

April 29, 2020

Chairman Bryan Daniel  
Commissioner Julian Alvarez III  
Commissioner Aaron Demerson  
Texas Workforce Commission  
101 E 15th St  
Austin, TX 78778-0001

Dear Commissioners:

We, the undersigned organizations, urge the Texas Workforce Commission (TWC) to take action to strengthen our state's Unemployment Insurance (UI) program to address the urgent needs of Texans facing the impact of COVID-19.

As the risk of infection continues to be present while businesses begin to reopen, the health and safety of our workforce must be a top priority. The Texas Unemployment Compensation Act ("the Act") requires recipients of UI benefits to accept offers of suitable work. Section 207.008 of the Act instructs the Workforce Commission to consider the risk to an individual's health in determining whether work is suitable for an individual.

Additionally, Section 207.053(b) of the Act states that individuals are not deemed ineligible for benefits if they have voluntarily separated from their employer if that employer did not make available the "facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with the communicable disease."

The Center for Disease Control (CDC) has issued guidance identifying those who are at a higher risk of infection which include people over 65, people with underlying medical conditions including lung disease and severe asthma, or those who are immunocompromised due to other medical conditions as high risk for infection of COVID-19. The CDC has also issued guidance on workplace protections to reduce exposure risk. These guidelines include measures such as protective shields and routine cleaning of frequently touched surfaces.

We request the following concerns be addressed through emergency rule amendments to Chapter 815 of TAC Title 40, Part 20, relating to Unemployment Insurance under the authority given to TWC through Texas Government Code §2001.034, Texas Labor Code §301.0015(a)(6), and Texas Labor Code §301.062.

### **Clarification of Suitable Work and Workplace Safety**

The TWC should amend Chapter 815 to clarify protections for workers from exposure to communicable diseases. Workplaces lacking proper safety precautions do not qualify as suitable work and jobseekers should not be disqualified from UI benefits for refusing to return to a workplace that does not take reasonable precautions to protect workers from communicable disease.

Requested language:

#### **§815.31. Determination of Suitable Work.**

- (a) The Commission, as provided by Section 207.008 of the Act, shall consider the risk to an individual's health when making determinations on suitable work. Determination shall include but is not limited to:
- (1) the individual's prior or current health conditions, age, or other risk factor that may lead to the individual to be immunocompromised;
  - (2) the individual is a higher risk of contracting COVID-19 according to guidance issued by the Centers for Disease Control; and
  - (3) provision of proper facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual from communicable disease in the workplace consistent with guidance issued by the Centers for Disease Control;
- (b) This section continues in effect until six months after the expiration of the Governor's Declaration of State of Disaster, dated March 13, 2020. At such time this provision is no longer in effect, this section is repealed.

### **Define Good Cause for Voluntarily Leaving Work**

The TWC should amend Chapter 815 to clarify good cause for voluntarily leaving work due to COVID-19. Workers who voluntarily leave work due to COVID-19 related issues should not be denied UI benefits. This should include both those who have left due to a lack of reasonable safety precautions at their workplace, as discussed above and defined in Sec. 207.053 of the Act, as well as those who have left to care for themselves or a family member.

Current law is unclear regarding whether workers needing to separate from work for care of themselves or a family member due to COVID-19 would qualify as good cause. Additionally, due to the strains on capacity in our health care system caused by the pandemic, such as limited availability of tests, many workers will lack immediate medical verification. Considerations should be made for those submitting applications without an official diagnosis.

Requested amendment to Chapter 815:

#### **§815.31. Good Cause.**

- (a) The Commission's finding of good cause for voluntary leaving employment shall include:
- (1) claimants who left employment based on being diagnosed with COVID-19 or upon experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  - (2) claimants who left employment to care for quarantined or sick family or household members with COVID-19 or are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  - (3) claimants who have left employment in order to quarantine on a doctor's order;
  - (4) claimants who have left employment because their employer did not make available to the individual the facilities, equipment, training, and supplies

- necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with COVID-19 consistent with guidance issued by the Centers for Disease Control; or
- (5) claimants who are at a higher risk of contracting COVID-19 according to guidance issued by the Centers for Disease Control.

(b) This section continues in effect until six months after the expiration of the Governor's Declaration of State of Disaster, dated March 13, 2020. At such time this provision is no longer in effect, this section is repealed.

Millions of Texans have had their income disrupted due to COVID-19. In order to safeguard the health of Texans we must ensure that UI eligibility requirements are not adversely impacting public health and our efforts to contain the spread of COVID-19. The Texas Workforce Commission has a crucial role to play in ensuring Texans get the resources they need to provide for their families while also ensuring the economy has the fuel it needs to restart. We ask for swift action on these amendments to address the needs presented during these unprecedented times.

Respectfully,

American Federation of Government Employees (AFGE)

American Federation of State, County and Municipal Employees (AFSCME)

Center for Public Policy Priorities

Equal Justice Center

Feeding Texas

Texas AFL-CIO

Texas American Federation of Teachers (Texas AFT)

Texas Appleseed

Texas Freedom Network

United Steelworkers District 13

United Ways of Texas

Workers Defense Action Fund

For questions or additional information please contact Jonathan Lewis at [lewis@cphp.org](mailto:lewis@cphp.org)

cc: Ed Serna, Executive Director, Texas Workforce Commission

cc: Les Trobman, General Council, Texas Workforce Commission