

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.
4 THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO
5 FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

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7 The Texas Workforce Commission (Commission) adopts the following new subchapter, *without*
8 changes, to Chapter 815 related to Unemployment Insurance, as published in the August 14,
9 2009, issue of the *Texas Register* (34 TexReg 5489):

10
11 Subchapter F, Extended Benefits, §§815.170, 815.171, 815.173, and 815.174

12
13 The Texas Workforce Commission (Commission) adopts the following new subchapter, *with*
14 changes, to Chapter 815 related to Unemployment Insurance, as published in the August 14,
15 2009, issue of the *Texas Register* (34 TexReg 5489):

16
17 Subchapter F, Extended Benefits, §815.172

18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
21 **RESPONSES**

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23
24 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

25 The purpose of the adopted Chapter 815 rule changes is to adjust unemployment eligibility
26 periods, as necessary, to maximize receipt of 100 percent federally shared extended
27 unemployment benefits in accordance with the American Recovery and Reinvestment Act of
28 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for
29 Unemployed Workers and Struggling Families, §2005. This authority was granted to the
30 Commission under House Bill (HB) 4586, 81st Texas Legislature, Regular Session (2009).

31
32 The Commission must take this action in order to pay unemployed individuals who are
33 exhausting their regular and emergency unemployment benefits. During this period of high,
34 sustained unemployment, these 100 percent federally shared extended benefits are vital to out-of-
35 work Texans who are struggling to pay their bills while seeking work. These benefits also serve
36 as a much-needed stabilizing factor in local economies.

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39 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS**
40 **AND RESPONSES**

41
42 **SUBCHAPTER F. EXTENDED BENEFITS**

43 **The Commission adopts new Subchapter F, as follows:**

44
45 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger**

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

4
5 There are two methods under which a state may trigger on to an extended benefit period:
6 --(1) a specified threshold under the Insured Unemployment Rate (IUR) methodology; and --(2)
7 a specified threshold under the Total Unemployment Rate (TUR) methodology.

8
9 Texas Labor Code, Chapter 209, provides for the use of the IUR methodology. However, its
10 threshold is so high that Texas would have to have substantial levels of chronic unemployment
11 before triggering on to an extended benefit period. The U.S. Department of Labor (DOL) has
12 advised states that they may enact a temporary, conditional TUR trigger in order to take
13 advantage of 100 percent federally shared extended benefits. The TUR trigger described in this
14 section is conditional upon 100 percent federal sharing of extended benefits as recommended and
15 approved by DOL.

16
17 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount**

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

21
22 The Federal-State Extended Unemployment Compensation Act of 1970 (Federal EB Law), *et*
23 *seq.*, requires that if a state has opted to enact the optional TUR trigger, it must also provide for
24 increased benefits under a "high unemployment period."

25
26 **§815.172. Concurrent Emergency Unemployment Compensation Programs**

27 New §815.172 stipulates that Texas may pay extended unemployment benefits after all regular
28 and emergency unemployment compensation has been exhausted. There are additional
29 administrative requirements associated with implementing extended benefits that are not
30 applicable to other 100 percent federally funded emergency unemployment compensation
31 programs. Ordering payment of extended benefits after all other types of unemployment benefits
32 have been exhausted helps the Agency make better use of the resources available to serve
33 claimants. This ordering of benefits is allowable under Public Law 110-252.

34
35 **Comment:** One commenter requested clarification on why the word "shall" is used instead
36 of "may" in §815.172.

37
38 **Response:** The Commission appreciates the comment and notes that when originally
39 proposed, this section stipulated that the state *shall* pay extended benefits after all regular and
40 emergency unemployment compensation has been exhausted. Since then, Congress has
41 proposed an additional round of emergency unemployment compensation benefits, but has
42 authorized states that so choose to continue paying extended benefits rather than switch
43 claimants already receiving extended benefits to this additional emergency compensation.
44 The Commission believes that revising the language to the permissive "may" allows Texas to
45 take advantage of the exception that Congress has created, alleviates an administrative
46 burden for the state, and ensures continuity for claimants.

1
2 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
3 **Benefits**

4 New §815.173 provides that individuals who exhaust emergency unemployment compensation
5 are otherwise eligible for extended unemployment benefits even if their benefit year for regular
6 benefits has exhausted. This provision is intended to consider individuals eligible for extended
7 benefits if they exhaust emergency unemployment compensation after their benefit year ends.
8

9 **§815.174. Financing of Extended Benefits**

10 New §815.174 clarifies that the benefit charging provisions of Texas Labor Code, Chapter 209,
11 Subchapter E relating to taxed employers, do not apply to circumstances in which 100 percent of
12 extended benefits are shared by the federal government. The charging provisions are intended to
13 account for the 50 percent of benefits that would be funded from the state's share under the
14 standard provisions of the Federal EB Law. Because there is no state sharing under this
15 subchapter, the taxed employer charging provisions are not necessary.
16

17 This section further clarifies that charges to governmental employers (§209.084 of the Act) and
18 Indian tribes (§209.0845 of the Act) shall apply.
19

20 **COMMENTS WERE RECEIVED FROM:**

21 Rachel Stroud, Stroud & Welch, PLLC, Austin, Texas
22

23 The Agency hereby certifies that the proposed rules have been reviewed by legal counsel and
24 found to be within the Agency's legal authority to adopt.
25

26 The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the
27 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
28 deems necessary for the effective administration of Agency services and activities.
29

30 The adopted rules affect Texas Labor Code, Title 4.
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1 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

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3 The Agency may pay unemployment compensation benefits under other emergency
4 unemployment compensation programs that may be in effect prior to paying extended
5 benefits under this subchapter.
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8 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
9 **Benefits.**

- 10
11 (a) Notwithstanding other eligibility provisions for extended benefits in the Act, an
12 individual's eligibility period shall include any eligibility period provided for in P.L. 111-
13 5, Division B, Title II, §2005(b).
14
15 (b) This section applies as long as §815.170 of this subchapter is in effect.
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18 **§815.174. Financing of Extended Benefits.**

- 19
20 (a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5,
21 Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act
22 relating to taxed employers shall not apply.
23
24 (b) The provisions of §209.084, regarding Charges to Governmental Employer, and
25 §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.
26
27 (c) This section applies as long as §815.170 of this subchapter is in effect.
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