

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **ADOPTED 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*.**
6

7 **ON JUNE 10, 2014, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW**
8 **RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

9
10 Estimated date of publication in the *Texas Register*: **June 27, 2014**

11 The rules will take affect: **June 30, 2014**

12
13 The Texas Workforce Commission (Commission) adopts amendments to the following sections
14 of Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the March
15 21, 2014, issue of the *Texas Register* (39 TexReg 2055):

16
17 Subchapter A. General Provisions, §815.1

18 Subchapter B. Benefits, Claims, and Appeals, §815.10

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

21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

28
29 Texas, like many states, relieves an employer's unemployment account of charges that the state
30 has determined were made improperly. However, Public Law 112-40 §252(a) added new
31 §3303(f) to the Federal Unemployment Tax Act (FUTA), which provides that for a state law to
32 meet the requirements of FUTA §3303(a)(1) and receive FUTA additional credit, the state
33 cannot relieve an employer of benefit charges when the employer or its agent does both of the
34 following:

35 --Was at fault for failing to respond timely or adequately to the state's request for information
36 relating to a claim that was subsequently overpaid; and

37 --Has established a pattern of failing to respond timely or adequately to requests from the state
38 agency for information relating to claims for unemployment benefits.

39
40 This prohibition applies if the employer has a pattern of failing to respond timely, failing to
41 respond adequately, or failing to respond both timely and adequately.

42
43 In enacting these FUTA amendments, Congress anticipated that the prospect of benefit charging
44 as a result of an employer's or agent's failure to comply with a state's notification requirements
45 would reduce future improper payments by prompting more accurate and timely reporting on
46 future claims for unemployment benefits.

1
2 To conform state law with the new FUTA requirements, the legislature passed SB 1537 related
3 to required notices under the Texas Unemployment Compensation Act (TUCA), including
4 employer liability arising from failure to provide adequate or timely notice. SB 1537 authorizes
5 the Commission to adopt rules necessary to implement these new TUCA provisions.
6

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

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

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

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

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

28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

32 **SUBCHAPTER A. GENERAL PROVISIONS**

33 **The Commission adopts the following amendments to Subchapter A:**
34

35 **§815.1. Definitions**

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

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

43 New §815.1(3)(B) specifies that the employer or its agent may demonstrate good cause for
44 failing to provide adequate notice. Good cause is established solely by showing that the
45 employer or its agent was prevented from providing adequate notification due to compelling
46 circumstances beyond the control of the employer or its agent.

1
2 New §815.1(3)(C) provides examples of adequate notification of adverse facts, which include,
3 but are not limited to:

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

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

8
9 New §815.1(3)(D) states that a notification is not adequate if it provides only a general
10 conclusion without substantiating facts. A general statement that a worker has been discharged
11 for misconduct connected with the work is inadequate. The allegation may be supported by a
12 summary of the events, which may include facts documenting the specific reason for the
13 worker's discharge, such as, but not limited to:

14 --(i) policies or procedures;

15 --(ii) warnings;

16 --(iii) performance reviews;

17 --(iv) attendance records;

18 --(v) complaints; and

19 --(vi) witness statements.

20
21 New §815.1(5) adds references to the Act, Chapters 208 and 212, to chargeback decisions or
22 determinations that are appealable.

23
24 Certain paragraphs in this section have been renumbered to accommodate additions.

25
26 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

27 **The Commission adopts the following amendments to Subchapter B:**

28
29 **§815.10. Appeals from Decisions on Chargebacks**

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

32
33 No comments were received.

34
35 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
36 be within the Agency's legal authority to adopt.

37
38 The rules are adopted under Texas Labor Code §301.0015, which provides the Texas Workforce
39 Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for
40 the effective administration of Title 4, Texas Labor Code.

41
42 The adopted rules affect Texas Labor Code, Title 4, Subtitle A, the Texas Unemployment
43 Compensation Act.

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) Agency--The unit of state government that is presided over by the Commission
22 and under the direction of the executive director, which operates the integrated
23 workforce development system and administers the unemployment
24 compensation insurance program in this state as established under Texas Labor
25 Code, Chapter 301. It may also be referred to as the Texas Workforce
26 Commission.
27

28 (5) Appeal--A submission by a party requesting the Agency or the Commission to
29 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) Base period with respect to an individual--The first four consecutive completed
37 calendar quarters within the last five completed calendar quarters immediately
38 preceding the first day of the individual's benefit year, or any other alternate
39 base period as allowed by the Act.
40

41 (7) 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) 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) 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) Commission--The three-member body of governance composed of Governor-
18 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) Day--A calendar day.
26
- 27 (12) Landman--An individual who is qualified to do field work in the purchasing of
28 right-of-way and leases of mineral interests, record searches, and related real
29 property title determinations, and who is primarily engaged in performing the
30 field work.
31
- 32 (13) Person--May include a corporation, organization, government or governmental
33 subdivision or agency, business trust, estate, trust, partnership, association, and
34 any other legal entity.
35
- 36 (14) Reopened claim--The first claim filed following a break in claim series during
37 a benefit year which was caused by other than intervening employment, i.e.,
38 illness, disqualification, unavailability, or failure to report for any reason other
39 than job attachment. The reopened claim reopens a claim series and is not a
40 payable claim since it is not a claim for seven days of compensable
41 unemployment.
42
- 43 (15) 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,
6 §208.004(c), and §212.005(b), shall be to the appeal tribunals and to the Commission
7 within the time prescribed by the Act. These appeals shall be heard in accordance with
8 the provisions of §815.16 of this chapter (relating to Appeals to Appeal Tribunals from
9 Determinations), §815.17 of this chapter (relating to Appeals to the Commission from
10 Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal
11 Stages), except to the extent that the referenced sections are clearly inapplicable.
12