

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 *APRIL 14, 2020*, 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: **April 14, 2020**

12 Estimated date of publication in the *Texas Register*: **April 24, 2020**

13
14 The Texas Workforce Commission (TWC) adopts on an emergency basis amendments to the
15 following sections of Chapter 815, relating to Unemployment Insurance:

16
17 Subchapter B. Benefits, Claims, and Appeals, §815.12 and §815.29

18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

21
22 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

23 The Commission adopts the new rules on an emergency basis pursuant to the authority cited
24 below, to comply with the waiver, overpayment, and benefit coordination provisions of the
25 Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law (P.L.) 116 - 136,
26 enacted March 27, 2020.

27
28 The COVID-19 pandemic has resulted in substantial job loss and other negative economic
29 impacts in Texas. To help provide support for workers who cannot work during this crisis,
30 Congress passed TITLE II--Assistance for American Workers, Families, and Businesses, Subtitle
31 A--Unemployment Insurance Provisions, of the CARES Act. These provisions provide for new,
32 limited duration, entitlement programs including, Federal Pandemic Unemployment
33 Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally
34 Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA). On
35 March 28, 2020, under delegated authority from Texas Governor Greg Abbott, Agency
36 Executive Director Ed Serna executed an agreement with the Secretary of Labor to carry out
37 these provisions of the CARES Act.

38
39 FPUC provides an additional \$600 payment on top of other Unemployment Compensation (UC)
40 payments from the period covering the benefit week ending April 4, 2020, through the benefit
41 week ending July 25, 2020. PEUC provides an additional 13 weeks of UC to eligible individuals
42 who exhaust their regular compensation benefits and expires with the benefit week ending
43 December 26, 2020. FRWW will also expire with the benefit week ending December 26, 2020.
44 PUA is a disaster UC program for an individual not eligible for regular compensation, Extended
45 Benefits (EB), or PEUC, including those who have exhausted other UC programs. PUA currently
46 provides for 39 weeks of benefits, minus regular compensation and EB, and covers individuals

1 not traditionally covered under UC, including independent contractors and the self-employed.
2 PUA also expires with the benefit week ending December 26, 2020.
3

4 On March 24, 2020, the Commission voted to allow staff to suspend overpayment offset during
5 the duration of the COVID-19 emergency. This suspension of overpayment offset during the
6 duration of the COVID-19 emergency was to the extent permitted under state and federal law.
7 Thus, the repayment of overpayments accrued under the CARES Act must conform to the
8 specific requirements therein as well as other provisions of federal law.
9

10 Under the CARES Act, the FPUC, PEUC, and FRWW have requirements that a claimant, who
11 receives benefits to which the claimant is not entitled, repay those benefits unless the payment
12 was made to the claimant without fault and such repayment would be contrary to equity and
13 good conscience. Current TWC rule §815.12 contains these waiver and overpayment regulations
14 for Temporary Extended Unemployment Compensation (TEUC), but does not contain
15 corresponding provisions for the new pandemic programs FPUC, PEUC, and FRWW. Amending
16 §815.12 to include FPUC, PEUC, and FRWW will remedy this issue.
17

18 Further, §815.12(i) must be amended to address that the determination of whether repayment of
19 the FPUC, PEUC, or FRWW overpayment will cause a financial hardship to the claimant is to be
20 made on a case-by-case basis. Unlike TEUC, the Agency cannot currently make a determination
21 that a claimant who has received FPUC, PEUC, or FRWW has been unemployed for an extended
22 period of time.
23

24 Section 815.29 contained the rule defining the Coordination between Extended Unemployment
25 Compensation and regular compensation as required by P.L. 111 - 205 §3. This section has been
26 amended to address the coordination between existing benefit programs with those provided for
27 in the CARES Act. These rules are necessary to provide the order in which each of these benefit
28 programs are paid to claimants.
29

30 The Commission must take immediate action in order to comply with these federal requirements.
31 During this surge of unemployment, it is vital that Texans have access to the federal benefit
32 programs authorized by the CARES Act. Out-of-work Texans who are struggling to pay their
33 bills need access to these unemployment benefits. These benefits also serve as a much-needed
34 stabilizing factor in local economies.
35

36 Therefore, the Commission finds that imminent peril to the public welfare requires adoption of
37 rules without 30 days' notice in the *Texas Register*. On the same basis, the Commission also
38 finds that imminent peril to the public welfare requires adoption of rules with an expedited
39 effective date that is effective immediately upon filing with the Secretary of State, so that these
40 rules can be implemented immediately under the emergency rulemaking provisions of Texas
41 Government Code §2001.034 and §2001.036.
42

43 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

44 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

45 **TWC adopts on an emergency basis amendments to Subchapter B:** 46

1
2 **§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment**
3 **Compensation, Federal Pandemic Unemployment Compensation, Pandemic Emergency**
4 **Unemployment Compensation, and Federally Reimbursed Waiting Week Overpayments**
5

6 Section 815.12 is amended to update the section name and add FPUC, PEUC, and FRWW to
7 §§815.12(a), (e)-(i).

8
9 Subsection (i) is amended to address that the Commission has determined that requiring the
10 claimant to repay a TEUC overpayment will cause financial hardship to the claimant, because in
11 order to receive TEUC benefits, the claimant had to have been unemployed for an extended
12 period of time. Whether repayment of FPUC, PEUC, or FRWW will cause a financial hardship
13 to the claimant will be determined on a case-by-case basis.

14
15 **§815.29. Coordination of Benefits Provided by Public Law 116 - 136 (CARES Act), Title II,**
16 **Subtitle A, Unemployment Insurance Provisions, with Regular Compensation and**
17 **Extended Benefits**
18

19 Section 815.29 is amended to update the section name and describe how CARES Act programs
20 will be integrated into existing benefit programs.

21
22 New subsection (a) provides for the program order in which a claimant can claim benefits. That
23 order is as follows:

24
25 For an individual who is eligible for regular compensation, including Unemployment
26 Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-
27 servicemembers (UCX), the following order of payment applies:

28 --The claimant must first apply for and receive regular compensation. The amount and duration
29 of these benefits are as defined by the Act;

30 --if the claimant exhausts regular compensation, the claimant may then be eligible to receive
31 PEUC;

32 --if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the
33 Act, the claimant may then be eligible to receive EB;

34 --if the State is not "triggered on" to EB or the individual exhausts EB, the claimant may then be
35 eligible to receive PUA. If the State " triggers on" to EB during the period in which the claimant
36 is collecting PUA and the claimant has not previously exhausted entitlement to EB for the
37 respective benefit year, then the claimant must stop collecting PUA and file for EB; and

38 --if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such
39 benefits will be payable after regular compensation, PEUC, EB if "triggered on", and PUA.
40

1 New subsection (b) describes that for a claimant who is not eligible for regular compensation,
2 EB, or PEUC, and who meets the federal requirements, the individual may be eligible to collect
3 PUA.

4
5 New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides
6 for an additional \$600 per week to an individual collecting regular compensation, PEUC, PUA,
7 EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment
8 Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective
9 underlying program for which the claimant is eligible. This applies for the benefit week ending
10 April 4, 2020, through the benefit week ending July 25, 2020 unless subsequently amended by
11 federal law.

12
13 New subsection (d) clarifies that PUA shall be administered as provided by P.L. 116 - 136
14 §2102. The Agency shall apply Title 20, Part 625, Code of Federal Regulations, if it is not
15 addressed by P.L. 116 - 136 §2102, as applicable.

16
17 New subsection (e) provides for the automatic repeal of this section once certain criteria are met.
18 Section 815.29 continues in effect as long as the provisions of P.L. 116 - 136, Title II, Subtitle A,
19 or any amendments thereto, remain in effect. At such time that these federal provisions are no
20 longer in effect, this section is repealed.

21
22 These rules are adopted on an emergency basis pursuant to:

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

25 --Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend,
26 or repeal such rules as it deems necessary for the effective administration of TWC services and
27 activities; and

28 --Texas Labor Code §301.062, which provides TWC with the power to make findings and
29 determine issues under Title 4 of the Texas Labor Code.

30
31 The effective date of these rules shall be immediate upon the date of filing the adoption with the
32 Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

33
34 TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and
35 found to be within the TWC's legal authority to adopt.

1 CHAPTER 815. UNEMPLOYMENT INSURANCE

2 SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

3 §815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment
4 Compensation, Federal Pandemic Unemployment Compensation, Pandemic
5 Emergency Unemployment Compensation, and Federally Reimbursed Waiting
6 Week -Overpayments.

- 7 (a) This section implements the waiver requirements for Temporary Extended
8 Unemployment Compensation (TEUC), Federal Pandemic Unemployment
9 Compensation (FPUC), Pandemic Emergency Unemployment Compensation
10 (PEUC), and a Federally Reimbursed Waiting Week (FRWW) ~~waiver of repayment~~
11 ~~program~~ by setting out the process that the Agency and Commission shall use to
12 determine whether to waive the repayment and recovery of non-fraudulent
13 overpayments. The terms repayment and recovery will be referred to as repayment in
14 this section, and ~~Temporary Extended Unemployment Compensation~~ a TEUC,
15 FPUC, PEUC, and FRWW overpayment will be referred to as overpayment.
- 16 (b) When a decision of the Agency or Commission results in an overpayment, an
17 appealable determination and a request for waiver of repayment of an overpayment
18 are mailed to the claimant.
- 19 (c) A claimant may appeal an overpayment determination pursuant to the provisions of
20 Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating
21 to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter
22 (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter
23 (relating to General Rules for Both Appeal Stages).
- 24 (d) A claimant's written request for waiver of repayment of an overpayment must be
25 filed within 14 days of the date a request to waive the repayment of an overpayment
26 notification is mailed by the Agency. The waiver request must be filed in
27 accordance with §815.16(1)(A) of this chapter (relating to Appeals to Appeal
28 Tribunals from Determinations) or mailed to the address on the request form.
- 29 (e) The Agency or Commission will deny a request to waive the repayment of a non-
30 fraudulent overpayment if it determines that:
 - 31 (1) the payment of TEUC, FPUC, PEUC, or FRWW ~~TEUC~~ benefits is the fault of
32 the claimant, or
 - 33 (2) the repayment is not contrary to equity and good conscience.
- 34 (f) The Agency or Commission will waive the repayment of a non-fraudulent
35 overpayment if it determines that:
 - 36 (1) the payment of TEUC, FPUC, PEUC, or FRWW ~~TEUC~~ benefits is not the
37 fault of the claimant, and

- 1 (2) the repayment is contrary to equity and good conscience.
- 2 (g) In determining whether fault exists, the Agency or Commission shall consider the
3 following:
- 4 (1) whether a material statement or representation was made by the claimant in
5 connection with the application for TEUC, FPUC, PEUC, or FRWW ~~or TEUC~~
6 that resulted in an overpayment, and whether the claimant knew or should have
7 known that the statement or representation was inaccurate;
- 8 (2) whether the claimant failed or caused another to fail to disclose a material fact,
9 in connection with an application for TEUC, FPUC, PEUC, or FRWW ~~or~~
10 ~~TEUC~~ that resulted in an overpayment, and whether the claimant knew or
11 should have known that the fact was material;
- 12 (3) whether the claimant knew or could have been expected to know that the
13 claimant was not entitled to the TEUC, FPUC, PEUC, or FRWW ~~or TEUC~~
14 payment; and
- 15 (4) whether, for any other reason, the overpayment resulted directly or indirectly,
16 and partially or totally, from any act or omission of the claimant or of which
17 the claimant had knowledge, and which was erroneous or inaccurate or
18 otherwise wrong.
- 19 (h) In determining whether equity and good conscience exists, the Agency or
20 Commission shall consider the following factors:
- 21 (1) whether the overpayment is the result of a decision on appeal;
- 22 (2) whether the Agency gave notice to the claimant that the claimant may be
23 required to repay the overpayment in the event of a reversal of a TEUC, FPUC,
24 PEUC, or FRWW ~~TEUC~~ eligibility determination on appeal; and
- 25 (3) whether repayment of the TEUC, FPUC, PEUC, or FRWW ~~or TEUC~~
26 overpayment will cause financial hardship to the claimant.
- 27 (i) The Commission has determined that requiring the claimant to repay a TEUC
28 overpayment will cause financial hardship to the claimant, because in order to
29 receive TEUC benefits, the claimant had to have been unemployed for an extended
30 period of time. Whether repayment of the FPUC, PEUC, or FRWW overpayment
31 will cause a financial hardship to the claimant will be determined on a case by case
32 basis.
- 33 (j) A claimant may appeal a denial of a request to waive the repayment of an
34 overpayment pursuant to subsection (c) of this Section.
- 35 (k) Hearings under this Section will be conducted in a fair and impartial manner in
36 accordance with the provisions of §815.15 of this chapter (relating to Parties with

1 Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals
2 from Determinations), §815.17 of this chapter (relating to Appeals to the
3 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
4 for Both Appeal Stages), except to the extent that the sections are clearly
5 inapplicable.

6 **§815.29. Coordination of Benefits Provided by Public Law 116 - 136 (CARES Act),**
7 **Title II, Subtitle A, Unemployment Insurance Provisions, ~~Emergency~~**
8 **~~Unemployment Compensation~~ with Regular Compensation and Extended Benefits.**

9 (a) For an individual who is eligible for regular compensation, including Unemployment
10 Compensation for Federal Employees (UCFE) and Unemployment Compensation
11 for Ex-servicemembers (UCX), the following order of payment applies:

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

14 (2) if the claimant exhausts regular compensation, the claimant may then be
15 eligible to receive Pandemic Emergency Unemployment Compensation
16 (PEUC);

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

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

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

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

31 (c) Federal Pandemic Unemployment Compensation (FPUC) provides for an additional
32 \$600 per week to an individual collecting regular compensation, PEUC, PUA, EB, a
33 Shared Work program under Chapter 215 of the Act, TRA, and Disaster
34 Unemployment Assistance (DUA). Claimants will receive FPUC payments
35 concurrently with payments under these programs. This applies for the benefit week
36 ending April 4, 2020, through the benefit week ending July 25, 2020, unless
37 subsequently amended by federal law.

1 (d) PUA shall be administered as provided by P.L. 116 - 136 §2102. The Agency shall
2 apply Title 20, Part 625, Code of Federal Regulations, if it is not addressed by P.L.
3 116 - 136 §2102, as applicable.

4 (e) This section continues in effect as long as the provisions of P.L. 116 - 136, Title II,
5 Subtitle A, or any amendments thereto, remain in effect. At such time that these
6 federal provisions are no longer in effect, this section is repealed.

7 ~~(a) The Commission shall establish a new benefit year, but defer the payment of regular~~
8 ~~compensation with respect to that new benefit year until exhaustion of all emergency~~
9 ~~unemployment compensation payable with respect to the prior benefit year if the~~
10 ~~individual's weekly benefit amount of regular compensation in the new benefit year~~
11 ~~is at least \$100 or 25 percent less than the individual's weekly benefit amount in the~~
12 ~~immediately preceding benefit year.~~

13 ~~(b) This section continues in effect as long as the provisions of P.L. 111 - 205 §3, or any~~
14 ~~amendments thereto, remain in effect. At such time that these federal provisions are~~
15 ~~no longer in effect, this section is repealed.~~