

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                                   **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2  
3                   **SUBCHAPTER A. GENERAL PROVISIONS**

4  
5                   **§815.4. Conformity with Federal Law.**

6  
7                   Notwithstanding any other provision of this chapter, if the US Secretary of Labor holds  
8                   that a provision of this chapter does not conform with federal statute or regulation, the  
9                   Agency may administer this chapter to conform with the federal statute or regulation until  
10                   the Commission has a reasonable opportunity to amend the nonconforming provision.

11  
12                   **SUBCHAPTER F. EXTENDED BENEFITS**

13  
14                   **§815.175. Federal Waiver to Preserve Access to Extended Benefits.**

15  
16                   Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available  
17                   and the Agency is permitted to reduce or eliminate the number of weeks between the end  
18                   of an extended benefit period and the beginning of a new extended benefit period  
19                   required by §203(b)(1)(B) of the Extended Unemployment Compensation Act of 1970,  
20                   the Agency shall reduce or eliminate the number of weeks accordingly to maximize the  
21                   receipt of any fully funded federal Extended Benefits. This section operates retroactively,  
22                   if applicable.

23  
24                   **SUBCHAPTER G. CARES ACT PROVISIONS**

25  
26                   **§815.180. Definitions.**

27  
28                   The following definitions shall apply to this subchapter:

- 29
- 30                   (1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security  
31                   Act, Public Law 116 - 136; TITLE II--Assistance for American Workers,  
32                   Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.
  - 33
  - 34                   (2) FPUC--refers to the Federal Pandemic Unemployment Compensation  
35                   provisions of §2104 of the CARES Act.
  - 36
  - 37                   (3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of  
38                   §2105 of the CARES Act.
  - 39
  - 40                   (4) MEUC--refers to the Mixed Earner Unemployment Compensation provisions  
41                   of §2104 of the CARES Act.
  - 42
  - 43                   (5) ~~(4)~~ PEUC--refers to the Pandemic Emergency Unemployment Compensation  
44                   provisions of §2107 of the CARES Act.
  - 45

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.