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 JANUARY 7, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

Estimated date of publication in the Texas Register: January 24, 2020
The rules will take effect: January 27, 2020

The Texas Workforce Commission (TWC) adopts the following new section to Chapter 815, relating to Unemployment Insurance, without changes, as published in the October 11, 2019, issue of the Texas Register (44 TexReg 5892):

Subchapter C. Tax Provisions, §815.117

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 amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement the requirements of Senate Bill (SB) 2296, passed by the 86th Texas Legislature, Regular Session (2019), by providing clear guidelines for employers and the Agency regarding the circumstances in which an employer may designate a Common Paymaster for state unemployment tax reporting purposes.

On June 10, 2019, the Governor signed SB 2296 which amends §201.011(11) of the Texas Unemployment Compensation Act (TUCA). Effective January 1, 2020, the definition of "employing unit" includes a Common Paymaster as defined in 26 U.S.C. §3306 (p) of the Federal Unemployment Tax Act (FUTA). Under this section "if two or more related corporations concurrently employ the same individual and compensate such individual through a Common Paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations." Under §201.011(11)(B), related corporations utilizing a Common Paymaster must still adhere to the requirements of TUCA Chapter 204, Subchapter E.

Currently, the Texas Workforce Commission's (Agency) Tax Department requires every employing unit to individually report wages for each of its employees. However, once SB 2296 becomes effective, certain related corporations will have the ability to designate one of those corporations as a Common Paymaster with respect to the employees that work concurrently for the related corporations.
Once approved by the Agency, the Common Paymaster will have the option to report the combined wages of any employee working for the Common Paymaster concurrently employed with one or more related corporations.

SB 2296 requires the Commission to adopt rules necessary to implement this new TUCA provision. The Commission recognizes that in order to properly implement SB 2296, the Commission will need to define certain terms and set parameters for eligible related corporations which have established an allowable Common Paymaster arrangement. These rules will need to address definitions for Common Paymaster, what constitute related corporations, and concurrent employment. Also required will be application procedures, TWC method of allocating taxes, useful examples, and how this new tax arrangement will affect claims for unemployment benefits.

A primary aim of these rules will be to reduce confusion concerning what constitutes an allowable Common Paymaster structure. For example, under a Common Paymaster arrangement, an employee must actually perform services concurrently for the Common Paymaster and each of the related corporations employing the individual for the Common Paymaster to take advantage of this wage reporting method.

This means that a Common Paymaster structure is in no way similar to a Professional Employer Organization relationship because there is no co-employment relationship and since an individual must actually perform services for the Common Paymaster. Similarly, because an individual must perform services for the Common Paymaster, for a group of related corporations to utilize this arrangement, the Common Paymaster cannot be a purely administrative entity without employees. Payrolling is still not allowable under a Common Paymaster arrangement.

An additional purpose of these rules is to closely align with FUTA, and its corresponding regulations, so that employers utilizing a Common Paymaster at the federal level can easily match the same standards at the state level. It should be noted that for administrative purposes under these adopted rules, a group of related corporations meeting all requirements may only designate a single Common Paymaster.

These rule amendments are adopted pursuant to §201.011(11)(A), whereby the Legislature has required TWC’s three-member Commission (Commission) to exercise rulemaking authority to administer the provisions of §201.011(11).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES
(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. TAX PROVISIONS
TWC adopts the following amendment to Subchapter C:
§815.117. Employing Units: Common Paymaster

New Section 815.117 establishes parameters to be used by the Agency's Tax Department for instances in which related corporations that concurrently employ the same workers delegate one of their constituent corporations to serve as a Common Paymaster for employment tax reporting purposes.

New subsection (a) limits the scope of this new rule to implementation of the Common Paymaster provisions related to the definition of "employing unit" (§201.011(11)), with respect to proper administration of the TUCA as required by SB 2296, 86th Texas Legislature, Regular Session.

New subsection (b) stipulates the definitions which will apply under §201.011(11). Those are:

Common Paymaster--A Common Paymaster of a group of two or more related corporations is the designated entity which disburses remuneration to concurrently employed individuals of the related corporations and is responsible for keeping books and records for the payroll with respect to those individuals. The following are also incorporated into this definition:

--The Common Paymaster is not required to disburse remuneration to all the employees of those two or more related corporations. However, this rule does not apply to any remuneration paid to an employee that is not paid through the Common Paymaster;

--A group of related corporations may only have one Common Paymaster for the group. A group of related corporations may not be subdivided to facilitate multiple Common Paymasters; and

--When two or more related corporations concurrently employ the same individual and compensate that individual through a Common Paymaster, the Common Paymaster being one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration it actually disburses to that individual, unless the disbursing corporation fails to remit the taxes due.

Related Corporations--Two or more corporations are considered related corporations for an entire calendar quarter if any of the following tests are satisfied at any time during that calendar quarter:

--Parent-subsidiary controlled group. The common parent corporation owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of its subsidiaries, AND one or more of the corporations, common parent included, owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the subsidiaries;

--Brother-sister controlled group. Five or fewer persons who are individuals, estates, or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking
into account the stock ownership of each person only to the extent such stock ownership is
identical with respect to each such corporation;

--Combined group. A group of three or more corporations if each corporation is a member of
either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of
corporations; and at least one of those corporations is the common parent of a parent-subsidiary
controlled group and also is a member of a brother-sister controlled group;

--With respect to stock, when a corporation that does not issue stock is involved, corporations are
related if either 50 percent or more of the members of one corporation's board of directors (or
other governing body) are members of the other corporation's board of directors (or other
governing body); or the holders of 50 percent or more of the voting power to select members of
one corporation's board of directors (or other governing body) are concurrently the holders of
more than 50 percent of that power with respect to the other corporation.

--With respect to concurrent officers and employees, corporations are related if 50 percent or
more of one corporation's officers are concurrently officers of the other corporation; or 30
percent or more of one corporation's employees are concurrently employees of the other
corporation.

Concurrent Employment--The simultaneous existence of an employment relationship between
an individual and two or more corporations. Concurrent employment involves the performance
of services by the individual for the benefit of the employing corporation, not merely for the
benefit of the group of corporations, in exchange for remuneration. The following are also
incorporated into this definition:

--The simultaneous existence of an employment relationship with each corporation is a decisive
factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily
inactive is immaterial.

--Employment is not concurrent with respect to one of the related corporations if the employee's
employment relationship with that corporation is completely nonexistent during the periods
when the employee is not performing services for that corporation;

--An individual who does not perform substantial services for a corporation is presumed not
employed by that corporation; and

--A corporation which has no employees performing services for it in Texas cannot be the
Common Paymaster for Texas employees of its related corporations.

New subsection (c) provides for procedures for submission of and approval by the Agency of a
Common Paymaster application.

--Related corporations which compensate their employees through a Common Paymaster must
file with the Agency the details of their plan on a form prescribed by the Agency. The details
must include the names of the related corporations, the name of the Common Paymaster
corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in the rule and that employees are concurrently employed. An amendment to the plan must be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.

--Plans and plan amendments submitted under the rule must be filed within the 30-day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a Common Paymaster shall be determined on a quarterly basis.

New subsection (d) stipulates how employment taxes required under the TUCA are to be allocated.

--A Common Paymaster making disbursements on behalf of related corporations to concurrently employed individuals is responsible for taxes, interest and penalties on all wages disbursed by it.

--If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required, the Agency may hold each of the related corporations liable for a proportionate share of the obligation. "Proportionate share" may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. If there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Agency may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

--A Common Paymaster is not a successor corporation pursuant to TUCA Chapter 204, Subchapter E, for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the corporation serving as the Common Paymaster.

--Wages paid by separate employing units may not be aggregated or combined for purposes of reporting, except as provided in this rule, unless there is an actual transfer of entity and experience rating as provided by TUCA Chapter 204, Subchapter E.

New subsection (e) describes benefit charging and notice procedures with respect to Common Paymaster arrangements.

--For purposes of charging benefits paid and mailing notices to base year employers, the Common Paymaster shall be considered the employer for all wages disbursed to individuals by it.
whether payment was for services performed for the common paymaster or for a related
corporation.

--An employer seeking to establish a Common Paymaster arrangement must designate a mailing
address for benefit claim notices with the Agency per §208.003 of the TUCA.

Finally, new subsection (f) provides examples for the public to clarify the definitions of

**Common Paymaster:**

--S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these
employees are concurrently employed and perform services for S and at least one other of the
related corporations, during a calendar quarter. The four corporations arrange for S to disburse
remuneration to thirty of these forty employees for their services. Under these facts, S is the
common paymaster of S, T, U, and V with respect to the thirty employees. S is not a common
paymaster with respect to the remaining employees.

**Related Corporations:**

*Parent-subsidiary controlled group.*

--P Corporation owns stock possessing 51 percent of the total combined voting power of all
classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary
controlled group consisting of member corporations P and S.

--Assume the same facts as in subsection (i). Assume further that S owns stock possessing 51
percent of the total value of shares of all classes of stock of X Corporation. P is the common
parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X.
The result would be the same if P, rather than S, owned the X stock.

--P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns
30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class
of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the
common parent of a parent-subsidiary controlled group consisting of member corporations P, S,
X, and Y.

*Brother-sister controlled group.*

--The outstanding stock of corporations X and Y, which have only one class of stock
outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y;
B owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns 20% of X; and E
owns 10% of Y. The result is that Corporations X and Y have 3 common owners - A, B, and C.
D and E are disregarded from the brother-sister test because they don't have ownership in both
companies. A, B, and C have the following Identical Ownership (the lesser of X or Y): A has
20%; B has 10%; and C has 30%. A, B, and C meet the identical ownership test because their identical ownership is more than 50 percent of X and Y.

**Combined group.**

--A, an individual, owns stock possessing 100 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 51 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations AND Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

--Assume the same facts as in subsection (i) and further assume that corporation X owns 51 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

**Concurrent Employment:**

--M, N, and O are related corporations which use N as a common paymaster. Their respective headquarters are located in three separate cities several hundred miles apart. A is an officer of M, N, and O who performs substantial services for each corporation. A does not work a set length of time at each corporate headquarters, and when A leaves one corporate headquarters, it is not known when A will return, although it is expected that A will return. Under these facts, A is concurrently employed by the three corporations.

**Summary of comments and agency responses.**

The public comment period on the proposal began October 11, 2019, and ended November 12, 2019. TWC received one timely comment during this time.

**Keith Ribnick, United States Department of Labor:**

Comment: We have reviewed and consulted with the Division of Legislation in the Office of Unemployment Insurance regarding the proposed Texas administrative rule related to the definition of "Common Paymaster" (attached). We did not identify any conformity issues with the proposed rule. If modifications are made to the proposed rule or if we can provide additional assistance, please let us know.

Response: TWC appreciates the review and findings from the US Department of Labor in accordance with its responsibility under federal law. No changes are necessary in response to this comment.

The Agency hereby certifies that the adoption has 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 §201.011(11) and §301.0015 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of unemployment insurance services and activities.

The adopted rules affect Texas Labor Code, Title 4, Subtitle A, Texas Unemployment Compensation Act.
§815.117. Employing Units: Common Paymaster.

(a) Scope. This section shall govern the Texas Workforce Commission in its administration of the Common Paymaster provisions authorized under §201.011(11) of the Act.

(b) Definitions. The following definitions shall apply to §201.011(11) of the Act:

(1) **Common Paymaster**—A Common Paymaster of a group of related corporations is any member thereof that disburse remuneration to employees of two or more of those corporations on their behalf and that is responsible for keeping books and records for the payroll with respect to those employees. The following are also incorporated into this definition:

   (A) The Common Paymaster is not required to disburse remuneration to all the employees of those two or more related corporations, but the provisions of this section do not apply to any remuneration to an employee that is not disbursed through a Common Paymaster;

   (B) A group of related corporations may only have one Common Paymaster for the group. A group of related corporations may not be subdivided to facilitate multiple Common Paymasters; and

   (C) When two or more related corporations concurrently employ the same individual and compensate that individual through a Common Paymaster, which is one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration it actually disburse to that individual, unless the disbursing corporation fails to remit the taxes due.

(2) **Related Corporations**—Two or more corporations shall be considered related corporations for an entire calendar quarter if they satisfy any of the following tests at any time during that calendar quarter:

   (A) Parent-subsidiary controlled group. The common parent corporation owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of its subsidiaries, AND one or more of the corporations, common parent included, owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more
than 50 percent of the total value of shares of all classes of stock of each of the subsidiaries;

(B) Brother-sister controlled group. Five or fewer persons who are individuals, estates, or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

(C) Combined group. A group of three or more corporations if:

(i) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

(ii) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group;

(D) When a corporation that does not issue stock is involved, either:

(i) 50 percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or

(ii) The holders of 50 percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than 50 percent of that power with respect to the other corporation;

(E) 50 percent or more of one corporation's officers are concurrently officers of the other corporation; or

(F) 30 percent or more of one corporation's employees are concurrently employees of the other corporation.

(3) Concurrent Employment--means the simultaneous existence of an employment relationship between an individual and two or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of
corporations, in exchange for remuneration. The following are also incorporated into this definition:

(A) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;

(B) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

(C) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation; and

(D) A corporation which has no employees performing services for it in Texas cannot be the Common Paymaster for Texas employees of its related corporations.

(c) Submission and approval of Common Paymaster.

(1) Related corporations which compensate their employees through a Common Paymaster shall file with the Agency the details of their plan on a form prescribed by the Agency. The details shall include the names of the related corporations, the name of the Common Paymaster corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in subsection (b)(2) of this section and that employees are the concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.

(2) Plans and plan amendments submitted pursuant to this rule shall be filed within the 30-day period following the end of the calendar quarter in which the plan is
in effect. Eligibility of an employee to be compensated through a Common Paymaster shall be determined on a quarterly basis.

(d) Allocation of employment taxes.

(1) A Common Paymaster making disbursements on behalf of related corporations to employed individuals shall be responsible for taxes, interest and penalties on all wages disbursed by it.

(2) If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required:

(A) the Agency may hold each of the related corporations liable for a proportionate share of the obligation. Such proportionate share may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations; or

(B) if there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Agency may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

(3) A Common Paymaster is not a successor corporation pursuant to Texas Labor Code Chapter 204, Subchapter E, for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the paymaster corporation.

(4) Wages paid by separate employing units may not be aggregated or combined for purposes of reporting, except as provided in this rule, unless there is an actual transfer of entity and experience rating as provided by Texas Labor Code Chapter 204, Subchapter E.

(e) Benefits.

(1) For purposes of charging benefits paid and mailing notices to base year employers, the Common Paymaster shall be considered the employer for all wages disbursed to individuals by the Common Paymaster whether payment
was for services performed for the Common Paymaster or for a related corporation.

(2) An employer seeking to establish a Common Paymaster arrangement shall designate a mailing address for benefit claim notices with the Agency per §208.003 of the Act.

(f) Examples.

(1) Common Paymaster. S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these employees are concurrently employed and perform services for S and at least one other of the related corporations, during a calendar quarter. The four corporations arrange for S to disburse remuneration to thirty of these forty employees for their services. Under these facts, S is the Common Paymaster of S, T, U, and V with respect to the thirty employees. S is not a Common Paymaster with respect to the remaining employees.

(2) Related Corporations:

(A) Parent-subsidiary controlled group.

(i) P Corporation owns stock possessing 51 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

(ii) Assume the same facts as in clause (i) of this subparagraph. Assume further that S owns stock possessing 51 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

(iii) P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns 30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

(B) Brother-sister controlled group. The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y; B owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns 20% of X; and E owns 10% of Y. The result is that Corporations X and Y
have 3 common owners - A, B, and C. D and E are disregarded from the  
brother-sister test because they don't have ownership in both companies.  
A, B, and C have the following Identical Ownership (the lesser of X or  
Y): A has 20%; B has 10%; and C has 30%. A, B, and C meet the  
identical ownership test because their identical ownership is more than 50  
percent of X and Y.

(C) Combined group.

(i) A, an individual, owns stock possessing 100 percent of the total  
combined voting power of all classes of the stock of corporations X  
and Y. Y, in turn, owns stock possessing 51 percent of the total  
combined voting power of all classes of the stock of corporation Z.  
X, Y, and Z are members of the same combined group since X, Y,  
and Z are each members of either a parent-subsidiary or brother-  
sister controlled group of corporations AND Y is the common  
parent of a parent-subsidiary controlled group of corporations  
consisting of Y and Z, and also is a member of a brother-sister  
controlled group of corporations consisting of X and Y.

(ii) Assume the same facts as in clause (i) of this subparagraph and  
further assume that corporation X owns 51 percent of the total value  
of shares of all classes of stock of corporation S. X, Y, Z, and S are  
members of the same combined group.

(3) Concurrent Employment. M, N, and O are related corporations which use N as  
a Common Paymaster. Their respective headquarters are located in three  
separate cities several hundred miles apart. A is an officer of M, N, and O who  
performs substantial services for each corporation. A does not work a set  
length of time at each corporate headquarters, and when A leaves one corporate  
headquarters, it is not known when A will return, although it is expected that A  
will return. Under these facts, A is concurrently employed by the three  
corporations.