CHAPTER 815. UNEMPLOYMENT INSURANCE

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

ON APRIL 14, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED THE EMERGENCY RULES BELOW WITH PREAMBLE AND SUBMITTED THEM TO THE TEXAS REGISTER.

The rules are effective: April 14, 2020
Estimated date of publication in the Texas Register: April 24, 2020

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

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

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

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

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

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

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

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

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

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

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

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

TWC adopts on an emergency basis amendments to Subchapter B:

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

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

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

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

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

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

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

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

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

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

--if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, EB if "triggered on", and PUA.
New subsection (b) describes that for a claimant who is not eligible for regular compensation, EB, or PEUC, and who meets the federal requirements, the individual may be eligible to collect PUA.

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

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

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

These rules are adopted on an emergency basis pursuant to:
--Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;
--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and
--Texas Labor Code §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

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

TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and found to be within the TWC’s legal authority to adopt.
CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS


(a) This section implements the waiver requirements for Temporary Extended Unemployment Compensation (TEUC), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and a Federally Reimbursed Waiting Week (FRWW) waiver of repayment program by setting out the process that the Agency and Commission shall use to determine whether to waive the repayment and recovery of non-fraudulent overpayments. The terms repayment and recovery will be referred to as repayment in this section, and Temporary Extended Unemployment Compensation (TEUC), FPUC, PEUC, and FRWW overpayment will be referred to as overpayment.

(b) When a decision of the Agency or Commission results in an overpayment, an appealable determination and a request for waiver of repayment of an overpayment are mailed to the claimant.

(c) A claimant may appeal an overpayment determination pursuant to the provisions of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(d) A claimant’s written request for waiver of repayment of an overpayment must be filed within 14 days of the date a request to waive the repayment of an overpayment notification is mailed by the Agency. The waiver request must be filed in accordance with §815.16(1)(A) of this chapter (relating to Appeals to Appeal Tribunals from Determinations) or mailed to the address on the request form.

(e) The Agency or Commission will deny a request to waive the repayment of a non-fraudulent overpayment if it determines that:

1. the payment of TEUC, FPUC, PEUC, or FRWW benefits is the fault of the claimant, or
2. the repayment is not contrary to equity and good conscience.

(f) The Agency or Commission will waive the repayment of a non-fraudulent overpayment if it determines that:

1. the payment of TEUC, FPUC, PEUC, or FRWW benefits is not the fault of the claimant, and
(2) the repayment is contrary to equity and good conscience.

(g) In determining whether fault exists, the Agency or Commission shall consider the following:

(1) whether a material statement or representation was made by the claimant in connection with the application for TEUC, FPUC, PEUC, or FRWW or TEUC that resulted in an overpayment, and whether the claimant knew or should have known that the statement or representation was inaccurate;

(2) whether the claimant failed or caused another to fail to disclose a material fact, in connection with an application for TEUC, FPUC, PEUC, or FRWW or TEUC that resulted in an overpayment, and whether the claimant knew or should have known that the fact was material;

(3) whether the claimant knew or could have been expected to know that the claimant was not entitled to the TEUC, FPUC, PEUC, or FRWW or TEUC payment; and

(4) whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the claimant or of which the claimant had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(h) In determining whether equity and good conscience exists, the Agency or Commission shall consider the following factors:

(1) whether the overpayment is the result of a decision on appeal;

(2) whether the Agency gave notice to the claimant that the claimant may be required to repay the overpayment in the event of a reversal of a TEUC, FPUC, PEUC, or FRWW TEUC eligibility determination on appeal; and

(3) whether repayment of the TEUC, FPUC, PEUC, or FRWW or TEUC overpayment will cause financial hardship to the claimant.

(i) The Commission has determined that requiring the claimant to repay a TEUC overpayment will cause financial hardship to the claimant, because in order to receive TEUC benefits, the claimant had to have been unemployed for an extended period of time. Whether repayment of the FPUC, PEUC, or FRWW overpayment will cause a financial hardship to the claimant will be determined on a case by case basis.

(j) A claimant may appeal a denial of a request to waive the repayment of an overpayment pursuant to subsection (c) of this Section.

(k) Hearings under this Section will be conducted in a fair and impartial manner in accordance with the provisions of §815.15 of this chapter (relating to Parties with
Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the extent that the sections are clearly inapplicable.


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

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

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

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

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

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

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

(c) Federal Pandemic Unemployment Compensation (FPUC) provides for an additional $600 per week to an individual collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. This applies for the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020, unless subsequently amended by federal law.
(d) PUA shall be administered as provided by P.L. 116 - 136 §2102. The Agency shall apply Title 20, Part 625, Code of Federal Regulations, if it is not addressed by P.L. 116 - 136 §2102, as applicable.

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

(a) 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.

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