

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 The Texas Workforce Commission (Commission) adopts on an emergency basis the following
8 new subchapter to Chapter 815 relating to Unemployment Insurance:
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10 Subchapter F. Extended Benefits, §§815.170 - 815.174

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12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
14
15

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

17 The Commission adopts the new rules on an emergency basis pursuant to the authority granted to
18 it under House Bill (HB) 4586, enacted by the 81st Texas Legislature, Regular Session (2009) to
19 adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent
20 federally shared extended unemployment benefits in accordance with the American Recovery
21 and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II,
22 relating to Assistance for Unemployed Workers and Struggling Families, §2005.
23

24 The Commission must take immediate action in order to continue paying unemployed
25 individuals who are exhausting their regular and emergency unemployment benefits. During this
26 period of high, sustained unemployment, these 100 percent federally shared extended benefits
27 are vital to out-of-work Texans who are struggling to pay their bills while seeking work. These
28 benefits also serve as a much-needed stabilizing factor in local economies. Therefore, the
29 Commission finds that imminent peril to the public welfare requires adoption of rules without 30
30 days' notice in the *Texas Register*. On the same basis, the Commission also finds that imminent
31 peril to the public welfare requires adoption of rules with an expedited effective date that is
32 effective immediately on filing with the Secretary of State, so that these rules can be
33 implemented immediately under the emergency rulemaking provisions of Texas Government
34 Code §2001.034 and §2001.036.
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36
37 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
38

39 **SUBCHAPTER F. EXTENDED BENEFITS**

40 **The Commission adopts on an emergency basis new Subchapter F, as follows:**
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42 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger**

43 New §815.170 adds a new, conditional trigger under which Texas could enter into an extended
44 benefit eligibility period, allowing the state to receive 100 percent federally shared extended
45 benefits as authorized under P.L. 111-5.
46

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

4
5 Texas Labor Code, Chapter 209, provides for the use of the IUR methodology. However, its
6 threshold is so high that Texas would have to have substantial levels of chronic unemployment
7 before triggering on to an extended benefit period. The U.S. Department of Labor (DOL) has
8 advised states that they may enact a temporary, conditional TUR trigger in order to take
9 advantage of 100 percent federally shared extended benefits. The TUR trigger described in this
10 section is conditional upon 100 percent federal sharing of extended benefits as recommended and
11 approved by DOL.

12
13 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount**

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

17
18 The Federal-State Extended Unemployment Compensation Act of 1970 (Federal EB Law), *et*
19 *seq.*, requires that if a state has opted to enact the optional TUR trigger, it must also provide for
20 increased benefits under a "high unemployment period."

21
22 **§815.172. Concurrent Emergency Unemployment Compensation Programs**

23 New §815.172 stipulates that Texas will pay extended unemployment benefits after all regular
24 and emergency unemployment compensation has been exhausted. There are additional
25 administrative requirements associated with implementing extended benefits that are not
26 applicable to other 100 percent federally funded emergency unemployment compensation
27 programs. Ordering payment of extended benefits after all other types of unemployment benefits
28 have been exhausted helps the Agency make better use of the resources available to serve
29 claimants. This ordering of benefits is allowable under P.L. 111-5.

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

33 New §815.173 provides that individuals who exhaust emergency unemployment compensation
34 are otherwise eligible for extended unemployment benefits even if their benefit year for regular
35 benefits has exhausted. This provision is intended to consider individuals eligible for extended
36 benefits if they exhaust emergency unemployment compensation after their benefit year ends.

37
38 **§815.174. Financing of Extended Benefits**

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

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

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6 These rules are adopted on an emergency basis pursuant to:

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8 --Texas Government Code §2001.034, which provides the Commission with the authority to
9 adopt rules on an emergency basis;

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11 --Texas Government Code §2001.036, which provides the Commission with the authority to
12 adopt rules with an expedited effective date;

13
14 --Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide the Commission with the
15 authority to adopt, amend, or repeal such rules as it deems necessary for the effective
16 administration of Agency services and activities; and

17
18 --Texas Labor Code §301.062, which provides the Commission with the power to make findings
19 and determine issues under Title 4 of the Texas Labor Code.

20
21 The effective date of these rules shall be immediate upon the date of filing the adoption with the
22 Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

23
24 The Commission hereby certifies that the emergency rule adoption has been reviewed by legal
25 counsel and found to be within the Commission's legal authority to adopt.

1 **Chapter 815. UNEMPLOYMENT INSURANCE**

2
3 **SUBCHAPTER F. EXTENDED BENEFITS**

4
5 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**

6
7 (a) In addition to the state "on" indicator provisions for extended benefits in the Act, and
8 with respect to weeks of unemployment beginning on or after February 17, 2009, a week
9 is a state "on" indicator week if:

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

15
16 (2) the average rate of total unemployment in Texas (seasonally adjusted), as determined
17 by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1)
18 of this subsection, equals or exceeds 110 percent of such average for either or both of
19 the corresponding three-month periods ending in the two preceding calendar years.

20
21 (b) In addition to the state "off" indicator provisions for extended benefits in the Act, there is
22 a state "off" indicator for only a week if, for the period consisting of such week and the
23 immediately preceding twelve weeks, none of the options specified in subsection (a) of
24 this section result in an "on" indicator.

25
26 (c) This section continues in effect until the week ending four weeks prior to the last week of
27 unemployment for which 100 percent federal sharing is available under P.L. 111-5,
28 Division B, Title II, §2005(a), without regard to the extension of federal sharing for
29 certain claims as provided under §2005(c) of such law.

30
31 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**

32
33 (a) If the conditions under §815.170(a) of this subchapter are met except that the average rate
34 of total unemployment equals or exceeds 8 percent, a high unemployment period shall
35 exist.

36
37 (b) Effective with respect to weeks beginning in a high unemployment period, the total
38 extended benefit amount payable to an eligible individual for the individual's eligibility
39 period is 80 percent of the total amount of regular benefits that were payable to the
40 individual under the Act in the individual's benefit year.

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42 (c) This section applies as long as §815.170 of this subchapter is in effect.
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1 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

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3 The Agency shall 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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7 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
8 **Benefits.**

9
10 (a) Notwithstanding other eligibility provisions for extended benefits in the Act, an
11 individual's eligibility period shall include any eligibility period provided for in P.L. 111-
12 5, Division B, Title II, §2005(b).
13

14 (b) This section applies as long as §815.170 of this subchapter is in effect.
15

16 **§815.174. Financing of Extended Benefits.**

17
18 (a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5,
19 Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act
20 relating to taxed employers shall not apply.
21

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

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