Wage Overpayment Policy
PCG-OVRPAY

The Division of Accounting (DOA) is responsible for working with State of Delaware Organizations to ensure effective controls are in place governing all financial activities, including the process of recouping overpaid wages from employees.

Organization Payroll Officers work with the DOA Payroll Compliance Group (PCG) to timely and accurately resolve overpayment situations. The Payroll Repayment Procedure, PCG-REPAY, offers step-by-step instructions on the process for repayment calculations, employee notifications, repayment agreements, and record corrections.

Wage overpayments occur for a variety of reasons. To minimize the risk of continued overpayments over multiple pay periods, update employee records as scenarios require in the PHRST system prior to the next Pay Confirm.

1.0 Delaware Code

1.1 Title 29, Chapter 59, §5916 and §5943

.....§5916 Uniform pay plan; hazardous duty pay.

.....(c) No state employee whose salary is designated in the annual appropriations act shall receive compensation, whether in wages, salary, wages-in-kind, food allotment bonuses or overtime, from agencies of this State in excess of said salary regardless of the source of funds involved except as provided in §§ 5105(c), 5112(b) and 5123 of this title. In the event that an employee shall receive excess compensation, the amount of the appropriation from the General Fund shall be reduced by the amount of such excessive compensation and the Attorney General shall take such steps as necessary to recover from such employee any such excessive amount as has actually been paid.

.....§ 5943. Enforcement of chapter by legal action.

.....(c) The State may maintain an action for the reimbursement of wages, benefits or both, paid contrary to this chapter, the merit rules or the Director's regulations adopted thereunder, against the recipient employee. All moneys recovered in such action shall be paid to the State Treasury and credited to the account from which original payments had been drawn....

.....(h) No action for the reimbursement of wages, benefits or both, improperly paid to a state employee shall be brought after the expiration of 3 years from the date the wages, benefits or both were improperly paid.

.....(j) ... all state agencies shall conduct audits of the payroll records of each of its employees. In the event that the audit indicates that a discrepancy exists between the amount actually paid and the amount that should have been paid, the agency shall notify the employee, the appointing authority, the Secretary of Finance and the Auditor of Accounts, with sufficient documentation to point out the source and amount of the discrepancy, within 10 calendar days of the date of the completion of the audit. In the event that the audit indicates an overpayment, the appointing authority shall provide the Attorney General with the same notice provided the employee. The Attorney General may proceed in accordance with subsection (c) of this section. The appointing authority shall, within 1 pay period, correct the discrepancy on proper personnel payroll forms.

2.0 State Employee Merit Rules

2.1 .... Chapter 17.0 Payroll

...17.4 Recovery of Salaries Improperly Paid. In accordance with the provisions of Delaware Code, officials may be held liable for the return of any salaries they wrongfully authorize.

3.0 Policy

3.1 Audits (*Del. C. – Title 29, Chapter 59, §5943 (j)*)

- Organizations conduct biweekly audits of payroll transactions as part of the Payroll Expenditure Authorization process.

- Organizations are required to have in place and enforce effective internal controls to monitor Payroll-related transactions. These internal controls must be documented in both the Payroll Internal Controls Plan, and Questionnaire, on file with the PCG. These controls must include, but are not limited to:

  - Review and approval (by an approving authority for the Organization) of all regular and exception payments to employees including, but not limited to:

    - Reported hours for hourly employees
    - Docking and Overtime hours

3.2 Notification of Overpayment

- The Organization Payroll Officer analyzes the circumstances of the overpayment, works with the PCG to determine the correct repayment amount, and submits either a *Current or Prior Year Notification of Wage Overpayment* letter to the employee (Active or Terminated). The letter explains the cause and amount of overpayment, the employee's acknowledgement of the overpayment, and the repayment options.

- Per Delaware Code, the Organization's appointing authority, the Secretary of Finance, the Auditor of Accounts, and the Attorney General must be advised of the overpayment.
  - The Division of Accounting PCG monitors overpayments and repayments.
  - The Secretary of Finance notifies the Auditor of Accounts and Attorney General when the amount of a gross overpayment is $\geq$ $2,500.00.

3.3 Payment Options

- For all overpayments, employees must complete, sign and submit the *Repayment Agreement/ Authorization for Payroll Deduction* section of the *Notification of Wage Overpayment* form to the Organization Payroll office within 10 days.

- To avoid additional tax implications, overpayments must be recovered in-full in the same calendar year in which the overpayment occurred.

- To streamline the collection process, overpayments shall be recovered through the PHRST Payroll system in one of two ways.

- Wage Reduction – monies recovered in the same year the overpayment occurred
  - Employees receiving regular paychecks will have earnings on subsequent paychecks in the current calendar year reduced by the amount of the overpayment.
- After-Tax General Deduction – monies recovered in year subsequent to year of overpayment
  - For prior-year overpayments, employees will have an after-tax deduction taken to recover the overpayment.

- Overpayments occurring over multiple pay periods may be recovered over multiple pay periods to reduce financial hardship.
  - No repayment shall take longer than the period of the overpayment (i.e., overpayments occurring over three pay periods must be repaid in no more than three pay periods).
- Alternative payment options may be available in cases of financial hardship.
- Accepting personal checks or money orders shall be the exception to the rule.
- Once a repayment plan is established, if in any pay period there are insufficient funds to cover the amount of the wage reduction, the next pay will include the balance of the first reduction amount and the full amount of the subsequent reduction amount.
- For terminating/retiring employees, the remaining balance is deducted as wage reduction or an after-tax deduction, to the fullest extent, from the final payout.

3.4 Taxes

- Calendar Year Considerations:
  - Federal law treats wage overpayments the same as other wages paid to the employee.
  - According to the Internal Revenue Service constructive receipt regulations, all wage payments within a calendar year are taxable and reportable on Form W-2 in the year paid.
  - If repayment is made in the same tax year that the overpayment occurred, the employee is entitled to a refund of the withheld taxes and pays back the net amount of the overpayment.
  - If repayment is made in a subsequent tax year, special calculation and reporting rules apply as explained below:
    - The amount of the repayment is reduced by the amount of Social security and Medicare taxes that were originally withheld and a corrected W-2 is processed to reduce the employee Social Security and Medicare taxable gross amounts for the year of the overpayment.

- Income taxes (Federal, State, and Local) are not refunded. Because the employee received and had use of the funds during that tax year, the wages paid in error in a prior year remain taxable to the employee for the year in which they were received.
- The Federal, State, and Local taxable wages on the W-2 for the year in which the overpayment was received cannot be corrected.
- The employee may not file an amended tax return for the year of the overpayment reflecting lower taxable wages.
- When filing the tax return for the year in which the wages were repaid, the employee may be entitled to either a deduction or credit to recover income taxes on the repaid wages.
- A statement of receipt of funds will be issued to the employee indicating the amount repaid in the current year to satisfy an overpayment in a previous year.
- The employee must provide a written statement that the employee did not and will not seek a refund of the Social Security and Medicare taxes directly from the IRS.

- Wages corrected beyond the period of limitations (3 years, 3 months, 15 days) for adjustments to Social Security and Medicare taxes may only be revised under conditions described below:
  - To correct:
    - an entry established through fraud;
    - a mechanical, clerical, or other obvious error;
    - errors in crediting earnings to the wrong person or to the wrong period; or
  - To add or remove wages in accordance with a wage report filed by the State employer with SSA, if the report is filed within the time limitation specified for assessment, refund, or credit under a State's coverage agreement; AND
  - Prior to the expiration of the time limit, the worker or the worker's survivor has:
    - Applied for benefits and stated that the earnings for a year(s) were incorrect; or
    - Requested a revision of his or her earnings record for a year(s).

3.5 Deduction Considerations

- When collecting a wage repayment through wage reductions or after-tax deductions, do not reduce wages to the extent that existing Benefit/General Deductions cannot be taken.
- Employee may not establish new or increase existing General Deductions for the purpose of limiting the State's ability to recoup overpayments in the shortest time possible.

- Employee is not refunded any general deductions that were withheld from overpaid wages that cannot be recovered from a vendor.

3.6 Funding Considerations

- When applying a wage reduction to a subsequent paycheck, do not allow the adjusted total gross dollars to equal zero. This scenario creates a funding error.
- If an overpayment occurs in one fiscal year and the funds are recouped in a new fiscal year, funds are credited to the ChartField String for the current fiscal year.
- The General Fund salary appropriation 0137 lapses and will not be credited if repayment is in a new fiscal year; these funds revert to the State General Fund.
- If an overpayment was funded with a Federal Grant or a Fund that may change or close before the overpayment is repaid, contact the FSF Service Desk.

3.7 Other Considerations

- Non-responsive Employees
  - Employees not responding to a *Notification of Wage Overpayment* within 10 days will have unpaid balances collected to the fullest extent with the following considerations:
    - The earnings on their next regular pay(s) will be reduced based on the calculation routine in PCG-REPAY (current calendar year only).
    - Recover wage overpayments through an after-tax deduction based on the calculation routine in PCG-REPAY (prior calendar year only).
    - Unpaid balances may be collected from State of Delaware Tax Refunds.
    - Inactive overpayments may be turned over to a collection agency or to the Attorney General's (AG) Office to file a claim in Small Claims court.
    - 1% monthly interest accrues on the outstanding balance of an inactive overpayment.
- Terminated Employees
  - The Organization Payroll Officer works with the PCG to analyze the overpayment and notify both the employee and the Human Resources Office in writing of the amount due.
  - Employees eligible to receive payment for unused Annual and/or Sick Leave may have up to their entire payout amount applied to their overpayment.
  - If the former employee is not able to remit payment in full, the Organization Payroll office must be notified immediately.
  - If the Organization Payroll Office is not contacted within 10 days, a repayment notification letter is sent to the employee's home requesting remittance of the overpayment in full.

- Employees have 30 days after receiving the notification to remit payment.
- Payments not received after 30 days are either turned over to the AG's Office to initiate legal process or to the Division of Revenue for collection from tax refunds.

- Deceased Employees
  - Deceased employees eligible to receive payment for unused Annual and/or Sick Leave may have up to their entire payout amount applied to their overpayment.
  - If employee is deceased before the debt is settled, a claim will be filed against the Estate with the Register of Wills of the County in which the decedent resided as of his death with a copy to the personal representative of the Estate as contemplated by 12 Del. C. § 2104, not later than eight (8) months following the date of death as required by 12 Del. C. §2102.

3.8 Supporting documents:

Title 29, Chapter 59, § 5916
Title 29, Chapter 59, § 5943
State Employee Merit Rules 17.4
IRS Publication 15 (Circular E)
PCG-REPAY – Payroll Repayment Procedure