

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

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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.**
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7 The Texas Workforce Commission (Commission) adopts on an emergency basis the following
8 new section to Chapter 815, relating to Unemployment Insurance:

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10 Subchapter B. Benefits, Claims, and Appeals, §815.29

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12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
14

15 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

16 The Commission adopts the new rules on an emergency basis pursuant to the authority cited
17 below, to comply with the benefit coordination provisions of the Unemployment Compensation
18 Extension Act (Act) of 2010, enacted July 22, 2010.
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20 Section 3 of the Act, Coordination of Emergency Unemployment Compensation with Regular
21 Compensation, speaks to circumstances in which an individual qualifies for a new benefit year
22 pursuant to Texas Labor Code §201.011(5) but retains entitlement for emergency unemployment
23 compensation (EUC) benefits from an immediately prior benefit year. In such cases, the
24 Commission must determine whether the individual qualifies for a weekly benefit amount of
25 regular compensation that is at least either \$100 or 25 percent less than the individual's weekly
26 benefit amount in the prior benefit year. The purpose of this section is to address cases in which
27 individuals take intermittent, part-time work to augment their unemployment benefits. Such
28 part-time work, inconsistent with their normal occupation and wage, comprises the base period
29 wage credits of a new benefit year, qualifying the individual for a substantially reduced weekly
30 benefit amount.
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32 In such instances, the Act dictates that a state shall implement procedures that allow an
33 individual to continue receiving the higher weekly benefit amount by continuing payment of
34 EUC before payment of regular compensation or by paying both types of claims simultaneously.
35 The Act allows the state to use one of the following options:
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37 (A) The state shall, if permitted by state law, establish a new benefit year, but defer the payment
38 of regular compensation with respect to that new benefit year until exhaustion of all emergency
39 unemployment compensation payable with respect to the prior benefit year;
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41 (B) The state shall, if permitted by state law, defer the establishment of a new benefit year
42 (which uses all the wages and employment that would have been used to establish a benefit year
43 but for the application of this section), until exhaustion of all emergency unemployment
44 compensation payable with respect to the prior benefit year;
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46 (C) The state shall pay, if permitted by state law:

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- 2 (i) regular compensation equal to the weekly benefit amount established under the new
- 3 benefit year, and
- 4 (ii) emergency unemployment compensation equal to the difference between that weekly
- 5 benefit amount and the weekly benefit amount for the expired benefit year; or
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7 (D) The state shall determine rights to emergency unemployment compensation without regard
8 to any rights to regular compensation if the individual elects to not file a claim for regular
9 compensation under the new benefit year.

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11 In evaluating the options available under the federal law, the Commission has determined that
12 Option A—establishing a new benefit year, but deferring the payment of regular compensation
13 until exhaustion of all emergency unemployment compensation payable with respect to the prior
14 benefit year—is the most financially sound, efficient, and beneficial method to comply with this
15 new, temporary requirement. After exhaustive analysis, the Commission believes this option can
16 be implemented through a mix of automation changes in the unemployment insurance (UI)
17 Benefits System and changes to existing manual staff processes.

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19 Option B—deferring the establishment of a new benefit year (which uses all the wages and
20 employment that would have been used to establish a benefit year), until exhaustion of all
21 emergency unemployment compensation payable with respect to the prior benefit year—is not
22 permitted under Texas law.

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24 Option C—paying regular compensation under the new benefit year and paying emergency
25 unemployment compensation from the prior benefit year equal to the difference between the two
26 weekly benefit amounts—requires extensive, costly modifications to the Commission's UI
27 Benefits System as well as extensive changes to the UI claims-taking process. This option would
28 pay benefits immediately from the already strained state unemployment compensation fund.

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30 Option D—allowing the individual to elect not to file a claim for regular compensation under the
31 new benefit year—could be implemented within a relatively short period of time, but it puts
32 claimants at the greatest risk of losing benefits eligibility. It requires claimants to make complex
33 decisions about receipt of benefits based on potential future monetary eligibility.

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35 The Commission must take immediate action in order to comply with this federal requirement.
36 During this period of high, sustained unemployment, continuing to pay 100 percent federally
37 funded EUC benefits at the higher weekly amount is vital to out-of-work Texans who are
38 struggling to pay their bills but have accepted intermittent, part-time work to augment their
39 unemployment benefits. These benefits also serve as a much-needed stabilizing factor in local
40 economies. Therefore, the Commission finds that imminent peril to the public welfare requires
41 adoption of rules without 30 days' notice in the *Texas Register*. On the same basis, the
42 Commission also finds that imminent peril to the public welfare requires adoption of rules with
43 an expedited effective date that is effective immediately upon filing with the Secretary of State,
44 so that these rules can be implemented immediately under the emergency rulemaking provisions
45 of Texas Government Code §2001.034 and §2001.036.

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

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

6 **The Commission adopts, on an emergency basis, the following new section to Subchapter**
7 **B:**

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9 **New §815.29. Coordination of Emergency Unemployment Compensation with Regular**
10 **Compensation**

11 New §815.29 adds a temporary provision. It establishes a new benefit year, but defers the
12 payment of regular compensation for that new benefit year until exhaustion of all emergency
13 unemployment compensation payable for the prior benefit year—if the weekly benefit amount of
14 regular compensation in a new benefit year is at least \$100 or 25 percent less than the
15 individual's weekly benefit amount in the immediately preceding benefit year.

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17 These rules are adopted on an emergency basis pursuant to:

18 --Texas Government Code §2001.034, which provides the Commission with the authority to
19 adopt rules on an emergency basis;

20 --Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide the Commission with the
21 authority to adopt, amend, or repeal such rules as it deems necessary for the effective
22 administration of Agency services and activities; and

23 --Texas Labor Code §301.062, which provides the Commission with the power to make findings
24 and determine issues under Title 4 of the Texas Labor Code.

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

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29 The Commission hereby certifies that the emergency rule adoption has been reviewed by legal
30 counsel and found to be within the Commission's legal authority to adopt.
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CHAPTER 815. UNEMPLOYMENT INSURANCE

Subchapter B. Benefits, Claims, and Appeals

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation.

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