

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 30, 2007**, 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*: **February 16, 2007**

The rules will take effect: **February 19, 2007**

The Texas Workforce Commission (Commission) adopts amendments, *without* changes, to the following sections of Chapter 815 related to Unemployment Insurance, as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9686):

Subchapter B, Benefits, Claims, and Appeals, §815.20

Subchapter C, Tax Provisions, §815.107 and §815.109

The Commission adopts the following new sections of Chapter 815 related to Unemployment Insurance, *without* changes, as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9686):

Subchapter C, Tax Provisions, §815.116, §815.134, and §815.135

Subchapter D, Farm and Ranch Labor, §815.150

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 rules change is to:

—implement House Bill (HB) 3250, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Title IV of the Texas Labor Code, the Texas Unemployment Compensation Act (TUCA), Chapter 204, Subchapter E, Acquisition of Experience-Rated Employer, by limiting the conditions under which the transfer of Unemployment Insurance (UI) compensation experience between business entities may occur; and requiring the Commission to establish, by rule, procedures to identify the transfer or acquisition of a business for the purposes of identifying State Unemployment Tax Act (SUTA) dumping;

—provide clear direction for UI claimants and employers, without creating an undue bureaucratic burden in navigating the UI and Tax systems; and

—ensure operation of efficient, cost-effective systems that fulfill the requirements of state and federal law.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor, nonsubstantive, 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 B. BENEFITS, CLAIMS, AND APPEALS

The Commission adopts amendments to Subchapter B, as follows:

§815.20. Claim for Benefits

Section 815.20 adds Internet filing as a method for unemployed individuals to file UI claims and specifies that the current restrictions to designated hours and days of claim filing do not apply to online initial claim filers or those who request payment of benefits online because the Internet is available 24 hours a day.

SUBCHAPTER C. TAX PROVISIONS

The Commission adopts amendments to Subchapter C, as follows:

§815.107. Reports Required and Their Due Dates

Section 815.107(a) specifies that employers may request, and the Agency may grant, a hardship exemption from filing reports and formats in the required format. The Agency does not intend to implement specific requirements for how the hardship exemption request must be submitted by an employer. The Agency will accept the notification by telephone or in writing, and will develop a system to provide confirmation numbers to employers who request hardship exemptions.

Section 815.107(a)(3)(A)(i) lowers the existing threshold from 250 or more employees to 10 or more employees for employers who must file quarterly benefit wage credit reports on magnetic or electronic media. This rule change is effective July 1, 2007. The Agency will continue ongoing notification initiatives to ensure that entities covered by this new threshold understand that compliance will be required following the effective date of the rule change.

Section 815.107(a)(3)(A)(ii) lowers the existing threshold from 250 or more employees to 10 or more employees for other entities, including agents reporting on behalf of multiple employers, who must file quarterly benefit wage credit reports on magnetic or electronic media. This rule change is effective July 1, 2007. The Agency will continue ongoing notification initiatives to ensure that entities covered by this new threshold understand that compliance will be required following the effective date of the rule change.

Section 815.107(a)(3)(B) lowers the existing threshold from less than 250 employees to less than 10 employees for employers who may file quarterly benefit wage credit reports on magnetic or electronic media. This rule change is effective July 1, 2007. The Agency will continue ongoing notification initiatives to ensure that entities covered by this new threshold understand that compliance will be required following the effective date of the rule change.

New §815.107(a)(3)(D) specifies that a quarterly benefit wage credit report filed in an approved medium shall contain both a wage credit report and a summary report. This rule change is effective July 1, 2007. The Agency will continue ongoing notification initiatives to ensure that entities covered by this new threshold understand that compliance will be required following the effective date of the rule change.

Comment: One commenter expressed concern that the proposed rule change would require employers with large numbers of employees or with high staff turnover to enter quarterly reports manually, increasing the likelihood of typographical errors in the report. The commenter indicated that the rule change would be acceptable if TWC had an electronic means of transferring required elements of the report from the employer's computer systems to TWC's computer systems.

Response: The Commission agrees that it is impractical to enter quarterly reports manually. Therefore, the Agency provides a free program—Quickfile—to enable employers to upload data online. Quickfile is available for download from the Agency's Web site at www.twc.state.tx.us/ui/tax/quickfile.html and allows for the upload of report elements in a variety of commonly used data formats. The Agency's Tax Department will provide information to employers statewide about the rule change as well as their reporting options.

§815.109. Payment of Contributions and Reimbursements

Section 815.109(f) removes the 60-day limit on extensions past the due date for payment of contributions due.

Removal of the 60-day limit on extensions provides the Agency with the flexibility necessary to respond to employers facing extreme circumstances, such as natural disasters, and is consistent with the corresponding extension provisions included in §815.107(b)(3).

Section 815.109(g) requires all agents or other entities making a payment on behalf of an employer to furnish an allocation list on magnetic or electronic media using a format prescribed by the Agency. Currently, agents or other entities making a payment on behalf of 20 or more employers must furnish an allocation list on magnetic or electronic media.

The number of service agents submitting remittance allocation lists for their clients using a paper list has diminished over the years; only a very small number still submit the list in this manner. The most efficient and widely used process, for both the Agency and the service agent, is an electronic submission of the allocation list with the electronic wage reports. This change is consistent with other initiatives to increase use of technology by all customers conducting business with the Agency.

§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses

New §815.116 implements the portion of HB 3250 that requires the Commission, by rule, to establish procedures to identify the transfer or acquisition of a business.

New §815.116(a) states that the Agency will employ an electronic method of tracking the reporting of employees and wages to help determine instances of improper reporting by employers.

New §815.116(b) provides that to aid the Agency in its determination, upon request and as determined necessary by the Agency, employers shall provide information sufficient to enable the Agency to determine:

- (1) the status of the employing unit under investigation and whether the employer is liable under the Act;
- (2) the proper employer of the employees reported and verify whether the wages are reported by the proper entity;
- (3) the relationship between the predecessor or successor entity and whether a mandatory transfer of compensation experience is in order; and
- (4) the correct calculation of the tax rate assigned to the employer.

§815.134. Employment Status: Employee or Independent Contractor

New §815.134 clarifies that, for the purposes of determining employee or independent contractor status, the Agency shall use the guidelines contained in §821.5 of this title.

§815.135. Voluntary Election by Employers

New §815.135(a) specifies that employers electing coverage under Chapter 206 of TUCA shall make the election in writing on a form specified by the Agency or by a prescribed electronic equivalent.

New §815.135(b) is added to specify that employers electing to pay reimbursements shall make the election in writing on a form specified by the Agency or by a prescribed electronic equivalent, and in compliance with Chapter 205, Subchapter A, of TUCA.

SUBCHAPTER D. FARM AND RANCH LABOR

The Commission adopts new Subchapter D, as follows:

§815.150. Definition of Terms

New §815.150 defines terms relating to farm and ranch labor when used in implementing TUCA §201.028, §201.047, and §204.009.

New §815.150(1) defines "agricultural association" as a nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under state law, which recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers.

New §815.150(2) defines "agricultural employer" as an individual who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery or who produces or

conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers.

New §815.150(3) defines "farm labor contracting activity" as the recruiting, soliciting, hiring, employing, furnishing, or transporting of migrant or seasonal agricultural workers.

New §815.150(4) defines "farm labor contractor" as an individual, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

New §815.150(5) defines "farm and ranch labor" as all services performed:

(A) on a farm or ranch in the employ of an individual in connection with cultivating the soil; raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur bearing wildlife; or

(B) in the employ of the owner, tenant, or other operator of a farm or ranch, in connection with the operation, management, conservation, improvement, or maintenance of such farm or ranch and its tools and equipment, if the major part of such service is performed on a farm or ranch.

New §815.150(6) defines "labor agent" as an individual in Texas who for a fee offers, attempts to procure, or procures employment for employees; or without a fee offers, attempts to procure, or procures employment for common or agricultural workers; or any individual who for a fee attempts to procure or procures employees for an employer; or without a fee offers or attempts to procure common or agricultural workers for employers; or any individual, regardless of whether a fee is received or due, who offers, attempts to supply, or supplies the services of common or agricultural workers to any individual.

New §815.150(7) defines "migrant worker" as an individual who is employed in farm or ranch labor of a seasonal or temporary nature and who is required to be absent overnight from his or her permanent place of residence, provided the individual is not a temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and §1184(c).

New §815.150(8) defines "orchard" as a farm devoted primarily to the planting, cultivating, growing, or harvesting of fruits or nuts.

New §815.150(9) defines "other farm or ranch laborer" as an individual employed in farm or ranch labor or who is neither a seasonal worker nor a migrant worker.

New §815.150(10) defines "seasonal worker" as an individual who is employed in farm or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from his or her permanent place of residence, provided the individual is not a temporary nonimmigrant alien

who is authorized to work in agricultural employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and §1184(c).

New §815.150(11) defines "truck farm" as a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market.

New §815.150(12) defines "vineyard" as a farm devoted primarily to the planting, cultivating, growing, or harvesting of grapes.

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 B. BENEFITS, CLAIMS, AND APPEALS

§815.20. Claim for Benefits.

An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to a representative of the Agency in a manner, including telephonic, Internet, or other means, that the Agency may approve, and file a claim for benefits. Before receiving benefits a claimant shall register for work with the public employment office, including workforce centers, serving the individual's area of residence, as provided in paragraphs (3) and (7) of this section, unless exempt from the requirement.

- (1) In case of a mass layoff by an employer, if the last employing unit involved makes an appropriate request, the Agency may accept, in lieu of an initial claim from each individual, a list furnished by the last employer of the individuals to be laid off and who wish to file initial claims for benefits. The list shall reflect, with respect to each individual, all information normally required on the initial claim by the Agency, except the reason for separation. If the Agency approves the request, the listing then may be used by the Agency as an initial claim for each individual on the list.
- (2) After an individual files a valid initial claim, which establishes the claimant's benefit year, the claimant may, during the benefit year, file subsequent continued claims, weekly or biweekly, by telephonic means, facsimile (fax) transmission, mail, common carrier, Internet, or other means as the Agency may approve in writing, but at intervals of no less than seven consecutive days. A claimant shall file all claims by telephonic means, in writing, or orally, during the hours, days, and weeks directed by Agency representatives. Internet filing is available 24 hours each day. If at any time during the benefit year, more than 30 days have elapsed since the filing of the claimant's last claim, the claimant shall file an additional or reopened claim for benefits as defined in §815.1 (relating to Definitions) and shall comply with all eligibility requirements for the claims. A claimant who exhausts regular benefits may file continued claims for extended benefits as referenced in §815.26 (relating to Extended Benefit Period Announcement) in the same manner in which the claimant filed claims for regular benefits, but the claimant's claims for extended benefits may be for benefit periods subsequent to the end of the claimant's benefit year.
- (3) An individual who files a claim for benefits shall comply with all requirements of the public employment office in which the claimant files an application for work that are necessary to establish a valid registration for work in that public employment office. The claimant shall comply with an Agency representative's requests, whether oral or written, that are reasonably designed

to inform the claimant of the claimant's rights and responsibilities in filing a claim for benefits. The claimant also shall:

- (A) provide evidence, upon request, to establish the claimant's correct Social Security account number;
 - (B) file all claims in the manner directed by the Agency, whether on Agency-provided forms or by telephonic, Internet, or other means approved by the Agency for claims purposes;
 - (C) supply all information within the claimant's knowledge, which is necessary to determine the claimant's rights to benefits under the Act;
 - (D) sign all provided claims forms personally for the claims that are filed in person or by mail or common carrier; and
 - (E) submit all claims filed by mail, common carrier, hand delivery, or by other means, including telephonic or Internet, as instructed by the Agency, in accordance with the terms of this section.
- (4) An individual may file a claim by mail, common carrier, hand delivery, or by other means as the Agency may approve, in writing in any of the following circumstances:
- (A) Conditions exist that make it impracticable for the Agency representative to take claims by telephonic, Internet, or other approved means; or
 - (B) The Agency finds that the claimant has good cause for failing to file a claim by telephonic, Internet, or other approved means.
- (5) If a claimant's answer to a question on a claim filed with the Agency creates uncertainty about the claimant's credibility, or a lack of understanding, or the claimant's record shows that the claimant previously filed a fraudulent claim; then the claimant may be required to file written claims on an Agency-approved form in a manner prescribed by the Agency in writing. A claimant required to file a claim under this section shall continue to file the claim in the prescribed manner, until the Agency determines that the reason no longer exists and directs otherwise in writing.
- (6) The following provisions shall apply to the disqualification provisions of the Act, Chapter 207, Subchapter C, concerning disqualification for benefits.
- (A) The term "employment" in the Act, Chapter 207, Subchapter C, shall be interpreted and applied to mean employment as defined in the Act.
 - (B) The disqualification to be imposed against an individual who has left work

to move with a spouse, as provided in the Act, §207.045(c), shall be construed to mean both a benefits (money payments) and a benefit period (time period) disqualification; and such disqualification shall be restricted in its application to apply only to the range from six weeks to 25 weeks.

- (C) Agency employees are authorized to administer oaths to claimants in an effort to verify that the requalifying requirements of the Act, Chapter 207, Subchapter C, concerning employment or earnings, have been satisfied.
- (D) An employer identified as the employer by whom the claimant was employed, for purposes of satisfying the requalifying requirements of the Act, Chapter 207, Subchapter C, shall be afforded 14 days within which to respond to notice by the Agency of the filing of an additional claim by the claimant.
- (E) In order to satisfy the requirement of the Act, Chapter 207, Subchapter C, concerning returning to employment and working for six weeks, a "work week" shall be defined as seven consecutive days during which the claimant has worked at least 30 hours.
- (F) Disqualifying separations, new benefit year, and extended benefit period.
 - (i) A claimant filing an initial claim, continued claim, or additional claim shall be disqualified from receiving benefits if the separation from the claimant's last work is a disqualifying separation as defined in the Act, Chapter 207.
 - (ii) If a work separation in a previous benefit year is the last separation prior to a claimant's filing an initial claim that creates a new benefit year, then that work separation may result in a disqualification in the new benefit year in accordance with the provisions of the Act, Chapter 207.
 - (iii) A disqualification resulting from a work separation in a benefit year shall continue during the extended benefit period until:
 - (I) the extended benefit period is terminated;
 - (II) the claimant qualifies to file a new initial claim; or
 - (III) the claimant requalifies in accordance with the provisions of the Act, Chapter 207, under which the disqualification was imposed.
- (7) A claimant shall be eligible to receive benefits with respect to any week only if the individual demonstrates the availability for work required by the Act,

§207.021(a)(4), and, if required by §207.021(a)(8), by participating in reemployment services, including, but not limited to, job search assistance, if the claimant has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the Agency.

- (8) The following categories of claimants are exempt from the requirement to register for work:
 - (A) individuals on temporary layoff with a definite date to return to work;
 - (B) members in good standing in unions that maintain a hiring hall; and
 - (C) individuals participating in a Shared Work plan as defined in the Act, Chapter 215.
- (9) Withholding from Benefits for Federal Income Tax.
 - (A) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:
 - (i) unemployment compensation is subject to federal, state, and local income tax;
 - (ii) requirements exist pertaining to estimated tax payments;
 - (iii) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal Internal Revenue Code; and
 - (iv) the individual shall be permitted to change a previously elected withholding status.
 - (B) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.
 - (C) The Agency shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to deducting and withholding of income tax.
 - (D) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld under any other provisions of the Act.
- (10) An employer's protest to an initial, additional, or continued claim made in

accordance with the Act, §208.004, may be delivered by telephonic means, which includes a verification procedure approved by the Agency in writing, mail, common carrier, facsimile (fax), Internet, or other means approved by the Agency in writing and as prescribed in the Agency's notice of claim form.

SUBCHAPTER C. TAX PROVISIONS

§815.107. Reports Required and Their Due Dates.

- (a) All reports and forms required by the Agency or the Act shall be filed with the Agency in one of the following formats unless a different format is approved in writing by the Agency, a hardship exemption is requested from and granted by the Agency, or as specified in this chapter.
 - (1) **General Format of Reports and Forms and Methods of Submission.** The reports and forms referenced in this section shall be filed using:
 - (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) **Content.** The reports and forms shall contain all facts and information necessary to a determination of the amounts due by the employing unit. The Agency may require the furnishing of additional information as it deems necessary for the proper administration of the Act.
 - (3) **Magnetic and Electronic Media Reporting.**
 - (A) **Required Magnetic or Electronic Media.** Regarding filing of quarterly benefit wage credit reports as required by §207.004 of the Act, the following shall file benefit wage credit reports on magnetic or electronic media using a format prescribed by the Agency:
 - (i) Employers who have to file a report on 10 or more employees in any one calendar quarter; and
 - (ii) Other entities, including agents reporting on behalf of multiple employers, who have to file reports on a cumulative total of 10 or more employees in any one calendar quarter.
 - (B) **Voluntary Use of Magnetic or Electronic Media.** Employers, including agents reporting on behalf of multiple employers, who file a benefit wage credit report on a cumulative total of less than 10 employees in any one

calendar quarter, as defined in §207.004 of the Act, may voluntarily elect to use magnetic or electronic media reporting.

(C) A magnetic or electronic media wage report may contain information from more than one employer.

(D) A quarterly benefit wage credit report filed in an approved medium shall contain both a wage credit report and a summary report.

(b) General Deadlines for Filing Reports and Forms.

(1) Unless otherwise provided in this subchapter, any report or form shall be completed and filed with the Agency within 10 days after the requested report or form is:

(A) mailed to the individual or employing unit at the address on record with the Agency; or

(B) personally delivered to the individual or employing unit by an Agency representative.

(2) Failure to receive notice regarding the reports shall not relieve the individual or employing unit of the responsibility of filing the reports by the date the reports are due.

(3) Good Cause for Extending Deadlines. When good cause is shown, the Agency may extend the due date for filing of a report required under this section; however, the extension shall be effective only if authorized in writing by an Agency representative.

(c) Status Reports.

(1) Status Reports in General. Each employing unit shall file with the Agency a status report within 10 days from the date upon which the employing unit becomes subject to the Act.

(2) Status Reports for New Acquisitions. Any employing unit in the state of Texas that acquires another business or substantially all of the assets of another business shall file a new status report with the Agency within 10 days of the date on which the employing unit made the acquisition.

(3) Status Reports for Additional Information. Each employing unit shall file additional status reports at any time upon the request of the Agency.

(4) Evidence in Support of Status Reports. Employing units filing status reports with the Agency shall:

- (A) file with the Agency all facts necessary to a determination of the taxable status of the employing unit; and
 - (B) if requested, file with the Agency evidence to establish the correctness of information contained in the employing unit's status reports.
- (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a domestic employer who has elected to report and pay annually under §201.027(b) of the Act, shall file with the Agency, within the month during which contributions for any period become due, and not later than the date on which contributions are required to be paid to the Agency, an employer's quarterly report showing for the preceding calendar quarter:
- (1) the total amount of remuneration paid for employment (or showing that no remuneration was paid during the quarter);
 - (2) the total amount of wages paid for employment (as defined in the Act, §201.081 and §201.082);
 - (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004) paid to each individual employee;
 - (4) the name and Social Security number of each individual to whom the wages were paid; and
 - (5) any other information requested on the employer's quarterly report, including all facts and information necessary to make a determination of the amount of contributions due.
- (e) Quarterly Reports from Reimbursing Employers and Group Representatives of a Group Account. Each reimbursing employer and the group representative of a group account shall file an employer's quarterly report, by the end of the month following each calendar quarter, that furnishes the following information for the preceding calendar quarter, information specified in paragraphs (1)–(4) of subsection (d) of this section, and any other information necessary to make a determination of the amount of reimbursements due.
- (f) Benefits Financed by the Federal Government. Each employer that has employees whose benefits are to be financed by the federal government shall file a separate quarterly report furnishing the names of the employees, their Social Security numbers, and the wages paid to each. The report shall be filed by the end of the month following each calendar quarter.
- (g) Annual Reports from Domestic Employers.

- (1) Making the Election. An election to report wages paid and pay contributions on an annual basis must be made in a format or on a form authorized by the Agency by the deadline specified in §201.027 of the Act.
- (2) Each domestic employer that qualifies under the Act and who has made an election as referenced in paragraph (1) of this subsection, shall file with the Agency, by January 31 of the year after the wages were paid, in a format consistent with subsection (a) of this section, a domestic employer's annual report showing the following for the preceding calendar year in which wages were paid.
 - (A) The information specified in paragraphs (1)–(4) of subsection (d) of this section subtotaled for each quarter; and
 - (B) Other information called for on the domestic employer's annual report including all facts and information necessary to make a determination of the amount of contributions due.
- (3) Penalties and interest incurred under this section shall be the same as applicable to other employer reporting requirements as provided in Chapter 213 of the Act and this subchapter.

§815.109. Payment of Contributions and Reimbursements.

- (a) When, in any calendar year, an individual or employing unit becomes an employer (other than a reimbursing employer) subject to this Act, the employer shall, on or before the last day of the month following the month during which the employer became a subject employer, file a report as specified in §815.107 and pay contributions with respect to all completed calendar quarters in the calendar year. Contributions for the quarter during which the employer becomes a subject employer shall be due on the first day of the month immediately following the quarter and shall be paid on or before the last day of the month. Contributions shall accrue quarterly and shall become due on the first day of the month immediately following the calendar quarter. They shall be paid to the Agency on or before the last day of the month. The provisions in subsection (a) of this section shall apply unless otherwise provided in §201.027 of the Act.
- (b) Reimbursements shall become due on the last day of the month following the end of each quarter and shall be paid to the Agency on or before the last day of the next month.
- (c) When the last day for payment of contributions or reimbursements falls on a Saturday, Sunday, or a legal holiday on which the Agency office is closed, the payment may be made on the next regular business day.
- (d) An employer or other entity, including agents paying on behalf of multiple

employers, which paid contributions in the preceding state fiscal year of \$250,000 or more, and which is reasonably anticipated to do the same in the current fiscal year, is required to transfer payment amounts of contributions by electronic funds transfer on or before the date the contributions are due, unless the Agency in writing has approved another method or form of payment. Except as otherwise provided in this subsection, employers, including agents, may voluntarily transfer payment of contributions by electronic funds transfer on or before the date the contributions are due, unless the Agency in writing has approved another method or form of payment. The transfers, when applicable, shall be subject to the provisions of the Texas Government Code §404.095, and to rules adopted by the state comptroller pursuant to that section.

- (e) Additional tax resulting from a chargeback adjustment is due on the first day of the second month following the month in which the Agency mailed the statement or letter notifying the employer of the change in tax rate and additional tax due. Amounts due from such chargeback adjustments shall be paid and must be received by the Agency on or before the last day of this second month.
- (f) When good cause is shown, the Agency may extend the due date for the payment of contributions or reimbursements. The extension shall not be effective unless it is authorized in writing by the Agency. In the event the Agency for good cause shown extends the due date for payment of contributions or reimbursements, the payments shall be made to the Agency on or before the thirtieth day following the extended due date.
- (g) An agent or other entity making a payment on behalf of employers shall furnish an allocation list on magnetic or electronic media using a format prescribed by this Agency, unless the Agency has approved another format and method in writing. This list shall be furnished with the remittance, and the remittance shall be allocated to the credit of the employers according to the order in which the employers appear on the list.

§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses.

- (a) An electronic method of tracking the reporting of employees and wages will be employed by the Agency to assist in ascertaining instances of improper reporting by employers.
- (b) To aid the Agency in this determination, upon request and as determined necessary by the Agency, employers shall provide information sufficient to enable the Agency to determine:
 - (1) the status of the employing unit under investigation and whether the employer is liable under the Act;

- (2) the proper employer of the employees reported and whether the wages are reported by the proper entity;
- (3) the relationship between the predecessor or successor entity and whether a mandatory transfer of compensation experience is required under §204.083 of the Act; and
- (4) the correct calculation of the tax rate assigned to the employer.

§815.134. Employment Status: Employee or Independent Contractor.

Subject to specific inclusions and exceptions to employment enumerated in Chapter 201 of the Act, the Commission shall use the guidelines referenced in §821.5 of this title as the official guidelines for use in determining employment status.

§815.135. Voluntary Election by Employers.

- (a) Each employer electing coverage under Chapter 206 of the Act shall make this election in writing on an Agency-specified form or electronic equivalent.
- (b) Each employer electing to pay reimbursements for benefits, rather than contributions, shall make this election:
 - (1) in writing on the Agency-specified form or electronic equivalent; and
 - (2) in compliance with the requirements of Chapter 205, Subchapter A, of the Act.

SUBCHAPTER D. FARM AND RANCH LABOR

§815.150. Definition of Terms.

The following words and terms shall apply to the Act, §§201.028, 201.047, and 204.009, concerning farm and ranch labor, and shall have the following meanings unless the statute or context clearly indicates otherwise.

- (1) Agricultural association -- Any nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under state law, which recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers.
- (2) Agricultural employer -- Any individual who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural workers.

- (3) Farm labor contracting activity -- The recruiting, soliciting, hiring, employing, furnishing, or transporting of migrant or seasonal agricultural workers.
- (4) Farm labor contractor -- Any individual, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.
- (5) Farm and ranch labor -- Includes all services performed:
 - (A) On a farm or ranch in the employ of an individual in connection with cultivating the soil; raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur bearing wildlife; or
 - (B) In the employ of the owner, tenant, or other operator of a farm or ranch, in connection with the operation, management, conservation, improvement, or maintenance of such farm or ranch and its tools and equipment, if the major part of such service is performed on a farm or ranch.
- (6) Labor agent -- An individual in Texas, who for a fee offers, attempts to procure, or procures employment for employees; or without a fee offers, attempts to procure, or procures employment for common or agricultural workers; or any individual, who for a fee attempts to procure or procures employees for an employer; or without a fee offers or attempts to procure common or agricultural workers for employers; or any individual, regardless of whether a fee is received or due, who offers, attempts to supply, or supplies the services of common or agricultural workers to any individual.
- (7) Migrant worker -- An individual who is employed in farm or ranch labor of a seasonal or temporary nature and who is required to be absent overnight from his or her permanent place of residence, provided the individual is not a temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and §1184(c).
- (8) Orchard -- A farm devoted primarily to the planting, cultivating, growing, or harvesting of fruits or nuts.
- (9) Other farm or ranch laborer -- An individual employed in farm or ranch labor or who is neither a seasonal worker nor a migrant worker.
- (10) Seasonal worker -- An individual who is employed in farm or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from his or her permanent place of residence, provided the individual is not a temporary nonimmigrant alien who is authorized to work in agricultural

employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and §1184(c).

- (11) Truck farm -- A farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market.
- (12) Vineyard -- A farm devoted primarily to the planting, cultivating, growing, or harvesting of grapes.