

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 FEBRUARY 1, 2011, 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*: **February 18, 2011**
Estimated End of Comment Period: **March 21, 2011**

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

Subchapter F. Extended Benefits, §815.170 and §815.171

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 the proposed 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 proposes 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.

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 additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules, as outlined below.

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

There are no estimated losses in revenue to the state and local governments as a result of enforcing or administering the rules. We cannot estimate what the increase in revenue to the state and local governments will total, as a result of enforcing or administering the rules,

although it is indicated that there will be an increase because of increased economic activity and probable tax revenue resulting from an estimated \$333.5 million in extended benefits being paid (most or all of which would subsequently be expended by unemployment compensation claimants).

There are implications relating to the costs (described below) or revenues (described above) 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 estimated adverse economic effect on small businesses as a result of enforcing or administering the rules.

The Agency estimates that \$333.5 million in unemployment compensation (UC) extended benefits—as authorized by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312) and American Recovery and Reinvestment Act of 2009 (P.L. 111-5), and pursuant to authority provided to the Commission under HB 4586, 81st Texas Legislature, Regular Session (2009)—will be paid and expended for the effective period of June 3, 2011, through January 7, 2012 (i.e., for individuals who are otherwise eligible for extended unemployment compensation benefits even if their benefit year for regular benefits has expired).

These extended benefit payments consist of federal funds, except for benefit payments based on benefit wage credits earned from: (1) a state; (2) any political subdivision of a state; or (3) any instrumentality of any one or more states or political subdivisions that is wholly owned by one or more states or political subdivisions. Assuming that expenditures of UC extended benefits will occur among base period employers largely in the same proportion as they occurred for UC extended benefits during the most recent 23-week period in Texas (August 31, 2010–January 14, 2011), estimates were made for the effective period of June 3, 2011, through January 7, 2012, which would be facilitated by these proposed rule amendments. These estimates are that UC extended benefits paid to former employees for which local governments in Texas have been their base period employer are estimated to total \$5.6 million, and UC extended benefits paid to former employees for which state government in Texas (including state agencies, and state universities and hospitals) has been their base period employer are estimated to total \$2.8 million.

Rich Froeschle, 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 of the 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 amendment will be to ensure compliance with federal and state requirements.

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

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. The Commission must receive comments 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 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 proposed 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)~~ (b) 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)~~ (e) 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.