

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON FEBRUARY 2, 2021**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE
8 EMERGENCY RULES BELOW WITH PREAMBLE AND SUBMITTED THEM TO THE
9 *TEXAS REGISTER*.

10
11 The rules are effective: **February 2, 2021**
12 Estimated date of publication in the *Texas Register*: **February 12, 2021**
13

14 The Texas Workforce Commission (TWC) adopts on an emergency basis the following new
15 sections to Chapter 815, relating to Unemployment Insurance:
16

- 17 Subchapter A. General Provisions, §815.4
- 18 Subchapter F. Extended Benefits, §815.175

19
20 TWC adopts on an emergency basis amendments to the following sections of Chapter 815,
21 relating to Unemployment Insurance:
22

- 23 Subchapter G. CARES Act Provisions, §§815.180 - 815.185

24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

26 TWC adopts this rulemaking on an emergency basis in accordance with the Families First
27 Coronavirus Response Act, Public Law (P.L.) 116 - 127, specifically:

- 28 --Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020,
29 enacted March 18, 2020;
- 30 --the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116 - 136, enacted
31 March 27, 2020;
- 32 --the Consolidated Appropriations Act, 2021, P.L. 116 - 260, enacted December 27, 2020, which
33 contained the Continued Assistance for Unemployed Workers Act of 2020 (Continued
34 Assistance Act or CAA); and
- 35 --Texas Labor Code, §209.205.

36
37 The CARES Act provided for new entitlement programs including Federal Pandemic
38 Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation
39 (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment
40 Assistance (PUA).

41
42 CAA amended the CARES Act in multiple ways, including allowing states the option to waive
43 PUA overpayments, providing for the creation of a new Mixed Earner Unemployment
44 Compensation (MEUC) program, and new requirements concerning the coordination of
45 programs.
46

1 Previously, each CARES Act program contained a provision for the waiver of overpayments
2 with the exception of PUA. TWC operationalized these requirements through administrative
3 rulemaking in 40 Texas Administrative Code §815.12 and §815.183. MEUC operates similarly
4 to another CARES Act program, FPUC.

5
6 As addressed in this rulemaking, in order for TWC to adjudicate the waiver of PUA
7 overpayments and operationalize MEUC, Chapter 815, Subchapter G must be amended. The
8 amended coordination of program rules must also be included in §815.181.

9
10 Under new guidance from the US Department of Labor, PUA has been removed from the 15
11 percent fraud penalty exception in §815.185(a). For the same reason, MEUC has been added.

12
13 Texas Labor Code, §209.025 provides that "Notwithstanding any other provision of this
14 subchapter, the commission by rule may adjust the extended benefit eligibility period as
15 necessary to maximize the receipt of any fully funded federal extended unemployment benefits,
16 if full federal funding for those benefits is available."

17
18 Section 266 of the CAA also provides a state option to disregard the requirement of
19 §203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26
20 USC §3304 note) that "no extended benefit period may begin before the fourteenth week after
21 the close of a prior extended benefit period with respect to such State." Currently, this flexibility
22 applies between November 1, 2020, and December 31, 2021.

23
24 To ensure that TWC maximizes the federal funding, TWC is adopting the flexibility provided by
25 §266 of the CAA with a retroactivity provision and generally applicable language should this
26 flexibility be extended into the future. This rule also accounts for possible future situations where
27 the fourteen-week period is reduced, but not eliminated. This provision is applicable to the
28 Insured Unemployment Rate and the Total Unemployment Rate trigger.

29
30 Finally, as discussions continue to evolve concerning the CARES Act and potential extensions of
31 or future benefits programs, TWC is adding a federal conformity provision to the Chapter 815
32 rules. This provision ensures that if federal statutes or regulations change before TWC has a
33 reasonable opportunity to amend its rules, that TWC will continue to operate in conformity with
34 federal law.

35
36 TWC's three-member Commission (Commission) must take immediate action in order to
37 operationalize these new federal programs, state options, and requirements. During this surge of
38 unemployment, it is vital that Texans have access to the federal benefit programs and options
39 authorized by the CARES Act as well as the potential to have their PUA overpayment waived as
40 adjudicated on a case-by-case basis. Out-of-work Texans who are struggling to pay their bills
41 need access to these unemployment benefits. These benefits also serve as a much-needed
42 stabilizing factor in local economies.

43
44 Therefore, the Commission finds that imminent peril to the public welfare requires adoption of
45 rules without 30 days' notice in the *Texas Register*. On the same basis, the Commission also
46 finds that imminent peril to the public welfare requires adoption of rules with an expedited

1 effective date that is effective immediately upon filing with the Secretary of State, so that these
2 rules can be implemented immediately under the emergency rulemaking provisions of Texas
3 Government Code, §2001.034 and §2001.036.

4
5 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

6
7 **SUBCHAPTER A. GENERAL PROVISIONS**

8 **TWC adopts on an emergency basis the following new section to Subchapter A:**

9
10 **§815.4. Conformity with Federal Law**

11 New §815.4 provides that, notwithstanding any other provision of Chapter 815, if the US
12 Secretary of Labor holds that a provision of Chapter 815 does not conform with federal statute or
13 regulation, TWC may administer Chapter 815 to conform with the federal statute or regulation
14 until it has a reasonable opportunity to amend the nonconforming provision.

15
16 **SUBCHAPTER F. EXTENDED BENEFITS**

17 **TWC adopts on an emergency basis the following new section to Subchapter F:**

18
19 **§815.175. Federal Waiver to Preserve Access to Extended Benefits**

20 New §815.175 states that pursuant to Texas Unemployment Compensation Act, §209.025, if full
21 federal funding for Extended Benefits (EB) is available and TWC is permitted to reduce or
22 eliminate the number of weeks between the end of an extended benefit period and the beginning
23 of a new extended benefit period required by the Extended Unemployment Compensation Act of
24 1970, §203(b)(1)(B), TWC shall reduce or eliminate the number of weeks accordingly to
25 maximize the receipt of any fully funded federal EB. Section 815.175 operates retroactively, if
26 applicable.

27
28 **SUBCHAPTER G. CARES ACT PROVISIONS**

29 **TWC adopts on an emergency basis amendments to Subchapter G:**

30
31 **§815.180. Definitions**

32 Section 815.180 is amended to add new paragraph (4), which defines MEUC as the Mixed
33 Earner Unemployment Compensation provisions of §2104 of the CARES Act. Current
34 paragraphs (4) and (5) are renumbered as paragraphs (5) and (6).

35
36 **§815.181. Coordination of CARES Act**

37 Section 815.181 is amended to add new subsections (c) - (g), which further dictate the
38 coordination of programs, especially how they relate to PEUC, EB, and MEUC.

39
40 New §815.181(c) provides that if a claimant is receiving PEUC, EB, or PUA, and becomes
41 eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file
42 a new claim for regular compensation, with the following exception: For a claimant whose
43 regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to
44 and has a remaining entitlement to PEUC with respect to that benefit year, TWC shall establish a
45 new benefit year, but defer the payment of regular compensation with respect to that new benefit
46 year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's

1 weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than
2 the individual's weekly benefit amount on the PEUC claim.

3
4 New §815.181(d) provides that a claimant who is receiving EB for the week of unemployment
5 that includes December 27, 2020, shall not be eligible for PEUC until the individual has
6 exhausted all rights to EB.

7
8 New §815.181(e) states that for weeks of unemployment beginning January 3, 2021, a claimant's
9 eligibility for EB shall be considered to include any week that begins after the individual
10 exhausts all rights to PEUC and that falls during an EB period that began after the date the
11 individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has
12 expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

13
14 New §815.181(f) replaces current §815.181(c). It still provides that FPUC provides for
15 additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a
16 Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, Trade
17 Readjustment Allowances (TRA), and Disaster Unemployment Assistance (DUA), and that
18 claimants will receive FPUC payments concurrently with payments under these programs. The
19 last sentence referencing dates for FPUC has been removed.

20
21 New subsection (g) provides that MEUC provides for additional compensation to a claimant
22 collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the
23 Texas Unemployment Compensation Act, TRA, and DUA. It does not provide additional
24 compensation to a claimant collecting PUA. Claimants will receive MEUC payments
25 concurrently with payments under these programs.

26
27 **§815.182. Appeals**

28 Section 815.182 is amended to add MEUC to §815.182(a) - (c).

29
30 **§815.183. Waiver**

31 Section 815.183 is amended to remove subsection (b). References to PUA and MEUC as being
32 federal extended unemployment compensation programs and therefore subject to §815.12 of this
33 chapter have been added.

34
35 **§815.184. Overpayments**

36 Section 815.184 is amended to add MEUC to subsections (a) and (c) as well as to remove the
37 PUA waiver prohibition from subsection (b).

38
39 **§815.185. Fraud**

40 Section 815.185 is amended to add MEUC to subsections (a) and (b) and remove PUA from
41 subsection (a).

42
43 **PART III. STATUTORY AUTHORITY**

44 The new rules and amendments are adopted on an emergency basis pursuant to:

45 --Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on
46 an emergency basis;

1 --Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to
2 maximize the receipt of any fully federally funded extended unemployment benefits, if full
3 federal funding of those benefits is available;
4 --Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend,
5 or repeal such rules as it deems necessary for the effective administration of TWC services and
6 activities; and
7 --Texas Labor Code, §301.062, which provides TWC with the power to make findings and
8 determine issues under Title 4 of the Texas Labor Code.
9
10 The effective date of these rules shall be immediate upon the date of filing the adoption with the
11 Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).
12
13 TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and
14 found to be within the TWC's legal authority to adopt.
15

1 ~~(6)~~ (5) PUA--refers to the Pandemic Unemployment Assistance provisions of
2 §2102 of the CARES Act.

3
4 **§815.181. Coordination of CARES Act Programs.**

5
6 (a) For a claimant who is eligible for regular compensation, including Unemployment
7 Compensation for Federal Employees (UCFE) and Unemployment Compensation
8 for Ex-servicemembers (UCX), the following order of payment applies:

9
10 (1) The claimant must first apply for and receive regular compensation. The
11 amount and duration of these benefits are as defined by the Act;

12
13 (2) if the claimant exhausts regular compensation, the claimant may then be
14 eligible to receive PEUC;

15
16 (3) if the claimant exhausts PEUC and the state has "triggered on" to Extended
17 Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible
18 to receive EB;

19
20 (4) if the State is not "triggered on" to EB or the claimant exhausts EB, the
21 claimant may then be eligible to receive PUA. If the State "triggers on" to EB
22 during the period in which the claimant is collecting PUA and the claimant has
23 not previously exhausted entitlement to EB for the respective benefit year, then
24 the claimant must stop collecting PUA and file for EB; and

25
26 (5) the claimant meets the qualifications to receive Trade Readjustment
27 Allowances (TRA), such benefits will be payable after regular compensation,
28 PEUC, and EB if "triggered on," but prior to PUA.

29
30 (b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA,
31 and who meets the federal requirements, the claimant may be eligible to collect
32 PUA.

33
34 (c) If a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular
35 compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new
36 claim for regular compensation, with the following exception: For a claimant whose
37 regular compensation benefit year expires after December 27, 2020, if the claimant is
38 entitled to and has a remaining entitlement to PEUC with respect to that benefit year,
39 the Agency shall establish a new benefit year, but defer the payment of regular
40 compensation with respect to that new benefit year until exhaustion of all PEUC
41 payable with respect to the prior benefit year if the individual's weekly benefit
42 amount of regular compensation in the new benefit year is at least \$25 less than the
43 individual's weekly benefit amount on the PEUC claim.

1
2 (d) A claimant who is receiving EB for the week of unemployment that includes
3 December 27, 2020, shall not be eligible for PEUC until the individual has exhausted
4 all rights to EB.

5
6 (e) For weeks of unemployment beginning January 3, 2021, a claimant's eligibility for
7 EB shall be considered to include any week that begins after the individual exhausts
8 all rights to PEUC and that falls during an EB period that began after the date the
9 individual exhausted all rights to PEUC. This applies even if the claimant's benefit
10 year has expired, provided the state is in an EB period as of the date the individual
11 exhausts PEUC.

12
13 (f) ~~(e)~~ FPUC provides for additional compensation to a claimant collecting regular
14 compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the
15 Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive
16 FPUC payments concurrently with payments under these programs. ~~This applies for~~
17 ~~the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020~~
18 ~~unless subsequently amended by federal law.~~

19
20 (g) MEUC provides for additional compensation to a claimant collecting regular
21 compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Act,
22 TRA, and DUA. It does not provide additional compensation to a claimant collecting
23 PUA. Claimants will receive MEUC payments concurrently with payments under
24 these programs.

25
26 **§815.182. Appeals.**

27
28 (a) A claimant may appeal an adverse FPUC, FRWW, MEUC, PEUC, or PUA
29 determination pursuant to the provisions and timeframes of Chapter 212 of the Act
30 and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal
31 Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the
32 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
33 for Both Appeal Stages).

34
35 (b) An employer is not a "party of interest," pursuant to §815.15(c) of this chapter
36 (relating to Parties with Appeal Rights), to a FPUC, FRWW, MEUC, PEUC, or PUA
37 determination and therefore does not have appeal rights. An employer may appear at
38 a FPUC, FRWW, MEUC, PEUC, or PUA hearing to offer evidence when
39 appropriate.

40
41 (c) When considering an appeal involving FPUC and/or MEUC, the Appeal Tribunal
42 and the Commission shall look to the merits of the denial of the underlying benefit
43 when determining eligibility for FPUC and/or MEUC payments.

44
45 **§815.183. Waiver.**

1
2 ~~(a)~~ FPUC, ~~the~~ FRWW, MEUC, PUA, and PEUC are federal extended unemployment
3 compensation programs and therefore subject to §815.12 of this chapter (relating to
4 Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation
5 Overpayments).

6
7 ~~(b) PUA, as provided by P.L. 116—136 §2102, is related to Disaster Unemployment~~
8 ~~Assistance programs regulated under Title 20, Part 625, Code of Federal~~
9 ~~Regulations. Therefore, PUA does not constitute a federal extended unemployment~~
10 ~~compensation program and the waiver provisions of §815.12 of this chapter do not~~
11 ~~apply.~~

12 13 **§815.184. Overpayments.**

14
15 (a) Unless a FPUC, FRWW, MEUC, or PEUC overpayment is otherwise recovered, or
16 ~~is~~ waived, the Agency shall, during the three-year period after the date the claimant
17 received the payment of FPUC, FRWW, MEUC, or PEUC to which the claimant
18 was not entitled, recover the overpayment by deductions from any sums payable to
19 the claimant. No single deduction may exceed 50 percent of the amount otherwise
20 payable to the claimant.

21
22 (b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the
23 overpayment by deductions from any sums payable to the claimant. A PUA
24 overpayment ~~may not be waived per §815.183(b) of this chapter and~~ is not subject to
25 the three-year period limitation stated in subsection (a) of this section. No single
26 deduction may exceed 50 percent of the amount otherwise payable to the claimant.

27
28 (c) If a claimant has an unemployment benefits overpayment with an appropriate agency
29 in another state, and the Agency has a reciprocal arrangement with that other state
30 agency under §211.004 of the Act, the Agency shall deduct 50 percent per each
31 single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise
32 payable to the claimant.

33 34 **§815.185. Fraud.**

35
36 (a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not
37 apply to fraudulently obtained FPUC, FRWW, MEUC, and PEUC, ~~and PUA~~
38 benefits forfeited.

39
40 (b) The Agency and the Commission shall examine the underlying payment or statement
41 which precipitated the fraud determination when examining FPUC and/or MEUC
42 fraud.

43
44 (c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R.
45 §625.14(i) shall apply.