

This is an amendment to 11.3.300 NMAC, Section 314 effective 06/21/2022

11.3.300.314 FRAUDULENT CLAIMS:

A. Claimant Fraud:

(1) Subsection F of Section 51-1-38 NMSA of the Unemployment Compensation Law provides: “Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of Subsection J of Section 51-1-8 NMSA 1978, if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. The entire amount of the benefits obtained by means of such claim shall be, in addition to any other penalties provided herein, subject to recoupment by deduction from the claimant’s future benefits or they may be recovered as provided for the collection of past due contributions in Subsection B of Section 51-1-36 NMSA 1978.” The terms used in, Section 51-1-38 NMSA 1978 mean:

(a) “False” means a statement contrary to fact.

(b) “Knowingly” means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because the person had no reasonable basis for believing it to be true.

(c) “Knowingly fails to disclose any material fact” means the claimant deliberately withholds information which the claimant knows should be disclosed to the department.

(d) “Material fact” means the fact affects the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits is not a material fact.

(e) “With intent to obtain benefits” means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant's intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant's intent shall be based on consideration of all the facts and not merely an assumption.

(2) Claimants who inadvertently make a mistake or omission on the basis of information previously given them by the department, cannot reasonably be expected to understand their responsibility and shall not be subject to the provisions of Subsection D of Section 51-1-38 NMSA 1978.

(3) The department shall impose an administrative penalty pursuant to Subsection A of Section 51-1-38 NMSA 1978 for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

(a) for each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks, from the date of the determination [~~or the date the claimant is next determined eligible for benefits~~];

(b) for each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks, from the date of the determination [~~or the date the claimant is next determined eligible for benefits~~]; and

(c) In any case where a claimant fraudulently obtained or increased benefits in two or more separate offenses, the claimant shall forfeit all benefit rights for 52 weeks from the date of the determination [~~or the date the claimant is next determined to be eligible for benefits~~].

(4) The department shall demand immediate repayment of any overpayment established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately. Recovery of the overpayment may be by any means permitted by law. Recovery of fraudulent overpayments may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment.

(5) Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the department from requesting criminal proceedings against such claimant.

(6) The department shall impose a civil penalty pursuant to Subsection B of Section 51-1-38 NMSA 1978 upon every claimant who knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. The total amount of the penalty shall be twenty-five percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact. The department shall apply the penalty as follows:

(a) an amount equal to the first fifteen percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the "unemployment compensation fund" set forth in Section 51-1-19 NMSA 1978.

(b) an amount equal to the remaining ten percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the Employment Security Department Fund.

(7) Any payments received from a claimant for repayment for any overpayment and civil penalty shall be applied first to the principal amount of the overpayment and any payment in excess of the principal amount of the overpayment shall be applied to pay the civil penalty.

B. Employer Fraud:

(1) Subsection D of Section 51-1-38 NMSA 1978 provides: "In addition to the penalty pursuant to subsection C of this section, any employing unit or officer or agent of an employing unit that makes a false statement or representation knowing it to be false or that knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for benefits under the Unemployment Compensation Law shall be required to pay a civil penalty in an amount not to exceed \$10,000 as determined by rule established by the department. The penalty shall be collected in a manner provided in Subsection B of Section 51-1-36 NMSA 1978 and distributed to the fund."

(2) When imposing a civil penalty upon employers found to have made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for benefits under the Unemployment Compensation Law, the department shall adhere to the following guidelines:

(a) an initial violation shall subject the employer to a maximum penalty of \$500.00;

(b) a second violation within a period of three years of the previous violation shall subject the employer to a penalty that is no less than \$500.00 and no more than \$1,000.00;

(c) a third violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$1,000.00 and no more than \$2,000.00;

(d) a fourth or subsequent violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$2,000.00 and no more than \$10,000.00.

(3) The department shall demand immediate repayment of any civil penalty established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the civil penalty is not repaid immediately. Recovery of the civil penalty may be by any means permitted by law. Recovery of the civil penalty may include court awarded costs. The court costs awarded by the court shall be added to the civil penalty.

(4) Payment of the civil penalty due to fraudulent misrepresentation or failure to disclose a material fact by any employing unit or officer or agent of an employing unit shall not preclude the department from requesting criminal proceedings against such employing unit or officer or agent of an employing unit.

[11.3.300.314 NMAC - Rp, 11.3.300.314 NMAC, 11/1/2018; A, 06/21/2022]