

CHAPTER 815. UNEMPLOYMENT INSURANCE

PROPOSED 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 **NOVEMBER 16, 2015**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **December 4, 2015**
Estimated End of Comment Period: **January 4, 2016**

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 815, relating to Unemployment Insurance:

Subchapter C. Tax Provisions, §815.111

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending Subchapter C, Chapter 815, Unemployment Insurance rules, is to facilitate implementation of [House Bill \(HB 1251\)](#), 84th Texas Legislature, Regular Session (2015), relating to the joint application following certain partial transfers of compensation experience.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(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

The Commission proposes the following amendments to Subchapter C:

§815.111. Partial Transfer of Compensation Experience

Section 815.111(b) is amended to clarify that with regard to mandatory partial transfers of compensation experience required under the Texas Unemployment Compensation Act (the Act) §204.083, the successor and predecessor employing units may jointly file with the Agency information necessary to establish a contribution rate pursuant to §204.085 of the Act. The section is further amended to clarify that for acquisitions that occurred prior to September 1, 2015, the effective date of HB 1251, the deadline for submitting the information remains one year following the acquisition. For all other acquisitions, the Agency shall use the deadlines stipulated in §204.085(a-1) of the Act.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

LaSha Lenzy, Director, Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be compliance with state law.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on September 28, 2015. The Commission also conducted a conference call with Board executive directors and Board staff on October 9, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,

Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015, which provides 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 proposed rules affect Texas Labor Code, Title 4.

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SUBCHAPTER C. TAX PROVISIONS

§815.111. Partial Transfer of Compensation Experience.

(a) Voluntary Partial Transfer of Compensation Experience

- (1) An application for transfer of compensation experience pursuant to §204.084 of the Act shall be filed with the Agency in one of the following formats:
 - (A) forms printed by the Agency;
 - (B) magnetic or electronic media in a format prescribed by this Agency; or
 - (C) any other manner approved and prescribed by the Agency in writing.
- (2) The application shall:
 - (A) contain all facts and information and documents, including waiver, necessary to make a determination under §204.084 of the Act and in accordance with the requirements of that section; and
 - (B) be accurate, complete, and signed by an authorized representative. Incomplete applications will be returned unprocessed.
- (3) An application under this section must be filed with the Agency within one year of the date the partial transfer is completed.
- (4) To satisfy the identifiable and segregable requirements of §204.084(c)(3):
 - (A) the applicants shall show that the successor employer acquired a distinct and separable part of the organization, trade, or business that is capable of operating independently and separately from the predecessor employer; and
 - (B) the wages attributable to the acquired part of the organization, trade, or business shall be separate and distinct from other wages of the predecessor employer and shall be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.

(b) Mandatory Partial Transfer of Compensation Experience

- (1) When a partial acquisition occurs that requires transfer of compensation experience pursuant to §204.083, the employing units involved ~~shall~~ may file

with the Agency, in one of the following formats, the information necessary to determine if the conditions of §204.085(a) are met:

- (A) Forms printed by the Agency;
- (B) Magnetic or electronic media in a format prescribed by the Agency; or
- (C) Any other manner approved and prescribed by the Agency in writing.

(2) The ~~required~~-submission shall:

- (A) contain all facts, information, and documents necessary to make a determination under, and in accordance with, the requirements of §204.085;
- (B) be accurate, complete, and signed by an authorized representative; and
- (C) be filed with the Agency within one year of the date the partial transfer ~~is~~ was completed, if the partial transfer was completed prior to September 1, 2015. Otherwise, the submission is due pursuant to deadlines established in §204.085(a-1).

(3) To satisfy the conditions of §204.085(a):

- (A) the successor employer shall have acquired a distinct and separable part of the organization, trade, or business that is capable of operating independently and separately from the predecessor employer; and
- (B) the wages attributable to the acquired part of the organization, trade, or business shall be separate and distinct from other wages of the predecessor employer and shall be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.