CHAPTER 815. UNEMPLOYMENT INSURANCE

EMERGENCY 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 APRIL 28, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED THE EMERGENCY RULES BELOW WITH PREAMBLE AND SUBMITTED THEM TO THE TEXAS REGISTER.

The rules are effective: April 28, 2020
Estimated date of publication in the Texas Register: May 8, 2020

TWC adopts on an emergency basis amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.1
Subchapter F. Extended Benefits, §§815.170 - 815.172, and 815.174

TWC adopts the repeal of the following section of Chapter 815, relating to Unemployment Insurance, on an emergency basis:

Subchapter F. Extended Benefits, §815.173

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Texas Workforce Commission (TWC) adopts these rules on an emergency basis in accordance with the Families First Coronavirus Response Act, Public Law (P.L.) 116 - 127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), enacted March 18, 2020, and Texas Labor Code §208.001(b) and §209.205.

EUISAA provides states with emergency funding grants for the administration of their unemployment compensation (UC) programs. The purpose of these grants is to assist states with the unprecedented claim volumes associated with COVID-19.

These grants are allocated into two separate allotments, Allotment I and II. Each allotment contains its own requirements to be fulfilled by each state. States may apply for either or both of these grants; TWC anticipates obtaining both. EUISAA requires the U.S. Department of Labor (USDOL) to transfer the grant funds to states meeting the Allotment I requirements no later than 60 days after enactment. USDOL has determined this deadline to be May 15, 2020. To meet this requirement, USDOL has determined states must submit their request for the first allotment by May 8, 2020.
Under EUISAA §4105, if a state meets the requirements of and obtains both Allotment I and II, the Federal Government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020 until December 31, 2020, including the first week of EB.

One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment." USDOL has stated that this notice must be individually made to the separated employee.

TWC has the authority under Texas Labor Code §208.001(b) to require this individual notice. Section 208.001(b) provides that "The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer." To clarify how this notice must be provided, TWC has determined it prudent to amend its rules to define "places accessible" to include general notice in the workplace and an individual notice upon separation.

As TWC anticipates obtaining both Allotment I and II grant funds, this will provide for 100 percent federally funded EB. Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Currently, Texas Labor Code, Chapter 209, provides for an Insured Unemployment Rate (IUR) trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however, provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger also provides that in periods of high unemployment, an additional seven weeks of EB benefit eligibility is available.

In order to fully maximize the receipt of fully funded federal EB anticipated by §209.025, TWC must implement the optional TUR trigger with the high unemployment rate period. To ensure that TWC maximizes the federal funding, a provision is being added to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for by federal law. Other provisions addressing coordination of benefit programs and the treatment of certain governmental and tribal employers are also addressed.

The Commission must take immediate action in order to allow for the continued payment of unemployed individuals who exhaust their regular and emergency unemployment benefits. The deadline for meeting the requirements of Allotment I is May 8, 2020. During this period of high, sustained unemployment, the 100 percent federally shared EB are vital to out-of-work Texans who are struggling to pay their bills. These benefits also serve as a much-needed stabilizing factor in local economies. Therefore, the Commission finds that imminent peril to the public welfare requires adoption of rules without 30 days' notice in the Texas Register. On the same basis, the Commission also finds that imminent peril to the public welfare requires adoption of rules with an expedited effective date that is effective immediately on filing with the Secretary of
State, so that these rules can be implemented immediately under the emergency rulemaking provisions of Texas Government Code §2001.034 and §2001.036.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A on an emergency basis:

§815.1. Definitions

Section 815.1 is amended to add paragraph (14), which defines "places accessible" as locations in which an employer shall provide required notices to an employee as provided in the Act, Chapter 208.

New subparagraph (A) provides that "places accessible" includes notices containing the required information are to be displayed in a manner reasonably calculated to be encountered by all employees.

New subparagraph (B) provides that "places accessible" means an employer must individually provide the required notice information to an employee upon separation from employment. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided in a paper format, including by mail or with separation paperwork, email, text, or other means reasonably calculated to ensure the individual receives the required notification.

SUBCHAPTER F. EXTENDED BENEFITS

TWC adopts the following amendments to Subchapter F on an emergency basis:

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

Previously repealed section 815.170 is reinstated with modifications.

Subsection (a) provides that pursuant to §209.025, if full federal funding for EB is available, a week is a state "on" indicator week if:

-- 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

--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 rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

Subsection (b) states that there is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) are not satisfied.
Subsection (c) clarifies that notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

§815.171. High Unemployment Period: Maximum Tool Extended Benefit Amount
Previously repealed section 815.171 is reinstated with modifications.

Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a). If the conditions under §815.170(a) are met, and the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period exists.

Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant for the claimant's eligibility period is the lesser of:

--80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;
--20 times the claimant's average weekly benefit amount; or
--46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

Subsection (c) provides that if the full federal funding for EB provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b), then that amount shall be the total extended benefit amount.

§815.172. Concurrent Emergency Unemployment Compensation Programs
Section 815.172 is amended to capitalize Extended Benefits.

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

§815.174. Financing of Extended Benefits
Previously repealed section 815.174 is reinstated with modifications.

If full federal funding for EB is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, shall not apply; however, the provisions of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to apply.

These rules are adopted on an emergency basis pursuant to:
--Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;
--Texas Labor Code §209.025, which provides TWC with authority to adopt rules necessary to
maximize the receipt of any fully federally funded extended unemployment benefits, if full
federal funding of those benefits is available;
--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend,
or repeal such rules as it deems necessary for the effective administration of TWC services and
activities; and
--Texas Labor Code §301.062, which provides TWC with the power to make findings and
determine issues under Title 4 of the Texas Labor Code.

The effective date of these rules shall be immediate upon the date of filing the adoption with the
Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and
found to be within TWC's legal authority to adopt.
Chapter 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

§815.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

1. **Act**—The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

2. **Additional claim**—A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

3. **Adequate notification**—A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

   A. Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

   B. The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

   C. Examples of adequate notification of adverse facts include, but are not limited to, the following:

      i. The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

      ii. The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.
A notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

(i) policies or procedures;

(ii) warnings;

(iii) performance reviews;

(iv) attendance records;

(v) complaints; and

(vi) witness statements.

Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.

Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.

Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.

Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an individual received for employment from an employer during the individual's
base period as well as any wages ordered to be paid to an individual by a final
Commission order, pursuant to its authority under Texas Labor Code, Chapter
61. Benefit wage credits awarded by a final Commission order that were due to
be paid to the individual by an employer during the individual's base period
shall be credited to the quarter in which the wages were originally due to be
paid.

(9) Board--Local Workforce Development Board created pursuant to Texas
Government Code §2308.253 and certified by the Governor pursuant to Texas
Government Code §2308.261. This includes a Board when functioning as the
Local Workforce Investment Board as described in the Workforce Investment
Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth
Council, as provided for under the Workforce Investment Act §117(i) (also
referred to as an LWDB).

(10) Commission--The three-member body of governance composed of Governor-
appointed members in which there is one representative of labor, one
representative of employers, and one representative of the public as established
in Texas Labor Code §301.002, which includes the three-member governing
body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings
involving unemployment insurance issues regarding tax coverage,
contributions or reimbursements.

(11) Day--A calendar day.

(12) Landman--An individual who is qualified to do field work in the purchasing of
right-of-way and leases of mineral interests, record searches, and related real
property title determinations, and who is primarily engaged in performing the
field work.

(13) Person--May include a corporation, organization, government or governmental
subdivision or agency, business trust, estate, trust, partnership, association, and
any other legal entity.

(14) Places accessible--Locations in which an employer shall provide required
notices to an employee as provided in the Act, Chapter 208. This includes:

(A) Notices providing general information about filing a claim for
unemployment benefits shall be displayed in a manner reasonably
calculated to be encountered by all employees; and

(B) Upon separation from employment, an employer shall provide an
employee individual notice of general information about filing a claim
for unemployment benefits as set out in the printed notice referenced in
§208.001(b) of the Act. As the notice is provided directly to the

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individual, the employer has significant flexibility in how this information may be made known. Such information may be provided:

(i) in a paper format, including by mail or with separation paperwork;
(ii) by email;
(iii) by text; or
(iv) by other means reasonably calculated to ensure the individual receives the required notification.

(15) Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(16) Week--A period of seven consecutive calendar days ending at midnight on Saturday.

**SUBCHAPTER F. EXTENDED BENEFITS**


(a) Pursuant to §209.025, if full federal funding for Extended Benefits is available, 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 rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

(b) There is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) of this section are not satisfied.

(c) Notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.
§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

(a) If the conditions under §815.170(a) of this subchapter are met, and 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 claimant for the claimant's eligibility period is the lesser of:

(1) 80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

(2) 20 times the claimant's average weekly benefit amount; or

(3) 46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

(c) Pursuant to §209.025, if the full federal funding for Extended Benefits provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b) of this section, that amount shall be the total extended benefit amount.


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


(a) Pursuant to §209.025, if full federal funding for extended benefits is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, shall not apply.

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