

ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

The Texas Workforce Commission (Commission) adopts new §815.12 Waiver of Repayment and Recovery of Temporary Extended Unemployment Compensation Overpayments to Chapter 815, Unemployment Insurance, Subchapter B. Benefits, Claims and Appeals, with changes as proposed in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3866).

No comments were received on the proposed new rule.

A clarification was made which does not change the substance of the provisions. Language was added to allow the Request for Waiver to be sent to the address on the request form or to the Appeals Tribunal as set out in §815.16.

The purpose of the rule is to set forth the provisions relating to the TEUC repayment waiver process, including:

- (1) the method for requesting the waiver;
- (2) the applicable time limit for making the request;
- (3) the explanation for the "fault" and "equity and good conscience" provisions;
- (4) the definition of "financial hardship;" and
- (5) the clarification regarding the appeal of the denial of a request for waiver.

Background/History: On March 9, 2002, the President signed into law as Public Law 107-147 "Job Creation and Worker Assistance Act of 2002," which included Title II related to the "Temporary Extended Unemployment Compensation" (TEUC) program. The TEUC program provides qualified unemployed individuals with up to 13 weeks of temporary extended Unemployment Insurance (UI) benefits. Under the TEUC provisions, these TEUC benefits are 100% federally funded. Thus, payment of the TEUC benefits will not impact the Texas UI Trust Fund. Therefore, payment of TEUC benefits does not subject taxed employers' accounts to chargeback, nor are accounts of reimbursing employers subject to reimbursement as a result of the payment of TEUC benefits. In addition, the TEUC benefits paid to the claimants will not impact the UI tax rates of the base period employers. Under §206(b) of the TEUC provisions, a state is required to obtain repayment and recovery (collection) of overpayments from claimants who have received TEUC benefits to which they were not entitled (whether fraudulent or non-fraudulent), unless the state, under the optional language of § 206(b), elects to waive repayment of the TEUC overpayment. A state may elect to implement a TEUC waiver procedure even if it has no waiver provisions under state law for regular compensation. If the state elects to have a TEUC waiver and has a state law with waiver provisions for regular compensation, the state provision may be applied to TEUC. The Commission has elected to implement a TEUC waiver process, since there are no provisions for the waiver of non TEUC overpayments in state law. The Commission has elected to allow the waiver of repayment of TEUC overpayments in part due to a recognition that because of the large number of qualified applicants and the critical urgency of processing payments, there may be occasional mis-payments that result through no

fault of the claimants. The Commission also recognized that the TEUC was implemented to assist those individuals who have been out of work for an extended period of time through no fault of their own; therefore requiring these individuals to repay an overpayment that is not their fault would be contrary to equity and good conscience.

The Commission received guidance from the United States Department of Labor (USDOL) through an Unemployment Insurance Program Letter (UIPL 17-02) dated March 19, 2002, that provided instructions for implementing the legislation. Generally, TEUC is payable to individuals who:

- (1) filed an initial (new or additional) claim that was effective during or after the week of March 15, 2001;
- (2) have exhausted regular benefits or have no benefit rights due to expiration of a benefit year ending during or after the week of March 15, 2001;
- (3) have no right to regular or extended benefits under any state or federal law; and
- (4) are not receiving benefits under the Canadian law.

In addition, UIPL 17-02 provided guidance regarding the implementation of the TEUC repayment waiver process. The Commission will implement the TEUC repayment waiver process through the promulgation of this rule. Pursuant to UIPL 17-02 the Commission may waive repayment of a non-fraudulent overpayment if the Commission finds that the claimant was not at fault for the overpayment and repayment of the overpayment by the claimant would be contrary to equity and good conscience.

UIPL 17-02 also sets forth the requirement that the Commission publish notice of the waiver process to the public. This notification was published in the May 10, 2002 issue of the *Texas Register*. The notice informed individuals about the process for applying and qualifying for the TEUC waiver of repayment of an overpayment.

The rule requires that a claimant's written request for waiver of repayment of an overpayment be filed within 14 days of the date the overpayment determination and request to waive repayment of the overpayment notification are mailed by the Commission. This requirement provides consistent filing requirements for the request for waiver of a repayment and the appeal of an overpayment. The common time frame will be less confusing for the claimants receiving the overpayment determination and the request for waiver of a repayment. This will result in more efficient administration of both repayment waiver requests and appeals of overpayments, and a more effective system for processing claims.

In the rule the Commission permits a claimant to request a waiver from the repayment of a TEUC overpayment if the Commission determines, on a case-by-case basis, that: (1) the overpayment was through no fault of the claimant; and (2) repayment of the overpayment by the claimant would be contrary to equity and good conscience. The Commission also sets forth in the rule the criteria for determining when equity and good conscience would result in the waiver of a TEUC overpayment by the Commission. UIPL 17-02 provides guidance and direction regarding implementation of the no fault and a portion of the equity and good conscience criteria,

but provides no specific criteria for the final component of equity and good conscience, financial hardship.

To provide clarification and consistency in administering the TEUC repayment waiver process, the Commission found that it would cause "financial hardship" to require a claimant to repay a TEUC overpayment if the claimant meets the criteria for TEUC benefits. The Commission has determined that individuals eligible for TEUC benefits have been unemployed for a long period of time through no fault of their own; and therefore, have faced significant and serious financial burdens resulting from prolonged unemployment. For that reason, meeting the criteria for TEUC benefits would itself be sufficient to constitute a financial hardship upon the individuals.

For more information about the Commission and available services, see www.texasworkforce.org.

The adopted new rule affects Texas Labor Code, Title 4.

The rule is adopted under Texas Labor Code §301.061, Public Law 107-147 "Job Creation and Worker Assistance Act of 2002" regarding the administration of the Temporary Extended Unemployment Compensation Program, and the United States Department of Labor's Unemployment Insurance Program Letter (UIPL 17-02) dated March 19, 2002, that provides the Texas Workforce Commission with the authority to adopt, amend, or repeal this rule as it deems necessary for the effective administration of Texas Workforce Commission services and the TEUC function.

§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment Compensation Overpayments.

- (a) This section implements the Temporary Extended Unemployment Compensation (TEUC) 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 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 ~~filing~~ 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 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 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 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 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 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 eligibility determination on appeal; and
 - (3) whether repayment of the 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.

- (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.