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Fraud

Last UID Revision: UID-M 16-08 dated 04/06/16
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I. Legal References

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II. Basic Elements of Fraud

Claimants are responsible for providing correct and complete information. If a claimant does not provide correct and complete information to the department on a weekly or initial claim, we may find that the claimant concealed wages and/or a material fact and that the claim is fraudulent.

The investigation into potential concealment is conducted while investigating the primary issue. "Conceal" means to intentionally mislead the department by withholding or hiding information or making a false statement or misrepresentation. Penalties may be assessed when a claimant conceals information.

The department has the burden of proof to establish concealment. The claimant must be notified of the concealment issue and about the potential for penalties.

In determining whether a claimant intended to mislead the department, consider the following factors:

- ▶ Whether the claimant failed to read or follow instructions or other communications of the department related to a benefit claim.
- ▶ Whether the claimant relied on statements or representations of persons other than an employee of the department who is authorized to provide advice regarding the claimant's claim for benefits.
- ▶ Whether the claimant has a limitation or disability, and, if so, whether the claimant provided evidence to the department of that limitation or disability.
- ▶ The claimant's unemployment insurance claims filing experience.
- ▶ Any instructions or previous determinations of concealment issued or provided to the claimant.
- ▶ Any other factor that may provide evidence of the claimant's intent.

There is no concealment issue and no fraud investigation required when:

- ▶ During an initial claim, the claimant provides incorrect or incomplete dates or reasons for separation with an employer that he or she reported on that claim or that was already listed on the wage file.
- ▶ During a weekly claim, the claimant provides incorrect or incomplete information about an employer that he or she reported on that claim.
- ▶ The claimant fails to report income (wages, holiday pay, vacation pay, dismissal pay or any pay that is treated as wages) on the weekly claim certification and notifies the department of such failure within 14 days following the date the certification was filed.

In the resolution of these issues the elements to be considered are:

- ▶ Did the claimant fail to report wages and/or a material fact?
- ▶ On what initial or weekly claim did the claimant fail to report the wages and/or material fact?
- ▶ Did the claimant conceal the wages and/or material fact?

A. Did the claimant fail to report wages, hours worked and/or a material fact?

- ▶ Establish whether the claimant failed to provide wages and/or a material fact.

B. On which initial or weekly claim did the claimant fail to report the wages, hours worked and/or material fact?

- ▶ Establish on what initial or weekly claim(s) the claimant failed to report the wages and/or material fact.

Hint: The claimant's recorded answers to questions on a weekly claim filed by telephone, internet or mail are documented on the "DUCQ" screen. The claimant's recorded answers to questions on an initial claim filed by telephone are documented on the "DVRU" screen. There is no "DVRU" equivalent for the internet initial claims. The "TICR" screen shows the final answers recorded from

initial claims filed by internet and telephone.

C. Did the claimant conceal wages, hours worked and/or a material fact?

D

- ▶ Establish why the claimant failed to report wages and/or a material fact.

When an investigation establishes a claimant has given us false answers we must determine the claimant's intent. We must decide if this was an innocent mistake or done on purpose or with such careless disregard of the claiming process as to amount to an intentional act.

- ▶ Below are some examples of acts that **would not be** considered concealment:

- ▶ Paid training not reported because claimant did not consider this to be work and wages for UI purposes.
- ▶ Wages reported when paid, not earned.
- ▶ Claimant believes their work or labor is donated and is paid unexpectedly.
- ▶ Conflicting answers on the claim.
- ▶ The claimant brings the issue to our attention by attempting to repay the overpayment.
- ▶ The claimant followed incorrect instructions provided by UI employee.
- ▶ The claimant followed incorrect instructions provided by an employer.
- ▶ The employer's misinformation was an innocent mistake and this was the first time.
- ▶ Facts establish the claimant made an honest mistake.

Note: Once the correct way of reporting wages, hours worked or a material fact is explained to the claimant as part of an investigation, he or she is expected to follow the correct procedure on future claims. Similar acts that occur in the future may be considered concealment.

- ▶ Below are some examples of acts that **would be** considered concealment:

- ▶ The claimant gives false answers because he or she has not taken the time to listen to the questions. He or she may state they were used to pushing certain buttons on the phone or answering questions in a certain way and didn't bother to listen/read the questions.
- ▶ The claimant admits deliberate concealment.
- ▶ There is a prior fraud determination involving the same or similar concealment.
- ▶ There is a prior warning determination (formerly "Letter of Direction") involving the same or similar concealment
- ▶ There is a prior UCB-38 on the claim.
- ▶ The claimant banked hours in an attempt to hide them and avoid having to report them. Banking hours often involves aiding and abetting by the employer.
- ▶ The claimant intentionally reported an amount of wages that was significantly less than the amount earned.

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III. Forfeiture Assessment

A forfeiture/ineligibility reduction is a penalty assessed to the claimant for concealing information to fraudulently obtain benefits. The penalty requires the claimant to forfeit/be ineligible for a specific dollar amount of future unemployment benefits within 6 years from the date of determination. When concealment is found, forfeitures/reductions must be assessed for each act of concealment.

Note: Claimants who receive TRA/TAA payments fraudulently lose their rights to any further payment under the Trade Act. See the Fraud Section of the TRA/TAA manual.

A. Acts of Concealment

- There is a separate act of concealment for each false answer on a claim.

Example:

An individual concealed work and wages and a quit on one weekly claim certification. There are two acts of concealment.

There can only be one act of concealment for each specific question on a claim, even if the answer to the question results in multiple issues.

Examples:

A claimant refuses 3 offers of work in one week and answered no to the job refusal question on the weekly claim. Although there are 3 job refusals the claimant only answered one question, there is only one act of concealment.

A claimant omits two employers on the initial claim. Although two employers were omitted, the claimant is only asked one question regarding additional employers. Therefore there is only one act of concealment.

False answers about the same material fact for the same week, even on different claims (initial and/or weekly), is one act of concealment. If the concealment occurred on both an initial and on a weekly claim, the penalty should be assessed on the weekly claim because it is week specific.

Examples:

The claimant conceals being self-employed on the initial claim for week 26. They also conceal being self-employed on the weekly claim for week 26. There is one act of concealment and the penalty is assessed on the weekly claim because it is week specific.

False answers about the same material fact on claims for different weeks are separate acts of concealment.

Example:

The claimant conceals being self-employed on the initial claim for week 26. The claimant also conceals being self-employed on the weekly claim for week 26 and on the weekly claim for week 27. There is one act of concealment for week 26 (and the penalty is assessed on the weekly because it is week specific) and there is one act of concealment for week 27.

B. Forfeiture/Ineligible Reduction Levels

The forfeiture assessment is calculated by using the weekly benefit rate paid or payable. If a weekly benefit rate has not been established, see [Fraud Technical Information/Hints](#) for instructions.

A claimant shall forfeit:

- ▶ 1 x WBR for each act that occurred on or before the date of the first concealment determination
- ▶ 3 x WBR for each act that occurred after the date of the first 1x level determination
- ▶ 5 x WBR for each act that occurred after the date of the first 3x level determination

Note: Although the department may have previously issued a penalty assessment, any concealment determination as of April 6, 2008 and later would start over with 1 x WBR.

Concealment found for weeks 43/12 or later, a claimant shall be assessed an ineligibility benefit reduction as follows:

- ▶ 2 x WBR for each act that occurred week 43/12 and later
- ▶ 4 x WBR for each act that occurred after the date of the first 2 x level determination
- ▶ 8 x WBR for each act that occurred after the date of the first 4 x level determination

NOTE: Although the department may have previously issued a forfeiture assessment, any concealment found for weeks 43/12 or later would start over with the 2 x WBR penalty

When concealment is found for weeks 43/12 or later, in addition to the reduction penalty the claimant will also be assessed a 15% overpayment penalty which he/she must pay out of pocket, not offset with unemployment benefits and the dollar amount will not be rounded to the nearest dollar.

Effective with decisions issued 10/4/15 and later, the penalty is increased to 40% of the overpayment amount resulting from concealment with week of issue 43/12 and later.

NOTE: Overpayments resulting from concealment established prior to 10/4/15 with weeks of issue 43/12 and later will continue to include the 15% penalty. In addition, overpayments established prior to 10/4/15 not resulting from concealment that are amended, redetermined or found by a higher authority to be the result of concealment as of 10/4/15 and later are assessed a penalty at 15% of the overpayment because the first overpayment was established prior to the law change.

Cases are referred to Program Integrity for potential prosecution if there are 5 acts of concealment and an overpayment resulting in \$5000 or more. A copy of the determination is automatically sent to Program Integrity when a "P" is entered as the fraud code in the overpayment code.

Note: Extraordinary cases that do not meet the above criteria may be referred for prosecution consideration. If you believe you have an extraordinary case consult with a lead worker or supervisor.

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IV. Special Circumstances

A. No Response by Claimant

If the claimant does not respond to the interview notice, or if the interview notice is returned as undeliverable, there must be enough information based on the facts in the file for the adjudicator to make a reasonable inference that concealment occurred.

B. Deceased Claimants

There is no concealment issue. Resolve the primary issue and include any overpayment of benefits on the primary decision.

C. Employer Aiding and Abetting

An employer, who acts with the knowledge or belief that a claimant is intending or has submitted a fraudulent claim, has aided and abetted the claimant when:

- ▶ The employer provides false information with the intent to assist the claimant in committing an act of concealment; or
- ▶ The employer is ready and willing to provide false information, if needed, and the claimant who commits the concealment knows of the employer's willingness to help commit an act of concealment.

When there is an allegation of aiding and abetting, the adjudicator takes a complete statement, including information about the employer's knowledge or participation in the claimant's concealment. The adjudicator issues the appropriate decisions including concealment.

The employer is penalized an amount equal to the amount of benefits improperly paid and an additional \$500, \$1000 or \$1500 for each single act of concealment.

V. Investigative Elements

A reasonable attempt must be made to obtain the relevant information from the claimant.

Note: A thorough review of the claim record is required prior to conducting the claimant interview. If the investigation was not scheduled on a fraud interview notice and the adjudicator determines that there is a potential concealment issue, a verbal notice about the concealment must be given to the claimant. If the claimant is a no response, the issue cannot be resolved until the claimant is notified of the potential concealment.

- ▶ Does the claimant understand the allegation?
- ▶ Did the claimant fail to report wages, hours worked or a material fact?
- ▶ Did the claimant file the claim for the week(s) in question? If not, does the claimant know who did?
- ▶ If the claimant filed the claim(s), why did the claimant fail to report the wages, hours worked or material fact(s)?
- ▶ Did the claimant understand correct filing procedures and did the claimant receive a handbook?
- ▶ What is the claimant's educational level?
- ▶ From what county did the claimant file the claim(s) in question?
- ▶ If claim record shows a PO Box, what is the claimant's street address?
- ▶ Has the claimant previously filed for unemployment and properly reported relevant wages, hours worked, and/or material facts?
- ▶ Has the claimant received instructions or previous determinations of concealment?

If aiding and abetting is alleged a reasonable attempt must be made to obtain the following relevant information from the parties:

- ▶ Who was aware of and/or advised the claimant to conceal information (obtain names if applicable)?
- ▶ When did this occur?
- ▶ What specifically was said?

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VI. Adjudication Mechanics

A. Week of Issue

Refer to the Week of Issue Manual Section

B. Employer Party of Interest

Refer to the Employer Party of Interest Manual Section

C. Resolution and Determination

A written determination is required when it is determined that:

- ▶ the claimant concealed wages/material fact
- ▶ the claimant did not conceal unreported wages/material fact
- ▶ there is no concealment issue (no failure to report wages/material fact) but the interview notice advised the claimant of a potential concealment issue and the claimant is not aware that the interview notice was in error.

D. Resolution Codes

Refer to FF issue family resolution codes to locate the appropriate resolution code.

E. Disqualification

Forfeiture penalties may be assessed.

Note: Claimants who receive TRA/TAA payments fraudulently lose their rights to any further payment under the Trade Act. See the Fraud Section of the TRA/TAA manual.

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VII. Technical Information/Hints

A. Entering a Forfeiture

Enter the appropriate forfeiture level and forfeiture amount on the effect screen.

If the monetary computation has not been issued, or if the claimant lacks qualifying, the next available weekly benefit rate applies. When entering the forfeiture LID, enter "99999.99" as the forfeiture amount. State in the LID that the claimant will forfeit the appropriate number times the next applicable WBR. A CL25 reject will be issued when a new claim is filed. Redetermine the forfeiture LID to show the exact forfeiture amount. The initial 6-year forfeiture period does not change when the forfeiture LID is amended.

1. Entering a Forfeiture Determination

Only one forfeiture determination may be issued for a given week. The determination should address all wages and material facts that were concealed.

If the claimant concealed wages, the employers from whom the wages were earned must be included on the determination.

Mini format 909 is automatically included on determinations that have related fraud issues resulting in an overpayment week 42/12 or earlier. Mini format 929 is automatically included on determinations that have related fraud issues resulting in an overpayment week 43/12 and later. M909 must be included on determinations that have related fraud issues resulting in no overpayment or the full overpayment is on another determination. M909/929 will automatically be included on any wage determination where the concealment ruling is accompanied by an overpayment.

For the adversely affected week, refer to the Technical Information/Hints Lower Level Issue and Decision Entry adversely affected week section of the Decision Entry Fields portion.

2. Forfeiture Records Inquiry Screen (FORF)

All forfeiture/benefit reduction penalties assessed to a claim are recorded on FORF. This screen includes the remaining dollars to be forfeited/reduced as well as the beginning and ending dates of the 6-year limit for each forfeiture/benefit reduction determination.

B. Aiding & Abetting Procedures

1. Aiding and Abetting Cases: Procedures for UI Staff

The Department can assess penalties against any entity that has at least one employee. This would include out-of-state employers and employers with pending accounts.

If an allegation of aiding and abetting arises, an aiding and abetting investigation is required.

Send an email to DWD MB UL DARA to ask whether the employer in question has been investigated and/or penalized for aiding and abetting in the past.

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a. Scheduling an employing unit for a fact-finding interview:

Use form UCF-7268-E, Employer Interview Notice, to schedule an employing unit for an aiding and abetting fact finding interview.

Include the following in the Employer Information Request interview notice:

1. Date and time for the interview.
2. State the facts of the aiding and abetting issue. Include the name and social security numbers of the claimant(s) involved.
3. State the total potential overpayment created by the aiding and abetting.
4. State the potential dollar forfeiture/penalty to be assessed the employing unit:

The employer is penalized an amount equal to the amount of benefits improperly paid and:

- ▶ \$500 for each act that occurred on or before the date of the first determination.
 - ▶ \$1000 for each act that occurred after the date of the first \$500 level determination.
 - ▶ \$1500 for each act that occurred after the date of the first \$1000 level determination.
5. State that failure to participate in the scheduled interview will result in a determination being made based on best available information.

b. Issuing an Employer Aiding and Abetting Determination:

1. Use form UCF-41-E, Determination of Employer Forfeitures, to issue the employing unit an Initial Determination.

Include the following elements in the determination

A. State in the findings:

- ▶ The facts found in the investigation.
- ▶ List the claimant name(s) and social security number(s), involved in the aiding and abetting.

B. State in the effects:

- ▶ The forfeiture/penalty dollar amount.
- ▶ Appropriate employer fault paragraphing on LID.

Wording:

THE EMPLOYING UNIT AIDED AND ABETTED THE CLAIMANT(S) IN COMMITTING AN ACT OR ACTS OF CONCEALMENT.

The employing unit is required to pay the Department of Workforce Development \$ _____, the amount of improperly paid benefits to the claimant(s) plus a penalty, for aiding and abetting in one or more acts of concealment.

Benefits were improperly paid because the employer aided and abetted the claimant(s) in receipt of unemployment benefits not due. Pursuant to section 106.04(13)(f), the employer is at fault.

Include this wording if a Covered Wisconsin employer:

Benefits improperly paid from other employers' UI reserve accounts will now be charged to Acct. # _____ (insert aiding and abetting ER account number here).

Benefits improperly paid from your UI reserve account will remain charged even if the claimant repays the department.

Pursuant to section 108.04(13)(e), the employer's UI reserve account will not be credited with the amount of the overpaid benefits, even if the department receives repayment.

C. Appeal Information

You will need to manually enter the appeal deadline on the UCF-41-E. Make sure the appeal deadline noted on the front of the form is 21 days from the date mailed. (The appeal period for aiding and abetting determination under section 108.10 is 21 days.)

Note: All aiding and abetting appeals are to be sent to:

Bureau of Legal Affairs
P.O. Box 8942
Madison, WI 53708
FAX (608) 266-8221

2. Manually send the aiding and abetting determination to the appropriate employer.
3. Enter an employer fault decision on the disputed claims record of each associated claimant using Reso AD011.
 - A. Enter this Reso code with decision type "35W".
 - B. Use the same week of issue as was used on the primary concealment LID for each claimant.
 - C. Enter a TISQ message explaining the AD011 was entered to document that an aiding and abetting decision was issued.

c. Distributing Aiding and Abetting Determinations within Department:

1. Scan documents into UIBnet the same day the determination is entered; copy to each associated claimant file; change sensitivity level to medium.
2. Send an email to DWD MB UI GENERAL ACCOUNTING, DWD MB UI NAC, and DWD MB UI DARA.
 - ▶ Write up short summary of case
 - ▶ Include SSN(s) of claimant(s)
 - ▶ Specify when a non-covered employer is involved, as special handling is required.

General Accounting will forward information to other relevant parties in Tax and Accounting.

NAC will charge/recharge appropriately in accordance with §108.04(13)(f), employer fault.

Note for NAC: Wisconsin non-covered employing units are only assessed a

for future penalty. Benefit charges are not transferable.

C. Detection Methods

- 1. Base Record Crossmatch
- 2. R Crossmatch
- 3. Border State Crossmatch
- 4. New Hire Crossmatch
- 10 Deceased Citizen Crossmatch
- 5. Field Audit Discoveries

D. Employer Audit Request Procedures

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PRIOR WID REVISIONS:

- WID # 15-23 dated 10/27/15
- WID # 15-24 dated 10/28/15
- WID # 14-23 dated 11/13/14
- WID # 13-25 dated 12/04/13
- WID # 12-24 dated 10/31/12
- WID # 10-24 dated 08/01/10
- WID # 03-18 dated 05/14/10
- WID # 18-22 dated 12/13/08

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