

CHAPTER 815. UNEMPLOYMENT INSURANCE

ADOPTED 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 **OCTOBER 13, 2009**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **October 30, 2009**

The rules will take effect: **November 2, 2009**

The Texas Workforce Commission (Commission) adopts the following new subchapter, *without* changes, to Chapter 815 related to Unemployment Insurance, as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5489):

Subchapter F, Extended Benefits, §§815.170, 815.171, 815.173, and 815.174

The Texas Workforce Commission (Commission) adopts the following new subchapter, *with* changes, to Chapter 815 related to Unemployment Insurance, as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5489):

Subchapter F, Extended Benefits, §815.172

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 815 rule changes is to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for Unemployed Workers and Struggling Families, §2005. This authority was granted to the Commission under House Bill (HB) 4586, 81st Texas Legislature, Regular Session (2009).

The Commission must take this action in order to pay unemployed individuals who are exhausting their regular and emergency unemployment benefits. During this period of high, sustained unemployment, these 100 percent federally shared extended benefits are vital to out-of-work Texans who are struggling to pay their bills while seeking work. These benefits also serve as a much-needed stabilizing factor in local economies.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER F. EXTENDED BENEFITS

The Commission adopts new Subchapter F, as follows:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger

New §815.170 adds a new, conditional trigger under which Texas could enter into an extended benefit eligibility period, allowing the state to receive 100 percent federally shared extended benefits as authorized under P.L. 111-5.

There are two methods under which a state may trigger on to an extended benefit period:

- (1) a specified threshold under the Insured Unemployment Rate (IUR) methodology; and
- (2) a specified threshold under the Total Unemployment Rate (TUR) methodology.

Texas Labor Code, Chapter 209, provides for the use of the IUR methodology. However, its threshold is so high that Texas would have to have substantial levels of chronic unemployment before triggering on to an extended benefit period. The U.S. Department of Labor (DOL) has advised states that they may enact a temporary, conditional TUR trigger in order to take advantage of 100 percent federally shared extended benefits. The TUR trigger described in this section is conditional upon 100 percent federal sharing of extended benefits as recommended and approved by DOL.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount

New §815.171 adds a definition of "high unemployment period" and provides a different methodology for calculating an individual's maximum total extended benefit amount if the state has triggered on to a "high unemployment period."

The Federal-State Extended Unemployment Compensation Act of 1970 (Federal EB Law), *et seq.*, requires that if a state has opted to enact the optional TUR trigger, it must also provide for increased benefits under a "high unemployment period."

§815.172. Concurrent Emergency Unemployment Compensation Programs

New §815.172 stipulates that Texas may pay extended unemployment benefits after all regular and emergency unemployment compensation has been exhausted. There are additional administrative requirements associated with implementing extended benefits that are not applicable to other 100 percent federally funded emergency unemployment compensation programs. Ordering payment of extended benefits after all other types of unemployment benefits have been exhausted helps the Agency make better use of the resources available to serve claimants. This ordering of benefits is allowable under Public Law 110-252.

Comment: One commenter requested clarification on why the word "shall" is used instead of "may" in §815.172.

Response: The Commission appreciates the comment and notes that when originally proposed, this section stipulated that the state *shall* pay extended benefits after all regular and

emergency unemployment compensation has been exhausted. Since then, Congress has proposed an additional round of emergency unemployment compensation benefits, but has authorized states that so choose to continue paying extended benefits rather than switch claimants already receiving extended benefits to this additional emergency compensation. The Commission believes that revising the language to the permissive "may" allows Texas to take advantage of the exception that Congress has created, alleviates an administrative burden for the state, and ensures continuity for claimants.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits

New §815.173 provides that individuals who exhaust emergency unemployment compensation are otherwise eligible for extended unemployment benefits even if their benefit year for regular benefits has exhausted. This provision is intended to consider individuals eligible for extended benefits if they exhaust emergency unemployment compensation after their benefit year ends.

§815.174. Financing of Extended Benefits

New §815.174 clarifies that the benefit charging provisions of Texas Labor Code, Chapter 209, Subchapter E relating to taxed employers, do not apply to circumstances in which 100 percent of extended benefits are shared by the federal government. The charging provisions are intended to account for the 50 percent of benefits that would be funded from the state's share under the standard provisions of the Federal EB Law. Because there is no state sharing under this subchapter, the taxed employer charging provisions are not necessary.

This section further clarifies that charges to governmental employers (§209.084 of the Act) and Indian tribes (§209.0845 of the Act) shall apply.

COMMENTS WERE RECEIVED FROM:

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The Agency hereby certifies that the proposed rules have been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Labor Code, Title 4.

Chapter 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER F. EXTENDED BENEFITS

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

- (a) In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009, a week is a state "on" indicator week if:
- (1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and
 - (2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.
- (b) In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) of this section result in an "on" indicator.
- (c) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(c) of such law.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

- (a) If the conditions under §815.170(a) of this subchapter are met except that the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.
- (b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual for the individual's eligibility period is 80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.
- (c) This section applies as long as §815.170 of this subchapter is in effect.

§815.172. Concurrent Emergency Unemployment Compensation Programs.

The Agency **mayshall** pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying extended benefits under this subchapter.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

(a) Notwithstanding other eligibility provisions for extended benefits in the Act, an individual's eligibility period shall include any eligibility period provided for in P.L. 111-5, Division B, Title II, §2005(b).

(b) This section applies as long as §815.170 of this subchapter is in effect.

§815.174. Financing of Extended Benefits.

(a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act relating to taxed employers shall not apply.

(b) The provisions of §209.084, regarding Charges to Governmental Employer, and §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.

(c) This section applies as long as §815.170 of this subchapter is in effect.