

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 **JULY 28, 2009**, 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*: **August 14, 2009**

Estimated End of Comment Period: **September 14, 2009**

The Texas Workforce Commission (Commission) proposes the following new subchapter to Chapter 815 related to Unemployment Insurance:

Subchapter F, Extended Benefits, §§815.170–815.174

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

The purpose of the proposed Chapter 815 rule changes is to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with 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 pay 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

SUBCHAPTER F. EXTENDED BENEFITS

The Commission proposes new Subchapter F, as follows:

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

New §815.170 adds a new, conditional trigger under which Texas could enter into an extended benefit eligibility period, allowing the state to receive 100 percent federally shared extended benefits as authorized under P.L. 111-5.

There are two methods under which a state may trigger on to an extended benefit period:
--(1) a specified threshold under the Insured Unemployment Rate (IUR) methodology; and
--(2) a specified threshold under the Total Unemployment Rate (TUR) methodology.

Texas Labor Code, Chapter 209, provides for the use of the IUR methodology. However, its threshold is so high that Texas would have to have substantial levels of chronic unemployment before triggering on to an extended benefit period. The U.S. Department of Labor (DOL) has advised states that they may enact a temporary, conditional TUR trigger in order to take advantage of 100 percent federally shared extended benefits. The TUR trigger described in this section is conditional upon 100 percent federal sharing of extended benefits as recommended and approved by DOL.

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

New §815.171 adds a definition of "high unemployment period" and provides a different methodology for calculating an individual's maximum total extended benefit amount if the state has triggered on to a "high unemployment period."

The Federal-State Extended Unemployment Compensation Act of 1970 (Federal EB Law), *et seq.*, requires that if a state has opted to enact the optional TUR trigger, it must also provide for increased benefits under a "high unemployment period."

§815.172. Concurrent Emergency Unemployment Compensation Programs

New §815.172 stipulates that Texas will pay extended unemployment benefits after all regular and emergency unemployment compensation has been exhausted. There are additional administrative requirements associated with implementing extended benefits that are not applicable to other 100 percent federally funded emergency unemployment compensation programs. Ordering payment of extended benefits after all other types of unemployment benefits have been exhausted helps the Agency make better use of the resources available to serve claimants. This ordering of benefits is allowable under P.L. 111-5.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits

New §815.173 provides that individuals who exhaust emergency unemployment compensation are otherwise eligible for extended unemployment benefits even if their benefit year for regular benefits has exhausted. This provision is intended to consider individuals eligible for extended benefits if they exhaust emergency unemployment compensation after their benefit year ends.

§815.174. Financing of Extended Benefits

New §815.174 clarifies that the benefit charging provisions of Texas Labor Code, Chapter 209, Subchapter E relating to taxed employers, do not apply to circumstances in which 100 percent of extended benefits are shared by the federal government. The charging provisions are intended to account for the 50 percent of benefits that would be funded from the state's share under the standard provisions of the Federal EB Law. Because there is no state sharing under this subchapter, the taxed employer charging provisions are not necessary.

This section further clarifies that charges to governmental employers (§209.084 of the Act) and Indian tribes (§209.0845 of the Act) shall apply.

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 would total, as a result of enforcing or administering the rules, although it is indicated that there would be an increase because of increased economic activity and probable tax revenue resulting from an estimated \$335 million in UI extended benefits being paid (most or all of which would subsequently be expended by unemployment 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 Commission estimates that \$335 million in these UI extended benefits, as authorized by the American Recovery and Reinvestment Act of 2009 and HB 4586, 81st Texas Legislature, will be expended (i.e., for individuals who will have exhausted emergency unemployment compensation and are otherwise eligible for UI extended benefits even if their benefit year for regular benefits has expired). Total expenditures of emergency unemployment compensation during the most recent 33 weeks in Texas (i.e., from November 27, 2008, through July 15, 2009) have been analyzed in the context of proportions of benefit expenditures attributed to certain base period employers. As directed by DOL, federal unemployment compensation statute requires “conforming legislation” on the part of states, and as a result of this, Texas Labor Code, §209.084, was earlier enacted to provide that the total amount of extended benefit payments shall be charged to the employer (i.e., and not included in the federal share) if the payments are 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. The assumption is being made that expenditures of UI extended benefits will occur among base period employers largely in the proportion that they occurred for emergency unemployment compensation during the most recent 33-week period in Texas. During this period, 2.6 percent of emergency unemployment compensation benefits were

attributed to former employees for which local governments in Texas had been their base employer, and 1.1 percent of emergency unemployment compensation benefits were attributed to former employees for which state government in Texas (including state agencies and state universities and hospitals) had been their base employer. Applying these percentages to the estimated \$335 million in UI extended benefits, the estimated cost impact for local governments in Texas is \$8.7 million, and the estimated cost impact for state government in Texas (including state agencies and state universities and hospitals) is \$3.7 million.

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.

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

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.

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 rules will be to provide long-term unemployed Texans with up to 13 weeks of additional unemployment compensation benefits.

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 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 proposed rules affect Texas Labor Code, Title 4.

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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) 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) of this section result in an "on" indicator.

(c) 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) 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.

§815.172. Concurrent Emergency Unemployment Compensation Programs.

The Agency shall pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying extended benefits under this subchapter.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

(a) Notwithstanding other eligibility provisions for extended benefits in the Act, an individual's eligibility period shall include any eligibility period provided for in P.L. 111-5, Division B, Title II, §2005(b).

(b) This section applies as long as §815.170 of this subchapter is in effect.

§815.174. Financing of Extended Benefits.

(a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act relating to taxed employers shall not apply.

(b) The provisions of §209.084, regarding Charges to Governmental Employer, and §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.

(c) This section applies as long as §815.170 of this subchapter is in effect.