

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

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3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**  
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**  
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**  
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7 **ON MARCH 5, 2014, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**  
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

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10 Estimated Publication Date of the Proposal in the *Texas Register*: **March 21, 2014**  
11 Estimated End of Comment Period: **April 21, 2014**  
12

13 The Texas Workforce Commission (Commission) proposes amendments to the following  
14 sections of Chapter 815, relating to Unemployment Insurance:  
15

- 16 Subchapter A. General Provisions, §815.1
- 17 Subchapter B. Benefits, Claims, and Appeals, §815.10

- 18
- 19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 21 **PART III. IMPACT STATEMENTS**
- 22 **PART IV. COORDINATION ACTIVITIES**  
23

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

25 The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement  
26 the requirements of Senate Bill (SB) 1537, passed by the 83rd Texas Legislature, Regular  
27 Session (2013), by providing clear guidelines for employers, their agents, and the Commission  
28 concerning what constitutes adequate notification to requests for information.  
29

30 Texas, like many states, relieves an employer's unemployment account of charges that the state  
31 has determined were made improperly. However, Public Law 112-40 §252(a) added new  
32 §3303(f) to the Federal Unemployment Tax Act (FUTA), which provides that for a state law to  
33 meet the requirements of FUTA §3303(a)(1) and receive FUTA additional credit, the state  
34 cannot relieve an employer of benefit charges when the employer or its agent does both of the  
35 following:

- 36 --Was at fault for failing to respond timely or adequately to the state's request for information  
37 relating to a claim that was subsequently overpaid; and
- 38 --Has established a pattern of failing to respond timely or adequately to requests from the state  
39 agency for information relating to claims for unemployment benefits.  
40

41 This prohibition applies if the employer has a pattern of failing to respond timely, failing to  
42 respond adequately, or failing to respond both timely and adequately.  
43

44 In enacting these FUTA amendments, Congress anticipated that the prospect of benefit charging  
45 as a result of an employer's or agent's failure to comply with a state's notification requirements

1 would reduce future improper payments by prompting more accurate and timely reporting on  
2 future claims for unemployment benefits.

3  
4 To conform state law with the new FUTA requirements, the legislature passed SB 1537 related  
5 to required notices under the Texas Unemployment Compensation Act (TUCA), including  
6 employer liability arising from failure to provide adequate or timely notice. SB 1537 authorizes  
7 the Commission to adopt rules necessary to implement these new TUCA provisions.

8  
9 The Commission recognizes its obligation under federal law to obtain relevant facts promptly--  
10 prior to a determination of an individual's right to benefits--that are reasonably sufficient to  
11 ensure the payment of unemployment benefits when due. The information obtained, and the  
12 resulting investigation made by the Agency, must be complete enough to provide a basis upon  
13 which the Commission may act with reasonable assurance that its decision is consistent with the  
14 unemployment compensation laws of this state. The Commission is also aware of its  
15 responsibility to take the initiative in the discovery of information; this responsibility may not be  
16 passed on to the claimant or the employer.

17  
18 The legitimate intent of the federal and state law is to hold employers and their agents  
19 accountable if they do not put forth a reasonable effort to apprise the Commission of facts and  
20 evidence needed to determine a claimant's right to unemployment benefits. In support of that  
21 end, however, these proposed rules also recognize that:

22 --an adequate notification does not mean a perfect notification. It must be sufficient to raise  
23 allegations regarding a claimant's benefit rights supported by facts;

24 --a response is not inadequate simply because an examiner weighs it one way, and an employer  
25 later successfully persuades an appeal tribunal or the Commission to rule against the claimant;  
26 and

27 --an employer, or the employer's agent, may establish good cause for failing to provide adequate  
28 notice due to compelling circumstances beyond the employer's or agent's control.

## 29 30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

31 (Note: Minor editorial changes are made that do not change the meaning of the rules and,  
32 therefore, are not discussed in the Explanation of Individual Provisions.)

### 33 34 **SUBCHAPTER A. GENERAL PROVISIONS**

35 **The Commission proposes the following amendments to Subchapter A:**

#### 36 37 **§815.1. Definitions**

38 New §815.1(3) defines "adequate notification" as a notification of adverse facts, including any  
39 subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

40  
41 New §815.1(3)(A) specifies that notification to the Commission is adequate as long as the  
42 employer or its agent gives a reason, supported by facts, directly related to the allegation raised  
43 regarding the claimant's right to benefits.

44  
45 New §815.1(3)(B) specifies that the employer or its agent may demonstrate good cause for  
46 failing to provide adequate notice. Good cause is established solely by showing that the

1 employer or its agent was prevented from providing adequate notification due to compelling  
2 circumstances beyond the control of the employer or its agent.

3  
4 New §815.1(3)(C) provides examples of adequate notification of adverse facts, which include,  
5 but are not limited to:

6 --(i) The claimant was discharged for misconduct connected with his work because he was  
7 fighting on the job in violation of written company policy.

8 --(ii) The claimant abandoned her job when she failed to contact her supervisor in violation of  
9 written company policy and previous warnings.

10  
11 New §815.1(3)(D) states that a notification is not adequate if it provides only a general  
12 conclusion without substantiating facts. A general statement that a worker has been discharged  
13 for misconduct connected with the work is inadequate. The allegation may be supported by a  
14 summary of the events, which may include facts documenting the specific reason for the  
15 worker's discharge, such as, but not limited to:

16 --(i) policies or procedures;

17 --(ii) warnings;

18 --(iii) performance reviews;

19 --(iv) attendance records;

20 --(v) complaints; and

21 --(vi) witness statements.

22  
23 New §815.1(5) adds references to the Act, Chapters 208 and 212, to chargeback decisions or  
24 determinations that are appealable.

25  
26 Certain paragraphs in this section have been renumbered to accommodate additions.

## 27 28 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

29 **The Commission proposes the following amendments to Subchapter B:**

### 30 31 **§815.10. Appeals from Decisions on Chargebacks**

32 Section 815.10 adds §208.004(c) and §212.005(b) to appeals from decisions on chargebacks  
33 under the Act, which shall be to the appeal tribunals and to the Commission.

## 34 35 36 **PART III. IMPACT STATEMENTS**

37 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five  
38 years the rules will be in effect, the following statements will apply:

39  
40 There are no additional estimated costs to the state and local governments expected as a result of  
41 enforcing or administering the rules.

42  
43 There are no estimated cost reductions to the state and to local governments as a result of  
44 enforcing or administering the rules.

1 There are no estimated losses or increases in revenue to the state or to local governments as a  
2 result of enforcing or administering the rules.

3  
4 There are no foreseeable implications relating to costs or revenue of the state or local  
5 governments as a result of enforcing or administering the rules.

6  
7 There are no anticipated economic costs to persons required to comply with the rules.

8  
9 There is no anticipated adverse economic impact on small or microbusinesses as a result of  
10 enforcing or administering the rules.

11  
12 Economic Impact Statement and Regulatory Flexibility Analysis

13 The Agency has determined that the proposed rules will not have an adverse economic impact on  
14 small businesses as these proposed rules place no additional requirements on small businesses.

15  
16 Richard C. Froeschle, Director of Labor Market and Career Information, has determined that  
17 there is no significant negative impact upon employment conditions in the state as a result of the  
18 rules.

19  
20 LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each  
21 year of the first five years the rules are in effect, the public benefit anticipated as a result of  
22 enforcing the proposed rules will be compliance with federal law, allowing Texas employers the  
23 FUTA additional credit.

24  
25 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
26 be within the Agency's legal authority to adopt.

27  
28 **PART IV. COORDINATION ACTIVITIES**

29 In the development of these rules for publication and public comment, the Commission sought  
30 the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding  
31 these rule amendments to the Boards for consideration and review on October 10, 2013. The  
32 Commission also conducted a conference call with Board executive directors and Board staff on  
33 October 11, 2013, to discuss the concept paper. During the rulemaking process, the Commission  
34 considered all information gathered in order to develop rules that provide clear and concise  
35 direction to all parties involved.

36  
37 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce  
38 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,  
39 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.  
40 The Commission must receive comments postmarked no later than 30 days from the date this  
41 proposal is published in the *Texas Register*.

42  
43 The rules are proposed under Texas Labor Code §301.0015, which provides the Texas  
44 Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems  
45 necessary for the effective administration of Title 4, Texas Labor Code.

1 The proposed rules affect Texas Labor Code, Title 4, Subtitle A, the Texas Unemployment  
2 Compensation Act.  
3  
4

1  
2 **CHAPTER 815. UNEMPLOYMENT INSURANCE**  
3

4 **SUBCHAPTER A. GENERAL PROVISIONS**  
5

6 **§815.1. Definitions.**  
7

8 The following words and terms, when used in this chapter, shall have the following  
9 meanings, unless the statute or context in which the word or phrase is used clearly  
10 indicates otherwise.  
11

12 (1) Act--The Texas Unemployment Compensation Act, Texas Labor Code  
13 Annotated, Title 4, Subtitle A, as amended.  
14

15 (2) Additional claim--A notice of new unemployment filed at the beginning of a  
16 second or subsequent series of claims within a benefit year or within a period  
17 of eligibility when a break of one week or more has occurred in the claim  
18 series with intervening employment. The employer named on an additional  
19 claim will have 14 days from the date notice of the claim is mailed to reply to  
20 the notice. The additional claim reopens a claim series and is not a payable  
21 claim since it is not a claim for seven days of compensable unemployment.  
22

23 (3) Adequate notification--A notification of adverse facts, including any  
24 subsequent notification, affecting a claim for benefits, as provided in the Act,  
25 Chapter 208.  
26

27 (A) Notification to the Commission is adequate as long as the employer or its  
28 agent gives a reason, supported by facts, directly related to the allegation  
29 raised regarding the claimant's right to benefits.  
30

31 (B) The employer or its agent may demonstrate good cause for failing to  
32 provide adequate notice. Good cause is established solely by showing that  
33 the employer or its agent was prevented from providing adequate  
34 notification due to compelling circumstances beyond the control of the  
35 employer or its agent.  
36

37 (C) Examples of adequate notification of adverse facts include, but are not  
38 limited to, the following:  
39

40 (i) The claimant was discharged for misconduct connected with his  
41 work because he was fighting on the job in violation of written  
42 company policy.  
43

44 (ii) The claimant abandoned her job when she failed to contact her  
45 supervisor in violation of written company policy and previous  
46 warnings.

1  
2 (D) A notification is not adequate if it provides only a general conclusion  
3 without substantiating facts. A general statement that a worker has been  
4 discharged for misconduct connected with the work is inadequate. The  
5 allegation may be supported by a summary of the events, which may  
6 include facts documenting the specific reason for the worker's discharge,  
7 such as, but not limited to:

8  
9 (i) policies or procedures;

10  
11 (ii) warnings;

12  
13 (iii) performance reviews;

14  
15 (iv) attendance records;

16  
17 (v) complaints; and

18  
19 (vi) witness statements.

20  
21 (4)(3) Agency--The unit of state government that is presided over by the  
22 Commission and under the direction of the executive director, which operates  
23 the integrated workforce development system and administers the  
24 unemployment compensation insurance program in this state as established  
25 under Texas Labor Code, Chapter 301. It may also be referred to as the Texas  
26 Workforce Commission.

27  
28 (5)(4) Appeal--A submission by a party requesting the Agency or the Commission  
29 to review a determination or decision that is adverse to that party. The  
30 determination or decision must be appealable and pertain to entitlement to  
31 unemployment benefits; chargeback as provided in the Act, Chapter 204,  
32 Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax  
33 coverage or contributions or reimbursements. This definition does not grant  
34 rights to a party.

35  
36 (6)(5) Base period with respect to an individual--The first four consecutive  
37 completed calendar quarters within the last five completed calendar quarters  
38 immediately preceding the first day of the individual's benefit year, or any  
39 other alternate base period as allowed by the Act.

40  
41 (7)(6) Benefit period--The period of seven consecutive calendar days, ending at  
42 midnight on Saturday, with respect to which entitlement to benefits is claimed,  
43 measured, computed, or determined.

44  
45 (8)(7) Benefit wage credits--Wages used to determine an individual's monetary  
46 eligibility for benefits. Benefit wage credits consist of those wages an

1 individual received for employment from an employer during the individual's  
2 base period as well as any wages ordered to be paid to an individual by a final  
3 Commission order, pursuant to its authority under Texas Labor Code, Chapter  
4 61. Benefit wage credits awarded by a final Commission order that were due  
5 to be paid to the individual by an employer during the individual's base period  
6 shall be credited to the quarter in which the wages were originally due to be  
7 paid.  
8

9 (9)~~(8)~~ Board--Local Workforce Development Board created pursuant to Texas  
10 Government Code §2308.253 and certified by the Governor pursuant to Texas  
11 Government Code §2308.261. This includes a Board when functioning as the  
12 Local Workforce Investment Board as described in the Workforce Investment  
13 Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth  
14 Council, as provided for under the Workforce Investment Act §117(i) (also  
15 referred to as an LWDB).  
16

17 (10)~~(9)~~ Commission--The three-member body of governance composed of  
18 Governor-appointed members in which there is one representative of labor, one  
19 representative of employers, and one representative of the public as established  
20 in Texas Labor Code §301.002, which includes the three-member governing  
21 body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings  
22 involving unemployment insurance issues regarding tax coverage,  
23 contributions or reimbursements.  
24

25 (11)~~(10)~~ Day--A calendar day.  
26

27 (12)~~(11)~~ Landman--An individual who is qualified to do field work in the  
28 purchasing of right-of-way and leases of mineral interests, record searches, and  
29 related real property title determinations, and who is primarily engaged in  
30 performing the field work.  
31

32 (13)~~(12)~~ Person--May include a corporation, organization, government or  
33 governmental subdivision or agency, business trust, estate, trust, partnership,  
34 association, and any other legal entity.  
35

36 (14)~~(13)~~ Reopened claim--The first claim filed following a break in claim series  
37 during a benefit year which was caused by other than intervening employment,  
38 i.e., illness, disqualification, unavailability, or failure to report for any reason  
39 other than job attachment. The reopened claim reopens a claim series and is  
40 not a payable claim since it is not a claim for seven days of compensable  
41 unemployment.  
42

43 (15)~~(14)~~ Week--A period of seven consecutive calendar days ending at midnight on  
44 Saturday.  
45



1     **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

2  
3     **§815.10. Appeals from Decisions on Chargebacks.**

4  
5     Appeals from decisions on chargebacks under the Act, §§204.021 - 204.027, [208.004\(c\)](#),  
6     [and 212.005\(b\)](#), shall be to the appeal tribunals and to the Commission within the time  
7     prescribed by the Act. These appeals shall be heard in accordance with the provisions of  
8     §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations),  
9     §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and  
10    §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the  
11    extent that the referenced sections are clearly inapplicable.  
12