

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 The Texas Workforce Commission (TWC) adopts on an emergency basis the following new  
8 sections to Chapter 815, relating to Unemployment Insurance:  
9

- 10 Subchapter A. General Provisions, §815.4
- 11 Subchapter F. Extended Benefits, §815.175

12  
13 TWC adopts on an emergency basis amendments to the following sections of Chapter 815,  
14 relating to Unemployment Insurance:  
15

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

17  
18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

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

29  
30 The CARES Act provided for new entitlement programs including Federal Pandemic  
31 Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation  
32 (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment  
33 Assistance (PUA).  
34

35 CAA amended the CARES Act in multiple ways, including allowing states the option to waive  
36 PUA overpayments, providing for the creation of a new Mixed Earner Unemployment  
37 Compensation (MEUC) program, and new requirements concerning the coordination of  
38 programs.  
39

40 Previously, each CARES Act program contained a provision for the waiver of overpayments  
41 with the exception of PUA. TWC operationalized these requirements through administrative  
42 rulemaking in 40 Texas Administrative Code §815.12 and §815.183. MEUC operates similarly  
43 to another CARES Act program, FPUC.  
44

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

1  
2 Under new guidance from the US Department of Labor, PUA has been removed from the 15  
3 percent fraud penalty exception in §815.185(a). For the same reason, MEUC has been added.  
4

5 Texas Labor Code, §209.025 provides that "Notwithstanding any other provision of this  
6 subchapter, the commission by rule may adjust the extended benefit eligibility period as  
7 necessary to maximize the receipt of any fully funded federal extended unemployment benefits,  
8 if full federal funding for those benefits is available."  
9

10 Section 266 of the CAA also provides a state option to disregard the requirement of  
11 §203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26  
12 USC §3304 note) that "no extended benefit period may begin before the fourteenth week after  
13 the close of a prior extended benefit period with respect to such State." Currently, this flexibility  
14 applies between November 1, 2020, and December 31, 2021.  
15

16 To ensure that TWC maximizes the federal funding, TWC is adopting the flexibility provided by  
17 §266 of the CAA with a retroactivity provision and generally applicable language should this  
18 flexibility be extended into the future. This rule also accounts for possible future situations where  
19 the fourteen-week period is reduced, but not eliminated. This provision is applicable to the  
20 Insured Unemployment Rate and the Total Unemployment Rate trigger.  
21

22 Finally, as discussions continue to evolve concerning the CARES Act and potential extensions of  
23 or future benefits programs, TWC is adding a federal conformity provision to the Chapter 815  
24 rules. This provision ensures that if federal statutes or regulations change before TWC has a  
25 reasonable opportunity to amend its rules, that TWC will continue to operate in conformity with  
26 federal law.  
27

28 TWC's three-member Commission (Commission) must take immediate action in order to  
29 operationalize these new federal programs, state options, and requirements. During this surge of  
30 unemployment, it is vital that Texans have access to the federal benefit programs and options  
31 authorized by the CARES Act as well as the potential to have their PUA overpayment waived as  
32 adjudicated on a case-by-case basis. Out-of-work Texans who are struggling to pay their bills  
33 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 A. GENERAL PROVISIONS**

45 **TWC adopts on an emergency basis the following new section to Subchapter A:**  
46

1  
2 **§815.4. Conformity with Federal Law**

3 New §815.4 provides that, notwithstanding any other provision of Chapter 815, if the US  
4 Secretary of Labor holds that a provision of Chapter 815 does not conform with federal statute or  
5 regulation, TWC may administer Chapter 815 to conform with the federal statute or regulation  
6 until it has a reasonable opportunity to amend the nonconforming provision.  
7

8 **SUBCHAPTER F. EXTENDED BENEFITS**

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

10  
11 **§815.175. Federal Waiver to Preserve Access to Extended Benefits**

12 New §815.175 states that pursuant to Texas Unemployment Compensation Act, §209.025, if full  
13 federal funding for Extended Benefits (EB) is available and TWC is permitted to reduce or  
14 eliminate the number of weeks between the end of an extended benefit period and the beginning  
15 of a new extended benefit period required by the Extended Unemployment Compensation Act of  
16 1970, §203(b)(1)(B), TWC shall reduce or eliminate the number of weeks accordingly to  
17 maximize the receipt of any fully funded federal EB. Section 815.175 operates retroactively, if  
18 applicable.  
19

20 **SUBCHAPTER G. CARES ACT PROVISIONS**

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

22  
23 **§815.180. Definitions**

24 Section 815.180 is amended to add new paragraph (4), which defines MEUC as the Mixed  
25 Earner Unemployment Compensation provisions of §2104 of the CARES Act. Current  
26 paragraphs (4) and (5) are renumbered as paragraphs (5) and (6).  
27

28 **§815.181. Coordination of CARES Act**

29 Section 815.181 is amended to add new subsections (c) - (g), which further dictate the  
30 coordination of programs, especially how they relate to PEUC, EB, and MEUC.  
31

32 New §815.181(c) provides that if a claimant is receiving PEUC, EB, or PUA, and becomes  
33 eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file  
34 a new claim for regular compensation, with the following exception: For a claimant whose  
35 regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to  
36 and has a remaining entitlement to PEUC with respect to that benefit year, TWC shall establish a  
37 new benefit year, but defer the payment of regular compensation with respect to that new benefit  
38 year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's  
39 weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than  
40 the individual's weekly benefit amount on the PEUC claim.  
41

42 New §815.181(d) provides that a claimant who is receiving EB for the week of unemployment  
43 that includes December 27, 2020, shall not be eligible for PEUC until the individual has  
44 exhausted all rights to EB.  
45

1 New §815.181(e) states that for weeks of unemployment beginning January 3, 2021, a claimant's  
2 eligibility for EB shall be considered to include any week that begins after the individual  
3 exhausts all rights to PEUC and that falls during an EB period that began after the date the  
4 individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has  
5 expired, provided the state is in an EB period as of the date the individual exhausts PEUC.  
6

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

14 New subsection (g) provides that MEUC provides for additional compensation to a claimant  
15 collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the  
16 Texas Unemployment Compensation Act, TRA, and DUA. It does not provide additional  
17 compensation to a claimant collecting PUA. Claimants will receive MEUC payments  
18 concurrently with payments under these programs.  
19

#### 20 **§815.182. Appeals**

21 Section 815.182 is amended to add MEUC to §815.182(a) - (c).  
22

#### 23 **§815.183. Waiver**

24 Section 815.183 is amended to remove subsection (b). References to PUA and MEUC as being  
25 federal extended unemployment compensation programs and therefore subject to §815.12 of this  
26 chapter have been added.  
27

#### 28 **§815.184. Overpayments**

29 Section 815.184 is amended to add MEUC to subsections (a) and (c) as well as to remove the  
30 PUA waiver prohibition from subsection (b).  
31

#### 32 **§815.185. Fraud**

33 Section 815.185 is amended to add MEUC to subsections (a) and (b) and remove PUA from  
34 subsection (a).  
35

### 36 **PART III. STATUTORY AUTHORITY**

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

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

40 --Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to  
41 maximize the receipt of any fully federally funded extended unemployment benefits, if full  
42 federal funding of those benefits is available;

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

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

3  
4 The effective date of these rules shall be immediate upon the date of filing the adoption with the  
5 Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

6  
7 TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and  
8 found to be within the TWC's legal authority to adopt.

9



- 1 (6) PUA--refers to the Pandemic Unemployment Assistance provisions of §2102  
2 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) 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.  
17  
18 (g) MEUC provides for additional compensation to a claimant collecting regular  
19 compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Act,  
20 TRA, and DUA. It does not provide additional compensation to a claimant collecting  
21 PUA. Claimants will receive MEUC payments concurrently with payments under  
22 these programs.  
23

#### 24 **§815.182. Appeals.**

- 25  
26 (a) A claimant may appeal an adverse FPUC, FRWW, MEUC, PEUC, or PUA  
27 determination pursuant to the provisions and timeframes of Chapter 212 of the Act  
28 and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal  
29 Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the  
30 Commission from Decisions), and §815.18 of this chapter (relating to General Rules  
31 for Both Appeal Stages).  
32  
33 (b) An employer is not a "party of interest," pursuant to §815.15(c) of this chapter  
34 (relating to Parties with Appeal Rights), to a FPUC, FRWW, MEUC, PEUC, or PUA  
35 determination and therefore does not have appeal rights. An employer may appear at  
36 a FPUC, FRWW, MEUC, PEUC, or PUA hearing to offer evidence when  
37 appropriate.  
38  
39 (c) When considering an appeal involving FPUC and/or MEUC, the Appeal Tribunal  
40 and the Commission shall look to the merits of the denial of the underlying benefit  
41 when determining eligibility for FPUC and/or MEUC payments.  
42

#### 43 **§815.183. Waiver.**

44  
45 FPUC, FRWW, MEUC, PUA, and PEUC are federal extended unemployment  
46 compensation programs and therefore subject to §815.12 of this chapter (relating to



1 Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation  
2 Overpayments).

3  
4 **§815.184. Overpayments.**

- 5  
6 (a) Unless a FPUC, FRWW, MEUC, or PEUC overpayment is otherwise recovered or  
7 waived, the Agency shall, during the three-year period after the date the claimant  
8 received the payment of FPUC, FRWW, MEUC, or PEUC to which the claimant  
9 was not entitled, recover the overpayment by deductions from any sums payable to  
10 the claimant. No single deduction may exceed 50 percent of the amount otherwise  
11 payable to the claimant.  
12  
13 (b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the  
14 overpayment by deductions from any sums payable to the claimant. A PUA  
15 overpayment is not subject to the three-year period limitation stated in subsection (a)  
16 of this section. No single deduction may exceed 50 percent of the amount otherwise  
17 payable to the claimant.  
18  
19 (c) If a claimant has an unemployment benefits overpayment with an appropriate agency  
20 in another state, and the Agency has a reciprocal arrangement with that other state  
21 agency under §211.004 of the Act, the Agency shall deduct 50 percent per each  
22 single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise  
23 payable to the claimant.  
24

25 **§815.185. Fraud.**

- 26  
27 (a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not  
28 apply to fraudulently obtained FPUC, FRWW, MEUC, and PEUC benefits forfeited.  
29  
30 (b) The Agency and the Commission shall examine the underlying payment or statement  
31 which precipitated the fraud determination when examining FPUC and/or MEUC  
32 fraud.  
33  
34 (c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R.  
35 §625.14(i) shall apply.