CHAPTER 41

Employment and Workforce ‑ Offenses, Penalties and Liabilities

Code Commissioner’s Note

At the direction of the Code Commissioner “Employment and Workforce” substituted for “Employment Security”, to bring the chapter title in conformance with 2010 Act No. 146.

CROSS REFERENCES

Corporate officers exempt from unemployment benefits absent employer election, procedure, exceptions, see Section 41‑27‑265.

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

**SECTION 41‑41‑10.** False statements or representations, or failures to disclose material facts, to obtain or increase benefits.

 Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or to increase any benefits or other payment under Chapters 27 through 41 of this title or under an employment security or unemployment compensation law of any other state, the Federal Government, or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than fifty nor more than two hundred fifty dollars or by imprisonment for not longer than thirty days and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

HISTORY: 1962 Code Section 68‑401; 1952 Code Section 68‑401; 1949 (46) 262; 1955 (49) 480; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

2015 Act No. 77, Section 2, substituted “of this title” for “of this Title”, and substituted “not less than fifty nor more than two hundred fifty dollars” for “not less than twenty nor more than one hundred dollars”.

CROSS REFERENCES

Improper unemployment compensation payments, see Section 41‑41‑45.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 164.

**SECTION 41‑41‑20.** Suspension of benefits to claimant making false statement or failing to disclose material fact; deduction from benefits.

 (A) A claimant found by the department knowingly to have made a false statement or who knowingly failed to disclose a material fact when filing a compensable claim to establish his right to or increase the amount of his benefits is ineligible to receive benefits for any week for which the claim was filed and is ineligible to receive further benefits for not less than ten and not more than fifty‑two consecutive weeks as determined by the department according to the circumstances of the case, these weeks to commence with the date of the determination.

 (B) If the department finds that a fraudulent misrepresentation has been made by a claimant with the object of obtaining benefits under this chapter to which he was not entitled, in addition to any other penalty or prosecution provided under this chapter, the department may make a determination that there must be deducted from benefits to which the claimant might become entitled during this present benefit year or the next subsequent benefit year, or both, an amount not less than two and one‑half times his weekly benefit amount and not more than his maximum benefit amount payable in a benefit year, as determined under Chapter 35. This deduction takes effect on the date of the determination. An appeal from this determination must be made in the manner prescribed in Article 5, Chapter 35.

HISTORY: 1962 Code Section 68‑401.1; 1972 (57) 2309; 1973 (58) 248; 2002 Act No. 202, Section 1, eff April 10, 2002; 2010 Act No. 146, Section 104, eff March 30, 2010; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

The 2002 amendment rewrote this section.

The 2010 amendment substituted “department” for four occurrences of “commission” throughout the section.

2015 Act No. 77, Section 2, in (B), inserted “and one‑half” following “an amount not less than two”.

CROSS REFERENCES

Improper unemployment compensation payments, see Section 41‑41‑45.

**SECTION 41‑41‑30.** False statements or representations, or failures to disclose material facts, to prevent or reduce payment of benefits or contributions.

 Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject thereto or to avoid or reduce any contribution or other payment required from any employing unit under Chapters 27 through 41 of this title shall be punished by a fine of not less than fifty nor more than two hundred fifty dollars or by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

HISTORY: 1962 Code Section 68‑402; 1952 Code Section 68‑402; 1949 (46) 262; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

2015 Act No. 77, Section 2, substituted “of this title” for “of this Title”, and substituted “a fine of not less than fifty nor more than two hundred fifty dollars” for “a fine of not less than twenty nor more than one hundred dollars”.

CROSS REFERENCES

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 164.

**SECTION 41‑41‑40.** Recovery of benefits paid to person not entitled thereto.

 (A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

 (2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41‑31‑380 through 41‑31‑400 for the collection of past due contributions.

 (3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12‑56‑10, et seq. If the overpayment is collectible in accordance with Section 12‑56‑60, the department shall add to the amount of the overpayment a collection fee of not more than fifty dollars for each collection attempt to defray administrative costs. Notwithstanding another provision of law, a final decision of the department or court establishing the character and amount of overpayment is final for all purposes and proceedings.

 (4) The department may attempt collection of overpayment through the federal Unemployment Compensation Treasury Offset Program (UCTOP). If the overpayment is collectible, the department shall add to the amount of the overpayment a collection fee not to exceed the administrative costs set by this program.

 (5) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination for nonfraudulent overpayments nor after eight years from the date of the final determination for fraudulent overpayments.

 (B)(1) A person who is overpaid any amounts as benefits under Chapters 27 through 41 is liable to repay those amounts, except as otherwise provided by this subsection.

 (2) Upon written request by the person submitted to the department within the statutory appeal period from the issuance of the determination of overpayment, the department may waive repayment if the department finds that the:

 (a) overpayment was not due to fraud, misrepresentation, or wilful nondisclosure on the part of the person;

 (b) overpayment was received without fault on the part of the person; and

 (c) recovery of the overpayment from the person would be contrary to equity and good conscience.

 (3) Decisions denying waiver requests are subject to the appeal provisions of Chapter 35.

 (C) A person who has received a sum as benefits under the comparable unemployment law of any other state while conditions imposed by that law were not fulfilled or while he was disqualified from receiving benefits by that law is liable to repay the department for the corresponding unemployment compensation fund of the other state a sum equal to the amount received by him if the other state has entered into an Interstate Reciprocal Overpayment Recovery Agreement with the State and has furnished the department with verification of the overpayment as required by the agreement. Recovery of overpayments under this subsection are not subject to the provisions of subsections (A)(3) and (B).

 (D) Upon the determination of fraudulent overpayments by the department, an employer from whose account the overpayment was debited must be credited for the amount of the overpayment regardless of the outcome of the action for recoupment or recovery of the overpayment. This section shall not apply to employers whose accounts are subject to the provisions of Section 41‑31‑810 or 41‑31‑620.

HISTORY: 1962 Code Section 68‑403; 1952 Code Section 68‑403; 1949 (46) 262; 1957 (50) 580; 1972 (57) 2309; 1981 Act No. 108 Section 13; 1985 Act No. 154, Section 7; 1993 Act No. 181, Section 982, eff July 1, 1993; 2002 Act No. 202, Section 2, eff April 10, 2002; 2010 Act No. 146, Section 105, eff March 30, 2010; 2011 Act No. 63, Section 13, eff June 14, 2011; 2012 Act No. 247, Section 3, eff June 18, 2012; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

The 1993 amendment substituted “Department of Revenue” for “Tax Commission”.

The 2002 amendment rewrote this section.

The 2010 amendment substituted “department” for eight occurrences of “commission” throughout the section.

The 2011 amendment inserted subsection (A)(4) relating to overpayment through the federal UCTOP, redesignated former subsection (A)(4) as subsection (A)(5), and in subsection (A)(5) added “for nonfraudulent overpayments nor after eight years from the date of the final determination for fraudulent overpayments” at the end.

The 2012 amendment added subsection (D).

2015 Act No. 77, Section 2, in (A)(3), substituted “fifty dollars” for “twenty‑five dollars”, and added the last sentence; and in (D), substituted “Section” for “Sections”.

CROSS REFERENCES

Waiver of non‑fraudulent or no‑fault overpayment, see S.C. Code of Regulations R. 47‑103.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 297.

NOTES OF DECISIONS

In general 1

1. In general

The purpose of the repayment provisions of Section 41‑41‑40 is to avoid a double recovery by unemployment benefit recipients. Jarrott v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 533, 351 S.E.2d 859.

Since the backpay awarded by the federal court order to school teachers who had been wrongfully terminated by the school district constituted wages, the Employment Security Commission was entitled to reimbursement from the teachers for the money paid to them as unemployment compensation during the period between their termination and reinstatement. Jarrott v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 533, 351 S.E.2d 859.

Supplemental federal court order which precluded school district from reducing the back pay of awards to teachers wrongfully terminated by the amount of the unemployment compensation paid to the teachers by the Employment Security Commission during the period between their termination and reinstatement did not bar, under the principles of equitable estoppel and res judicata, the Commission from recouping benefits paid to the teachers during that period, since the Commission was not a party to the federal court litigation, nor was it in privity with the school district. Jarrott v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 533, 351 S.E.2d 859. Judgment 829(1)

**SECTION 41‑41‑45.** Improper unemployment compensation payments.

 (A) Notwithstanding any other provision of law, if the department determines that an improper payment from its unemployment compensation fund or from any federal unemployment compensation fund was made to any individual due to a false statement or failure to disclose a material fact pursuant to Sections 41‑41‑10 and 41‑41‑20, the department will assess a monetary penalty of thirty‑three percent of the amount of the overpayment.

 (B) The notice of the determination or decision informing the individual of the overpayment must include:

 (1) the claimant’s appeal rights;

 (2) the penalty amount;

 (3) an explanation of the reason for the overpayment; and

 (4) the reason the penalty has been applied.

 (C) The recovered amounts shall be applied with priority to:

 (1) the principal amount of the overpayment to the unemployment compensation fund;

 (2) sixty percent of the monetary penalty to the unemployment compensation fund;

 (3) the remaining forty percent of the monetary penalty to promote unemployment compensation integrity; and

 (4) any remaining amounts to interest.

 (D) Offset of future unemployment insurance benefits shall not be applied to the monetary penalty or interest associated with an overpayment.

 (E) The monetary penalty will be assessed on any fraudulent overpayment determined by the department.

HISTORY: 2013 Act No. 53, Section 1, eff June 7, 2013; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

2015 Act No. 77, Section 2, in (A), substituted “thirty‑three percent” for “twenty‑five percent”; and in (E), deleted “after October 21, 2013” at the end.

CROSS REFERENCES

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 25, Claims.

**SECTION 41‑41‑50.** General penalty.

 An employing unit or person who wilfully violates a provision of Chapters 27 through 41 of this title or an order, rule, or regulation under this title, the violation of which is made unlawful or the observance of which is required under the terms of these chapters, is liable to a penalty of two thousand dollars, to be recovered by the department in an appropriate action in the South Carolina Administrative Law Court, and also is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than fifty dollars but not more than two hundred fifty dollars or imprisonment for not longer than thirty days, and, with regard to both civil and criminal penalties, each day the violation continues is considered a separate offense.

HISTORY: 1962 Code Section 68‑404; 1952 Code Section 68‑404; 1949 (46) 262; 2010 Act No. 146, Section 106, eff March 30, 2010; 2015 Act No. 77 (S.407), Section 2, eff June 8, 2015.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

2015 Act No. 77, Section 2, substituted “a penalty of two thousand dollars” for “a penalty of one thousand dollars”, substituted “the South Carolina Administrative Law Court” for “a court of competent jurisdiction”, substituted “a fine of not less than fifty dollars but not more than two hundred fifty dollars” for “a fine of not less than twenty dollars but not more than one hundred dollars”, and added “with regard to both civil and criminal penalties,”.

CROSS REFERENCES

Liability of common carrier for injuries to employee, see Sections 58‑17‑3720 et seq.

Retirement systems generally, see Title 9.

Attorney General’s Opinions

Magistrates have jurisdiction and it is their duty to issue warrants for the violation of the provisions of the Unemployment Compensation Law or any rules or regulations promulgated thereunder. 1964‑65 Op Atty Gen, No 1901, p 186.