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 **AUGUST 3, 2010**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date in the *Texas Register*: **August 20, 2010**
The rules take effect: **August 3, 2010**

The Texas Workforce Commission (Commission) adopts on an emergency basis the following new section to Chapter 815, relating to Unemployment Insurance:

Subchapter B. Benefits, Claims, and Appeals, §815.29

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts the new rules on an emergency basis pursuant to the authority cited below, to comply with the benefit coordination provisions of the Unemployment Compensation Extension Act (Act) of 2010, enacted July 22, 2010.

Section 3 of the Act, Coordination of Emergency Unemployment Compensation with Regular Compensation, speaks to circumstances in which an individual qualifies for a new benefit year pursuant to Texas Labor Code §201.011(5) but retains entitlement for emergency unemployment compensation (EUC) benefits from an immediately prior benefit year. In such cases, the Commission must determine whether the individual qualifies for a weekly benefit amount of regular compensation that is at least either $100 or 25 percent less than the individual's weekly benefit amount in the prior benefit year. The purpose of this section is to address cases in which individuals take intermittent, part-time work to augment their unemployment benefits. Such part-time work, inconsistent with their normal occupation and wage, comprises the base period wage credits of a new benefit year, qualifying the individual for a substantially reduced weekly benefit amount.

In such instances, the Act dictates that a state shall implement procedures that allow an individual to continue receiving the higher weekly benefit amount by continuing payment of EUC before payment of regular compensation or by paying both types of claims simultaneously. The Act allows the state to use one of the following options:

(A) The state shall, if permitted by state law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(B) The state shall, if permitted by state law, defer the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year but for the application of this section), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(C) The state shall pay, if permitted by state law:

> (i) regular compensation equal to the weekly benefit amount established under the new benefit year, and
> (ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

(D) The state shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

In evaluating the options available under the federal law, the Commission has determined that Option A—establishing a new benefit year, but deferring the payment of regular compensation until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year—is the most financially sound, efficient, and beneficial method to comply with this new, temporary requirement. After exhaustive analysis, the Commission believes this option can be implemented through a mix of automation changes in the unemployment insurance (UI) Benefits System and changes to existing manual staff processes.

Option B—deferring the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year—is not permitted under Texas law.

Option C—paying regular compensation under the new benefit year and paying emergency unemployment compensation from the prior benefit year equal to the difference between the two weekly benefit amounts—requires extensive, costly modifications to the Commission's UI Benefits System as well as extensive changes to the UI claims-taking process. This option would pay benefits immediately from the already strained state unemployment compensation fund.

Option D—allowing the individual to elect not to file a claim for regular compensation under the new benefit year—could be implemented within a relatively short period of time, but it puts claimants at the greatest risk of losing benefits eligibility. It requires claimants to make complex decisions about receipt of benefits based on potential future monetary eligibility.

The Commission must take immediate action in order to comply with this federal requirement. During this period of high, sustained unemployment, continuing to pay 100 percent federally funded EUC benefits at the higher weekly amount is vital to out-of-work Texans who are struggling to pay their bills but have accepted intermittent, part-time work to augment their unemployment benefits. 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 upon 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 B. BENEFITS, CLAIMS, AND APPEALS

The Commission adopts, on an emergency basis, the following new section to Subchapter B:

New §815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation

New §815.29 adds a temporary provision. It establishes a new benefit year, but defers the payment of regular compensation for that new benefit year until exhaustion of all emergency unemployment compensation payable for the prior benefit year—if the weekly benefit amount of regular compensation in a new benefit year is at least $100 or 25 percent less than the individual's weekly benefit amount in the immediately preceding benefit year.

These rules are adopted on an emergency basis pursuant to:
--Texas Government Code §2001.034, which provides the Commission with the authority to adopt rules on an emergency basis;
--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and
--Texas Labor Code §301.062, which provides the Commission 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).

The Commission hereby certifies that the emergency rule adoption has been reviewed by legal counsel and found to be within the Commission's legal authority to adopt.

Chapter 815. UNEMPLOYMENT INSURANCE

Subchapter B. Benefits, Claims, and Appeals

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation.

The Commission shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least $100 or 25 percent less than the individual's weekly benefit amount in the immediately preceding benefit year.