

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 The Texas Workforce Commission (Commission) adopts the following new sections, without
8 changes to Chapter 815, relating to Unemployment Insurance, as published in the June 11, 2010,
9 issue of the *Texas Register* (35 TexReg 4966):

10
11 Subchapter B. Benefits, Claims, and Appeals, §815.25

12 Subchapter C. Tax Provisions, §815.136

13
14 The Commission adopts amendments, without changes, to the following section of Chapter 815,
15 relating to Unemployment Insurance, as published in the June 11, 2010, issue of the *Texas*
16 *Register* (35 TexReg 4966):

17
18 Subchapter A. General Provisions, §815.1

19
20 The Commission adopts the repeal, without changes, of the following section of Chapter 815,
21 relating to Unemployment Insurance, as published in the June 11, 2010, issue of the *Texas*
22 *Register* (35 TexReg 4966):

23
24 Subchapter B. Benefits, Claims, and Appeals, §815.25

25
26 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

27 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
28 **RESPONSES**

29
30 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

31 The purpose of the Chapter 815 rule changes is to:

32 --implement the provisions of House Bill (HB) 2120, enacted by the 80th Texas Legislature,
33 Regular Session (2007), which amended, in part, Texas Labor Code §207.002 and §207.004,
34 regarding benefit wage credits;

35 --clarify under what circumstances training is considered *approved* for the purposes of Texas
36 Labor Code §207.022; and

37 --implement the provisions of HB 2360 enacted by the 81st Texas Legislature, Regular Session
38 (2009), which added Chapter 104 to the Texas Labor Code, regarding the Earned Income Tax
39 Credit (EITC).

40
41 *Benefit Wage Credits*

42 Texas Labor Code §207.002 and §207.004 relate to the operation of the unemployment
43 compensation (UC) system and computation of an individual's UC benefits. Prior to enactment
44 of HB 2120, Texas Labor Code, Title 4, Subtitle A (Texas Unemployment Compensation Act)
45 provided that an individual was entitled to UC benefits based upon wages actually received
46 during that individual's base period of employment. Benefit wage credits determine whether an

1 individual qualifies monetarily for UC benefits, but the Commission had no authority to credit
2 wages that were owed but not actually paid to an individual.

3
4 Texas Labor Code §207.002(a) enables the Commission to count as benefit wage credits those
5 wages determined by a final order of the Commission to be paid (pursuant to Texas Labor Code,
6 Chapter 61)—even if those wages have not been paid to the claimant by the employer—provided
7 the wages were due to be paid to the claimant during the claimant's base period. The statute
8 stipulates that, by rule, the Commission must determine the method for crediting such wages to
9 the claimant's base period. To address this mandate, new §815.1(7) of this chapter adds a
10 definition of "benefit wage credits."

11 *Commission-Approved Training*

12 The Federal Unemployment Tax Act (FUTA) §3304(a)(8) and (9) requires all states to include
13 provisions in their laws that prevent denial of unemployment insurance (UI) benefits if a UI
14 claimant is enrolled in training with the approval of the state agency. Such prohibition of benefit
15 denial must be related to availability for work, active work search, and refusal to accept suitable
16 work.

17
18
19 New §815.25 clarifies under what circumstances training must be considered *approved* for the
20 purposes of Texas Labor Code §207.022. The Commission's intent is that approval of training
21 takes the following into account:

- 22
23 --Whether the individual's skills make it unlikely that he or she will return to work within a
24 reasonable time to an industry or occupation that requires those skills;
25 --Whether the training will facilitate the individual's reemployment in an occupation for which
26 there is substantial and recurring demand; and
27 --Whether the individual is attending and making satisfactory progress in the training.

28
29 The Commission also intends that the training's funding source not be a factor in whether the
30 training is approved except in limited circumstances.

31
32 Finally, the Commission reaffirms that approval of training must not be denied Texas claimants
33 solely because they reside outside the state, as required by FUTA §3304(a)(9).

34 *Earned Income Tax Credit*

35 Texas Labor Code, Chapter 104, requires that employers provide their employees with
36 information on the federal EITC no later than March 1 of each year. Section 104.002 requires
37 that employers provide their employees with information on the general eligibility requirements
38 for EITC through one of the following methods:

- 39
40 --In person
41 --E-mail
42 --A flyer with the employee's paycheck
43 --U.S. first-class mail

44
45 However, Texas Labor Code, Chapter 104, does not reference the specific information to be
46 provided. Section 104.003 indicates that the notice is something other than:

1 --Internal Revenue Service (IRS) publications on EITC;
2 --information prepared by the Texas Comptroller of Public Accounts under Texas Government
3 Code §403.025 relating to EITC; or
4 --federal income tax forms necessary to claim federal EITC.
5

6 While Texas Labor Code §104.003 excludes IRS publications and forms from the required
7 information, it does not exclude notices. IRS Notice 797, "Possible Federal Tax Refund Due to
8 the Earned Income Credit (EIC)" supplies information regarding general eligibility requirements
9 for EITC.
10

11 Texas Labor Code §104.004 sets forth the Commission's duties, which include:
12 --periodically notifying employers regarding the requirements of Chapter 104 as part of any
13 other periodic notice sent to employers; and
14 --posting a notice on its Web site.
15

16 Texas Labor Code, §104.004 provides the authority to the Commission to establish rules.
17

18 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 19 **RESPONSES**

20 21 **SUBCHAPTER A. GENERAL PROVISIONS**

22 **The Commission adopts the following amendments to Subchapter A:**
23

24 **§815.1. Definitions**

25 New §815.1(7) defines "benefit wage credits" as wages received by an individual for
26 employment from an employer during the individual's base period and wages ordered to be paid
27 to an individual by a final Commission order, provided the wages ordered were due to be paid
28 during the claimant's base period; such wages will be credited to the quarter in which the wages
29 were originally due to be paid.
30

31 Certain subparagraphs have been renumbered to accommodate the addition of new §815.1(7).
32

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

34 **The Commission adopts the following amendments to Subchapter B:**
35

36 **§815.25. Approval of Training**

37 Section 815.25 is repealed and replaced by new §815.25.
38

39 New §815.25(a) provides that the Agency must approve training:
40

41 --(1) if the individual's existing skills make reemployment in his or her customary industry or
42 occupation unlikely within a reasonable period or his or her earning potential or ability to
43 maintain secure employment will be enhanced by the training; and

44 --(2) if the training will help the individual obtain employment in an occupation with substantial
45 and recurring demand.
46

1 New §815.25(b) provides that an individual will be in approved training, pursuant to Texas
2 Labor Code §207.022, if the Agency approves the training and the individual is attending the
3 training as shown by the following:

4
5 --(1) If, at the request of the Agency, the individual and/or the training facility provides the
6 Agency with satisfactory evidence of the individual's attendance and progress; and

7 --(2) If, at claim certification, the individual affirms his or her attendance at the training during
8 the benefit period or whether he or she had good cause for failure to attend the training.

9
10 New §815.25(c) prohibits the Agency from considering the source of funding of the training as
11 approval criteria, except when the training occurs under the auspices of the Texas Department of
12 Assistive and Rehabilitative Services; the Texas Department of Aging and Disability Services; or
13 federal or state veterans' services. These entities conduct their own assessment of an individual's
14 likelihood for reemployment and the necessity for the training. Training provided by these
15 entities, by its very nature, is designed to enhance the individual's employability.

16
17 New §815.25(d) reiterates that the Agency must not deny approval of training solely because the
18 individual does not live in Texas. It affirms that the Agency can rely on the recommendation of
19 the agent state when determining whether the training should be approved.

20
21 New §815.25(e) requires the Commission to develop and issue procedural guidelines to be used
22 by Agency staff and the Boards when evaluating an individual's request to have his or her
23 training designated as *approved*. These guidelines will be consistent with the elements of new
24 §815.25.

25 **SUBCHAPTER C. TAX PROVISIONS**

26 **The Commission adopts the following amendment to Subchapter C:**

27 **§815.136 Earned Income Tax Credit**

28
29 New §815.136 provides guidance to employers on what constitutes acceptable EITC information to
30 be provided to employees as required by Texas Labor Code, Chapter 104.

31 The section specifies that the information regarding general eligibility requirements for the federal
32 EITC in Texas Labor Code §104.002 means IRS Notice 797 or a written statement that provides the
33 same wording as IRS Notice 797.
34

35
36 No comments were received.

37
38 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
39 be within the Agency's legal authority to adopt.

40
41 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
42 Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the
43 effective administration of Agency services and activities.

44
45 The adopted rules will affect Texas Labor Code, Title 4, the Texas Unemployment
46 Compensation Act.
47

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 (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 (9) 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 (10) Day--A calendar day.
26
- 27 (11) 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 (12) 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 (13) 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 (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

4 **§815.25. Approval of Training.**
5

- 6 (a) The Agency shall approve training, if:
7
8 (1) there is no longer substantial and recurring demand for the individual's skills,
9 and the lack of employment opportunities in occupations requiring those skills
10 is expected to continue for an extended period of time, and the individual has
11 no other skill for which there is an expectation of reemployment in a
12 reasonable period; and
13
14 (2) the training will enhance the individual's ability to secure stable employment
15 and earning potential in an occupation for which there is substantial and
16 recurring demand.
17
18 (b) An individual shall be in approved training if the Agency approves the training for
19 the individual and the individual is attending the training as shown by the following:
20
21 (1) The individual and/or the training facility agrees to furnish evidence upon
22 request of the Agency that the individual is regularly attending the training
23 course and is satisfactorily performing assignments as a trainee; and
24
25 (2) The individual affirms at the time of the claim certification that the individual
26 has attended the training course during the given training week or had good
27 cause for the individual's failure to do so.
28
29 (c) The funding source of the training shall not affect the approval of the training except
30 that training under the auspices of the Workforce Investment Act; the Texas
31 Department of Assistive and Rehabilitative Services; the Texas Department of Aging
32 and Disability Services; federal or state veterans' services, or any other program
33 specifically designated by the Agency shall be considered approved for the purposes
34 of the Act §207.022.
35
36 (d) The Agency shall not deny approval of training solely because the individual resides
37 outside of the state. Agency staff may rely upon the recommendation of the agent
38 state regarding whether the training is approved.
39
40 (e) The Commission shall develop procedural guidelines for use by Agency staff and the
41 Boards that are consistent with the requirements of this section. Procedures may
42 include, but are not limited to:
43
44 (1) using a statewide or Board-level demand or targeted occupations list to
45 determine whether there is substantial and recurring demand for an occupation
46 or industry; and

- 1
2 (2) using the Agency's job-matching system to assess the individual's existing
3 skills when determining the individual's likelihood to return to an occupation
4 or industry requiring those skills.
5

6 **SUBCHAPTER C. TAX PROVISIONS**
7

8 **§815.136. Earned Income Tax Credit.**
9

10 This section provides information to employers on the acceptable information to be
11 provided to employees on the federal Earned Income Tax Credit (EITC) as required by
12 Texas Labor Code, Chapter 104. The information regarding general eligibility
13 requirements for the federal EITC in Texas Labor Code §104.002 means IRS Notice 797
14 or a written statement that provides the same wording as IRS Notice 797.
15
16