

## **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 **APRIL 12, 2011**, 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*: **April 29, 2011**

The rules will take effect: **May 2, 2011**

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 909):

Subchapter F. Extended Benefits, §815.170 and §815.171

**PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

**PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the adopted Chapter 815 rule amendment is to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312); the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for Unemployed Workers and Struggling Families, §2005. This authority was granted to the Commission under House Bill (HB) 4586, 81st Texas Legislature, Regular Session (2009).

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

### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

(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 F. EXTENDED BENEFITS**

**The Commission adopts the following amendments to Subchapter F:**

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

Section 815.170(b)(1)–(2) adds an additional calendar year in the comparison period when determining whether there is a state "on" indicator for the purposes of paying extended benefits.

To pay extended benefits, a state must reach a trigger related to statewide unemployment. Under authority granted by the legislature, Texas may use a temporary trigger based upon its Total Unemployment Rate (TUR).

If the TUR average equals or exceeds 6.5 percent and is at least 110 percent of the corresponding three-month period in either or both of the prior two calendar years (look-back period), a state must offer 13 weeks of extended benefits. If the average TUR equals or exceeds 8 percent and meets the same 110 percent test, 20 weeks of extended benefits must be available.

As part of the TUR trigger methodology, the U.S. Department of Labor is instructed to compute the three-month average TUR each week and compare it to the same look-back period in either or both of the two preceding calendar years.

During 2011, the reference months for Texas will be in calendar years 2009 and 2010. The unemployment rates—and therefore the moving three-month average for both 2009 and 2010—are likely to be closer to, or even higher than, the rate for the equivalent period in 2011. Texas will need to look back three years, to 2008, to meet the 110 percent criterion and remain triggered on extended benefits. Congress recognized this dilemma; P.L. 111-312 allows states to amend their law and temporarily add a third year to the look-back period to take advantage of continued 100 percent federal funding of extended benefits.

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

Section 815.171(a) adds a reference to §815.170(b) to indicate that a high unemployment period also exists under the new three-year look-back option.

No comments were received.

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 §301.0015, 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, Subtitle A, Texas Unemployment Compensation Act.

## Chapter 815. UNEMPLOYMENT INSURANCE

### SUBCHAPTER F. EXTENDED BENEFITS

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

- (a) In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009, a week is a state "on" indicator week if:
  - (1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and
  - (2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.
- (b) With respect to compensation for weeks of unemployment beginning after the date of enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in federal law permitting this provision, a week is a state "on" indicator week if:
  - (1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and
  - (2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.
- (c) In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) or (b) of this section result in an "on" indicator.
- (d) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(c) of such law.

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

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