

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **EMERGENCY 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 APRIL 28, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **EMERGENCY RULES BELOW WITH PREAMBLE AND SUBMITTED THEM TO THE**
9 **TEXAS REGISTER.**

10
11 The rules are effective: **April 28, 2020**
12 Estimated date of publication in the *Texas Register*: **May 15, 2020**
13

14 TWC adopts on an emergency basis amendments to the following sections of Chapter 815,
15 relating to Unemployment Insurance:

- 16 Subchapter A. General Provisions, §815.1
- 17 Subchapter F. Extended Benefits, §§815.170 - 815.172, and 815.174

18
19
20 TWC adopts the repeal of the following section of Chapter 815, relating to Unemployment
21 Insurance, on an emergency basis:

- 22 Subchapter F. Extended Benefits, §815.173

23
24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

27
28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

29 The Texas Workforce Commission (TWC) adopts these rules on an emergency basis in
30 accordance with the Families First Coronavirus Response Act, Public Law (P.L.) 116 - 127,
31 specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act
32 of 2020 (EUISAA), enacted March 18, 2020, and Texas Labor Code §208.001(b) and §209.205.
33

34 EUISAA provides states with emergency funding grants for the administration of their
35 unemployment compensation (UC) programs. The purpose of these grants is to assist states with
36 the unprecedented claim volumes associated with COVID-19.
37

38 These grants are allocated into two separate allotments, Allotment I and II. Each allotment
39 contains its own requirements to be fulfilled by each state. States may apply for either or both of
40 these grants; TWC anticipates obtaining both. EUISAA requires the U.S. Department of Labor
41 (USDOL) to transfer the grant funds to states meeting the Allotment I requirements no later than
42 60 days after enactment. USDOL has determined this deadline to be May 15, 2020. To meet this
43 requirement, USDOL has determined states must submit their request for the first allotment by
44 May 8, 2020.
45

1 Under EUISAA §4105, if a state meets the requirements of and obtains both Allotment I and II,
2 the Federal Government will pay 100 percent of any Extended Benefits (EB), beginning on
3 March 18, 2020 until December 31, 2020, including the first week of EB.

4
5 One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires
6 employers to provide notification of the availability of unemployment compensation to
7 employees at the time of separation from employment." USDOL has stated that this notice must
8 be individually made to the separated employee.

9
10 TWC has the authority under Texas Labor Code §208.001(b) to require this individual notice.
11 Section 208.001(b) provides that "The commission shall supply, without cost to each employer,
12 printed notices that provide general information about filing a claim for unemployment benefits.
13 Each employer shall post and maintain the notices in places accessible to the individuals in the
14 employ of the employer." To clarify how this notice must be provided, TWC has determined it
15 prudent to amend its rules to define "places accessible" to include general notice in the
16 workplace and an individual notice upon separation.

17
18 As TWC anticipates obtaining both Allotment I and II grant funds, this will provide for 100
19 percent federally funded EB. Texas Labor Code §209.025 provides that "Notwithstanding any
20 other provision of this subchapter, the commission by rule may adjust the extended benefit
21 eligibility period as necessary to maximize the receipt of any fully funded federal extended
22 unemployment benefits, if full federal funding for those benefits is available."

23
24 Currently, Texas Labor Code, Chapter 209, provides for an Insured Unemployment Rate (IUR)
25 trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however,
26 provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger
27 also provides that in periods of high unemployment, an additional seven weeks of EB benefit
28 eligibility is available.

29
30 In order to fully maximize the receipt of fully funded federal EB anticipated by §209.025, TWC
31 must implement the optional TUR trigger with the high unemployment rate period. To ensure
32 that TWC maximizes the federal funding, a provision is being added to allow for additional
33 weeks of benefit eligibility, in excess of the current seven, if provided for by federal law. Other
34 provisions addressing coordination of benefit programs and the treatment of certain
35 governmental and tribal employers are also addressed.

36
37 The Commission must take immediate action in order to allow for the continued payment of
38 unemployed individuals who exhaust their regular and emergency unemployment benefits. The
39 deadline for meeting the requirements of Allotment I is May 8, 2020. During this period of high,
40 sustained unemployment, the 100 percent federally shared EB are vital to out-of-work Texans
41 who are struggling to pay their bills. These benefits also serve as a much-needed stabilizing
42 factor in local economies. Therefore, the Commission finds that imminent peril to the public
43 welfare requires adoption of rules without 30 days' notice in the *Texas Register*. On the same
44 basis, the Commission also finds that imminent peril to the public welfare requires adoption of
45 rules with an expedited effective date that is effective immediately on filing with the Secretary of

1 State, so that these rules can be implemented immediately under the emergency rulemaking
2 provisions of Texas Government Code §2001.034 and §2001.036.

3
4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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6 **SUBCHAPTER A. GENERAL PROVISIONS**

7 **TWC adopts the following amendments to Subchapter A on an emergency basis:**

8
9 **§815.1. Definitions**

10 Section 815.1 is amended to add paragraph (14), which defines "places accessible" as locations
11 in which an employer shall provide required notices to an employee as provided in the Act,
12 Chapter 208.

13
14 New subparagraph (A) provides that "places accessible" includes notices containing the required
15 information are to be displayed in a manner reasonably calculated to be encountered by all
16 employees.

17
18 New subparagraph (B) provides that "places accessible" means an employer must individually
19 provide the required notice information to an employee upon separation from employment. As
20 the notice is provided directly to the individual, the employer has significant flexibility in how
21 this information may be made known. Such information may be provided in a paper format,
22 including by mail or with separation paperwork, email, text, or other means reasonably
23 calculated to ensure the individual receives the required notification.

24
25 **SUBCHAPTER F. EXTENDED BENEFITS**

26 **TWC adopts the following amendments to Subchapter F on an emergency basis:**

27
28 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger**

29 Previously repealed section 815.170 is reinstated with modifications.

30
31 Subsection (a) provides that pursuant to §209.025, if full federal funding for EB is available, a
32 week is a state "on" indicator week if:

33
34 -- the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
35 U.S. Secretary of Labor, for the period consisting of the most recent three months for which data
36 for all states are published before the close of such week equals or exceeds 6.5 percent; and

37
38 --the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
39 U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this
40 subsection, equals or exceeds 10 percent of such average rate for either, or both, of the
41 corresponding three-month periods ending in the two preceding calendar years.

42
43 Subsection (b) states that there is a state "off" indicator for a week if either the requirements of
44 subsection (a)(1) or (a)(2) are not satisfied.

1 Subsection (c) clarifies that notwithstanding this section, any week for which there would
2 otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week
3 and shall not be determined to be a week for which there is a state "off" indicator.

4
5 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount**

6 Previously repealed section 815.171 is reinstated with modifications.

7
8 Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a).
9 If the conditions under §815.170(a) are met, and the average rate of total unemployment equals
10 or exceeds 8 percent, a high unemployment period exists.

11
12 Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the
13 total extended benefit amount payable to an eligible claimant for the claimant's eligibility period
14 is the lesser of:

15
16 --80 percent of the total amount of regular compensation payable to the claimant during the
17 claimant's benefit year under the Act;

18
19 --20 times the claimant's average weekly benefit amount; or

20
21 --46 times the claimant's average weekly benefit amount, reduced by the regular compensation
22 paid, during the claimant's benefit year under the Act.

23
24 Subsection (c) provides that if the full federal funding for EB provides for an additional extended
25 benefit amount payable to an eligible claimant in excess of that provided for in subsection (b),
26 then that amount shall be the total extended benefit amount.

27
28 **§815.172. Concurrent Emergency Unemployment Compensation Programs**

29 Section 815.172 is amended to capitalize Extended Benefits.

30
31 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
32 **Benefits**

33 Section 815.173 is repealed.

34
35 **§815.174. Financing of Extended Benefits**

36 Previously repealed section 815.174 is reinstated with modifications.

37
38 If full federal funding for EB is available, the provisions of §209.082, Charges to Reimbursing
39 Employer, and §209.083, Charges to Taxed Employer, shall not apply; however, the provisions
40 of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of
41 the Act shall continue to apply.

42
43 These rules are adopted on an emergency basis pursuant to:

44 --Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on
45 an emergency basis;

1 --Texas Labor Code §209.025, which provides TWC with authority to adopt rules necessary to
2 maximize the receipt of any fully federally funded extended unemployment benefits, if full
3 federal funding of those benefits is available;
4 --Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend,
5 or repeal such rules as it deems necessary for the effective administration of TWC services and
6 activities; and
7 --Texas Labor Code §301.062, which provides TWC with the power to make findings and
8 determine issues under Title 4 of the Texas Labor Code.
9
10 The effective date of these rules shall be immediate upon the date of filing the adoption with the
11 Secretary of State pursuant to Texas Government Code §2001.036(a)(2).
12
13 TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and
14 found to be within TWC's legal authority to adopt.
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Chapter 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

§815.1. Definitions.

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

- (1) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.
- (2) Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.
- (3) Adequate notification--A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.
 - (A) Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.
 - (B) The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.
 - (C) Examples of adequate notification of adverse facts include, but are not limited to, the following:
 - (i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.
 - (ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

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

7
8 (i) policies or procedures;

9
10 (ii) warnings;

11
12 (iii) performance reviews;

13
14 (iv) attendance records;

15
16 (v) complaints; and

17
18 (vi) witness statements.
19

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

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

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

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

44 (8) Benefit wage credits--Wages used to determine an individual's monetary
45 eligibility for benefits. Benefit wage credits consist of those wages an
46 individual received for employment from an employer during the individual's

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

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

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

24 (11) Day--A calendar day.
25

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

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

35 (14) Places accessible--Locations in which an employer shall provide required
36 notices to an employee as provided in the Act, Chapter 208. This includes:
37

38 (A) Notices providing general information about filing a claim for
39 unemployment benefits shall be displayed in a manner reasonably
40 calculated to be encountered by all employees; and
41

42 (B) Upon separation from employment, an employer shall provide an
43 employee individual notice of general information about filing a claim
44 for unemployment benefits as set out in the printed notice referenced in
45 §208.001(b) of the Act. As the notice is provided directly to the

1 individual, the employer has significant flexibility in how this
2 information may be made known. Such information may be provided:

3
4 (i) in a paper format, including by mail or with separation paperwork;

5
6 (ii) by email;

7
8 (iii) by text; or

9
10 (iv) by other means reasonably calculated to ensure the individual
11 receives the required notification.

12
13 ~~(14)~~(15) Reopened claim--The first claim filed following a break in claim series
14 during a benefit year which was caused by other than intervening employment,
15 i.e., illness, disqualification, unavailability, or failure to report for any reason
16 other than job attachment. The reopened claim reopens a claim series and is
17 not a payable claim since it is not a claim for seven days of compensable
18 unemployment.

19
20 ~~(15)~~(16) Week--A period of seven consecutive calendar days ending at midnight
21 on Saturday.
22

23 SUBCHAPTER F. EXTENDED BENEFITS

24 §815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

25 (a) ~~In addition to the state "on" indicator provisions for extended benefits in the Act,~~
26 ~~Pursuant to §209.025, and with respect to weeks of unemployment beginning on or~~
27 ~~after February 17, 2009 if full federal funding for Extended Benefits is available,~~ a
28 week is a state "on" indicator week if:

29 ~~(1)~~ the average rate of total unemployment in Texas (seasonally adjusted), as
30 determined by the U.S. Secretary of Labor, for the period consisting of the
31 most recent three months for which data for all states are published before the
32 close of such week equals or exceeds 6.5 percent; and

33 ~~(2)~~ the average rate of total unemployment in Texas (seasonally adjusted), as
34 determined by the U.S. Secretary of Labor, for the three-month period referred
35 to in paragraph (1) of this subsection, equals or exceeds 110 percent of such
36 average rate for either, or both, of the corresponding three-month periods
37 ending in the two preceding calendar years.

38 ~~(b) With respect to compensation for weeks of unemployment beginning after the date of~~
39 ~~enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job~~
40 ~~Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in~~
41 ~~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.~~

~~(e) (b) There is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) of this section are not satisfied. 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.~~

(c) Notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

~~(d) 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(e) 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~~ and 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~~ claimant for the ~~individual's~~ claimant's eligibility period is the lesser of:

(1) 80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

(2) 20 times the claimant's average weekly benefit amount; or

(3) 46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

~~80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.~~

- 1 (c) Pursuant to §209.025, if the full federal funding for Extended Benefits provides for
2 an additional extended benefit amount payable to an eligible claimant in excess of
3 that provided for in subsection (b) of this section, that amount shall be the total
4 extended benefit amount. ~~This section applies as long as §815.170 of this subchapter~~
5 ~~is in effect.~~

6 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

7 The Agency may pay unemployment compensation benefits under other emergency
8 unemployment compensation programs that may be in effect prior to paying ~~extended~~
9 Extended ~~benefits~~ Benefits under this subchapter.

10
11 ~~**§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**~~
12 ~~**Benefits.**~~

13 ~~(a) Notwithstanding other eligibility provisions for extended benefits in the Act, an~~
14 ~~individual's eligibility period shall include any eligibility period provided for in P.L.~~
15 ~~111-5, Division B, Title II, §2005(b).~~

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

17 **§815.174. Financing of Extended Benefits.**

18 (a) ~~__ If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5,~~
19 ~~Division B, Title II, §2005, +~~Pursuant to §209.025, if full federal funding for
20 extended benefits is available, the provisions of §209.082, Charges to Reimbursing
21 Employer, and §209.083, Subchapter E, Chapter 209 of the Act relating Charges ~~to~~
22 ~~taxed~~ Taxed ~~employers~~ Employer, shall not apply.

23 (b) ~~__~~ -The provisions of §209.084, ~~regarding~~ Charges to Governmental Employer, and
24 §209.0845, ~~regarding~~ Charges to Indian Tribe, of the Act shall continue to apply.

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