut cases for transportation employees. These are the employees who usually provided transportation services for the school division for summer school that lost that income due to cancellation of in-person summer programs due to COVID-19. They would likely receive a waiver to forgive the overpayment of benefits.

There are more complicated cases where transportation employees applied for unemployment and received benefits while they were still being paid by the school division. We recognize that most of these employees applied for VEC benefits due to a reduction in wages because they were only paid their base contracts. Unfortunately, the VEC has issued decisions finding claimant fault and ineligibility for forgiveness. But, if the employee can prove he/she was induced or told to file by their employer to apply for benefits at the same time they were being paid by the school division, they may be eligible for forgiveness.

The VEC is starting to process applications for unemployment overpayment waivers. The VEC will send claimants an application for waiver of overpayment form. All employees should complete and return the application.

So, you got the overpayment notice stating you need to repay the unemployment benefits you received. Now what?

You need to file an Application for Waiver of Overpayment Form. The VEC should send you this form as there is currently no online form or portal for it.

1. Make sure you timely file the application for waiver. By fax, which will give you a confirmation sheet that you should save as proof you sent it in.
2. VEA has recommendations for completing the application for waiver form.
3. Please contact your UniServ Director who can walk you through your options and provide support. They are your conduit to VEA legal services for representation on appeal.

What if I miss the 30-day deadline to file for a waiver?

- The law provides that the Commission may extend the 30-day period for “good cause shown.” This means that factors or circumstances beyond your control prevented you from making a request for waiver within the 30-day period.
- Talk with your UniServ Director about language and options.

Read more on the VEC Website: <https://www.vec.virginia.gov/node/13150>