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TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT

SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT

CHAPTER 201. UNEMPLOYMENT COMPENSATION ACT—GENERAL PROVISIONS

Subchapter A. Short Title; Application of Sunset Act

Sec. 201.001. Short Title

This subtitle may be cited as the "Texas Unemployment Compensation Act."

Subchapter B. General Definitions

Sec. 201.011. General Definitions in This Subtitle

- (1) **"Base period"** means:
 - (A) the four consecutive completed calendar quarters, prescribed by the commission, in the five consecutive completed calendar quarters preceding the first day of an individual's benefit year; or
 - (B) for an individual precluded because of a medically verifiable injury or illness from working during a major part of a calendar quarter of the period that would otherwise be the individual's base period under Paragraph A, the first four calendar quarters of the five consecutive calendar quarters preceding the calendar quarter in which the illness began or the injury occurred if the individual files an initial claim for benefits not later than 24 months after the date on which the individual's injury or illness began or occurred

(NOTE: See Illustration on Page 151)

- (2) **"Benefit"** means the money payable under this subtitle to an individual because of the individual's unemployment.
- (3) **"Benefit amount"** means benefits an individual is entitled to receive for one benefit period of total unemployment.
- (4) **"Benefit period"** means the seven consecutive calendar days ending at midnight on Saturday and is the period for which entitlement to benefits is determined.
- (5) **"Benefit year"** means the 52 consecutive calendar weeks beginning with the week for which an individual files a valid initial claim for benefits.

- (6) **"Calendar quarter"** means a period of three consecutive calendar months ending on:
- (A) March 31, June 30, September 30, or December 31; or
 - (B) the dates prescribed by rule of the commission.
- (7) **"Chargeback"** means the benefits charged to an employer's account under Section 204.021.
- (8) **"Commission"** means the Texas Workforce Commission.
- (9) **"Compensation fund"** means the unemployment compensation fund.
- (10) **"Contribution"** means a tax payment under this subtitle to the compensation fund.
- (11) **"Employing unit"** means a person who, after January 1, 1936, has employed an individual to perform services for the person in this state. Effective January 1, 2020, this definition includes a common paymaster, as defined in 26 U.S.C. Section 3306(p).
- (A) The commission shall adopt rules as necessary to implement the inclusion of common paymaster.
 - (B) The inclusion of common paymaster to the definition of "employing unit" shall not negate a person's obligations with respect to acquisitions of experience-rated employers and transfers of compensation experience pursuant to Subchapter E, Chapter 204.
- (12) **"Employment office"** means a free public employment office operated by this state or maintained as a part of a state-controlled system of public employment offices. The term includes a branch office.
- (13) **"Initial claim"** means a notice filed under Section 208.001(a) to establish a benefit year by an individual who does not have a benefit year in effect at the time the notice was filed.
- (14) **"Institution of higher education"** means:
- (A) a college or university in this state; or
 - (B) a public or other nonprofit educational institution that:
 - (i) admits as regular students only individuals with a certificate of graduation or equivalent credentials;

- (ii) is legally authorized to provide an educational program beyond high school; and
 - (iii) provides an educational program:
 - (a) for which the institution awards a bachelor's or higher degree;
 - (b) that is acceptable for full credit toward a bachelor's or higher degree; or
 - (c) that trains a student for the gainful practice of a recognized occupation.
- (15) **"Mail"** means the United States Postal Service or any other method approved by the commission to provide actual notice, including an electronic transfer system.
- (16) **"Reimbursement"** means a payment made in accordance with Chapter 205.
- (17) **"Reimbursing employer"** means an employer making payments in accordance with Chapter 205.
- (18) **"State"** means a state of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands.
- (19) **"Taxed employer"** means an employer who pays a contribution under this subtitle.
- (20) **"Temporary employee"** means an individual employed by a temporary help firm for the purpose of being assigned to work for the clients of a temporary help firm.
- (21) **"Temporary help firm"** means a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's work force during employee absences, temporary skill shortages, seasonal work loads, special assignments and projects, and other similar work situations.
- (22) **"United States"** includes, in a geographic context, each state.
- (23) **"Valid claim"** means a claim filed by an unemployed individual who has received the wages necessary to qualify for benefits.
- (24) **"Warrant"** means a written payment order or an electronic payment order that is a part of an electronic fund transfer system approved by the commission.
- (25) **"Week"** means seven consecutive calendar days as prescribed by the commission.

- (26) **"Indian tribe"** has the meaning assigned by Section 3306(u), Federal Unemployment Tax Act (26 U.S.C. Section 3306), as amended. A reference in this subtitle to an Indian tribe includes a tribal unit, a subdivision or subsidiary of an Indian tribe, and a business wholly owned by an Indian tribe.

Sec. 201.012. Definition of Misconduct

- (a) **"Misconduct"** means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees.
- (b) The term **"misconduct"** does not include an act in response to an unconscionable act of an employer or superior.

Subchapter C. Definition of Employer

Sec. 201.021. General Definition of Employer

- (a) In this subtitle, **"employer"** means an employing unit that:
- (1) paid wages of \$1,500 or more during a calendar quarter in the current or preceding calendar year; or
 - (2) employed at least one individual in employment for a portion of at least one day during 20 or more different calendar weeks of the current or preceding calendar year.
- (b) The definition provided by this section does not apply to an employing unit covered by Section 201.023 or to farm and ranch labor covered by Section 201.028.
- (c) An individual who performs a service in this state for an employing unit that maintains two or more separate establishments in this state is employed by a single employing unit for purposes of this subtitle.
- (d) In this subsection, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1. The definition of employer provided by this section does not apply to a franchisor with respect to:
- (1) a franchisee; or
 - (2) a franchisee's employees.
- (e) With respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, Subsection (d) does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over

the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Sec. 201.022. Effect of Business Acquisition

In this subtitle, "employer" also means an individual or employing unit that acquires or otherwise receives, through any means, all or part of the organization, trade, business, or workforce of another that was an employer subject to this subtitle at the time of the acquisition.

Sec. 201.023. Tax-Exempt Nonprofit Organization

In this subtitle, "employer" also means an employing unit that:

- (1) is a nonprofit organization under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));
- (2) is exempt from income tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)); and
- (3) employed at least four individuals in employment for a portion of at least one day during 20 or more different calendar weeks during the current year or during the preceding calendar year.

Sec. 201.024. Election to be Employer

In this subtitle, "employer" also means an employing unit that has elected to become an employer under Section 205.001, 205.002, 206.002, or 206.003.

Sec. 201.025. Employer Under Federal Law

In this subtitle, "employer" also means:

- (1) an employing unit that is liable for the payment of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) for the current calendar year; or
- (2) an employing unit that the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) requires to be an employer under this subtitle as a condition for approval of this subtitle for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

Sec. 201.026. State; Political Subdivision

In this subtitle, "employer" also means a state, a political subdivision of a state, or an instrumentality of a state or political subdivision of a state that is wholly owned by one or more states or political subdivisions of one or more states.

Sec. 201.027. Employer of Domestic Service Worker

- (a) In this subtitle, "**employer**" also means an employing unit that paid cash wages of \$1,000 or more during a calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.
- (b) An employer subject to this section who is not otherwise considered an employer under this subtitle, annually, may report quarterly wages and pay contributions. An employer who elects to report wages and pay contributions under this section must make the election not later than December 31 of the year before the first calendar year reported.
- (c) Contributions paid as provided by Subsection (b) become due and are required to be reported and paid by each employer not later than January 31 with respect to wages for employment paid in the preceding calendar year. For a rate taking effect under Section 204.041(c) during the preceding calendar year, the commission shall estimate the rate, subject to a correction when a final computation is made as provided by Section 204.047(c).
- (d) An employer who elects to report wages and pay contributions annually shall file, on the request of the commission, reports at other times as necessary to adjudicate a claim or to establish wage credits.
- (e) With respect to an employer who reports wages and pays contributions annually under this section, any penalty or interest imposed on the employer shall be computed in the same manner as for other types of employment.
- (f) An election by an employer under this section is not revocable by the employer before the second anniversary of the date of the election.
- (g) An employer under this section is not an employer for wages paid for a service other than domestic service unless the employer is treated as an employer for that service under another provision of this subtitle.

Sec. 201.028. Employer of Farm and Ranch Laborer

- (a) In this subtitle, "**employer**" also means an employing unit that paid wages for, or employed individuals in, farm and ranch labor in accordance with this section, Section 201.047, or Section 204.009.
- (b) In this section, an employer shall not be treated as an employer for wages paid for a service other than service performed by:
 - (1) a seasonal worker employed on a truck farm, orchard, or vineyard;
 - (2) a farm and ranch laborer who is a migrant worker; or

- (3) a seasonal worker who:
 - (A) works for a farmer, ranch operator, or labor agent who employs migrant workers; and
 - (B) does the same work at the same time and location as migrant workers.
- (c) Subsection (b) does not apply if the employer is an employer with respect to farm and ranch labor performed under Section 201.047(a)(4).

Sec. 201.029. Temporary Help Firm

For purposes of this subtitle, a temporary help firm is the employer of an individual employed by the firm as a temporary employee.

Sec. 201.030. Professional Employer Organization

For the purposes of this subtitle, "professional employer organization" has the meaning assigned by Section 91.001.

Subchapter D. Definition of Employment

Sec. 201.041. General Definition of Employment

In this subtitle, "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

The provisions of Subtitle C, Title 14, Occupations Code, Chapter 2402, adopted to be effective May 29, 2017, classifies drivers working for a transportation network company as independent contractors for all purposes if the company does not prescribe the specific hours during which the driver is required to be logged in to the company's digital network; impose restrictions on the driver's ability to use other transportation network companies' digital networks; limit the territory within which the driver may provide digitally prearranged rides; or restrict the driver from engaging in another occupation or business; and the company and the driver agree in writing that the driver is an independent contractor.

Sec. 201.042. Service of Driver or Salesman

In this subtitle, "employment" includes service:

- (1) as an agent-driver or commission-driver who delivers a meat product, vegetable product, fruit product, bakery product, laundry, dry cleaning, or beverage except milk, if:

- (A) the service is performed for remuneration;
 - (B) the employment contract provides that the individual personally performs substantially all of the service;
 - (C) the individual performing the service does not have a substantial investment in a facility used in the performance of the service, other than in a facility for transportation; and
 - (D) the service is part of a continuing relationship with the principal and is not a single transaction; or
- (2) of a traveling or city salesman, except as provided in Section 201.070, an agent-driver, or a commission-driver, who, on a full-time basis, obtains for the individual's principal, except for sideline sales activities for another person, orders from a wholesaler, retailer, contractor, or operator of a hotel, restaurant, or similar establishment for merchandise for resale or supplies for use in the business's operation if:
- (A) the employment contract provides that the individual personally performs substantially all of the service;
 - (B) the individual does not have a substantial investment in a facility used in the performance of the service, except a facility for transportation; and
 - (C) the service is part of a continuing relationship with the principal and is not a single transaction.

Sec. 201.043. Location of Service

- (a) In this subtitle, "**employment**" includes service performed in this state or in and outside this state if:
- (1) the service is localized in this state; or
 - (2) the service is not localized in any state and some of the service is performed in this state and:
 - (A) the base of operations is in this state, or there is no base of operations, but the service is directed or controlled from this state; or
 - (B) the base of operations or place from which service is directed or controlled is not in a state in which a part of the service is performed, and residence of the person who performs the service is in this state.

- (b) In this subtitle, "employment" includes service performed anywhere in the United States, including service performed entirely outside this state, if:
- (1) the service is not localized in a state;
 - (2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and
 - (3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.
- (c) In this subtitle, **"employment"** includes service performed entirely outside this state that is not included as employment under Subsection (b) or Section 201.045 and for which contributions are not required and paid under an unemployment compensation law of another state if:
- (1) the individual performing the service is a resident of this state; and
 - (2) the commission approves the election of the employing unit for which the individual performs the service that the entire service of the individual is employment under this subtitle.
- (d) In this subtitle, **"employment"** includes service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer, if:
- (1) the service was not performed in a contiguous country with which the United States has an agreement relating to unemployment compensation;
 - (2) the service is not considered employment under Subsection (b) or (c) or Section 201.044 or 201.045 or the parallel provisions of another state's law; and
 - (3) the employer:
 - (A) has its principal place of business in the United States in this state;
 - (B) does not have a place of business in the United States and is:
 - (i) an individual who is a resident of this state;
 - (ii) a corporation that is organized under the laws of this state; or
 - (iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state;
 - (C) has elected coverage in this state; or

- (D) has failed to elect coverage in any state and the individual has filed a claim for benefits based on the service under the laws of this state.
- (e) In this section, "**American employer**" means:
 - (1) an individual who is a resident of the United States;
 - (2) a partnership, if two-thirds or more of the partners are residents of the United States;
 - (3) a trust, if all of the trustees are residents of the United States; or
 - (4) a corporation organized under the laws of the United States or of a state.
- (f) For the purposes of Subsection (b), service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "**incidental**" includes a service that is temporary or that consists of isolated transactions.
- (g) If this state is the state of jurisdiction for services covered as employment under Subsection (d), the employer shall so notify its employees.

Sec. 201.044. ServiceUnder Reciprocal Agreement

In this subtitle, "employment" includes service that is performed by an individual and that is covered by a reciprocal agreement under this subtitle between the commission and the agency that administers another state's or a federal unemployment compensation law if:

- (1) under the agreement all service performed by the individual for an employing unit is considered to be performed entirely in this state; and
- (2) the commission approves an election of the employing unit for whom the service is performed under which the entire service of the individual is considered employment subject to this subtitle during the period covered by the election.

Sec. 201.045. Service on Vessel or Aircraft

In this subtitle, "employment" includes service performed on or in connection with an American vessel or aircraft if:

- (1) the service is employment under Section 3306(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3306(c)); and
- (2) the operating office from which the vessel or aircraft is ordinarily and regularly directed and controlled is in this state.

Sec. 201.046. Employment to Assist Employee or Agent

- (a) An individual employed to perform or to assist in performing the work of an employee or agent of an employing unit is employed by that employing unit for purposes of this subtitle if the employing unit has actual or constructive knowledge of the work.
- (b) Subsection (a) applies without regard to whether the individual is hired or paid directly by the employing unit or by the employee or agent.

Sec. 201.047. Farm and Ranch Labor as Employment

- (a) Farm and ranch labor is employment for the purposes of this subtitle if the labor:
 - (1) is performed by a seasonal worker employed on a truck farm, orchard, or vineyard;
 - (2) is performed by a migrant worker;
 - (3) is performed by a seasonal worker who:
 - (A) is working for a farmer, ranch operator, or labor agent who employs a migrant worker; and
 - (B) is doing the same work at the same time and location as the migrant worker;
 - (4) performed after 1986 and the laborer is employed by an employing unit that:
 - (A) pays wages in cash of \$6,250 or more for the labor during a calendar quarter in the calendar year in which the labor is performed or the calendar year preceding that year; or
 - (B) employs three or more individuals in farm and ranch labor for a portion of at least one day during at least 20 different calendar weeks of the calendar year in which the labor is performed or the calendar year preceding that year.
- (b) Wages paid for services described in Subdivision (a)(1), (2), or (3) are included in determining the wages paid for the purpose of Subdivision (a)(4).

Sec. 201.048. Service for Indian Tribe

Except as provided by Sections 201.063 and 201.067, in this subtitle, "employment" includes service performed in the employ of an Indian tribe if the services are excluded from the definition of employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended, solely because of Section 3306(c)(7) of that Act.

Subchapter E. Exceptions to Employment

Sec. 201.061. Service Eligible Under Act of Congress

In this subtitle, "employment" does not include service for which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

Sec. 201.062. Service Under Arrangement with Agency

In this subtitle, "employment" does not include service under an arrangement that is between the commission and the agency that administers another state's or a federal unemployment compensation law and that considers the service for an employing unit during the period covered by the employing unit's approved election to be performed entirely within the agency's state or under the federal law.

Sec. 201.063. Certain Government Service

- (a) In this subtitle, "employment" does not include:
- (1) service in the employ of a political subdivision or of an instrumentality of a political subdivision that is wholly owned by one or more political subdivisions:
 - (A) as an elected official;
 - (B) as a member of a legislative body;
 - (C) as a member of the judiciary;
 - (D) as a temporary employee in case of fire, storm, snow, earthquake, flood, or similar emergency;
 - (E) in a position that is designated under law as a major nontenured policy-making or advisory position or a policy-making or advisory position that ordinarily does not require more than eight hours of service each week; or
 - (F) as an election official or worker if the remuneration received by the individual during the calendar year is less than \$1,000;
 - (2) service in the employ of a foreign government, including service as a consular or other officer or employee or as a nondiplomatic representative;
 - (3) service in the employ of an instrumentality wholly owned by a foreign government if:
 - (A) the service is similar to service performed in a foreign country by an employee of the United States government or an instrumentality of that government; and

- (B) the United States secretary of state has certified to the United States secretary of the treasury that the foreign government grants an equivalent exemption for similar services performed in the foreign country by an employee of the United States government or an instrumentality of the United States government;
 - (4) service in the employ of the United States government or an instrumentality of the United States exempt under the United States Constitution from the contributions imposed by this subtitle; or
 - (5) service described by Subdivisions (1)-(3) performed in the employ of an Indian tribe.
- (b) To the extent the United States Congress permits a state to require an instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, this subtitle applies to the instrumentality and to the service performed for the instrumentality.

Sec. 201.064. Domestic Service

In this subtitle, "**employment**" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as performed for an employer under Section 201.027.

Sec. 201.065. Service by Relative

In this subtitle, "employment" does not include:

- (1) service of an individual in the employ of the individual's son, daughter, or spouse; or
- (2) service of an individual younger than 21 years of age in the employ of the individual's father or mother.

Sec. 201.066. Religious Service

In this subtitle, "employment" does not include:

- (1) service in the employ of:
 - (A) a church;
 - (B) a convention or association of churches; or
 - (C) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches;

- (2) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry; or
- (3) service performed by a member of a religious order as required by the order.

Sec. 201.067. Rehabilitative Service; Work Relief; Exception for Services Performed by Certain Trained Individuals

- (a) In this subtitle, "**employment**" does not include service performed:
 - (1) by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury while the individual is in training at a sheltered workshop or other facility operated by a charitable organization under a rehabilitation program that includes:
 - (A) an individual plan for employment as required by 29 U.S.C. Section 722, as amended by the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128);
 - (B) a timeline for completion of the training; and
 - (C) a planned employment outcome; or
 - (2) by an individual who receives work relief or work training as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, a political subdivision of a state, or an Indian tribe.
- (b) Notwithstanding Subsection (a) (1), in this subtitle "**employment**" includes service performed by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury, other than an individual compensated as provided by Section 62.057, and who, after training, is working for a sheltered workshop or other facility operated by a charitable organization:
 - (1) temporarily while awaiting placement in a position of employment in the competitive labor market; or
 - (2) permanently because the individual is unable to compete in the competitive labor market.

Sec. 201.068. Service in Hospital

In this subtitle, "employment" does not include:

- (1) service as a student nurse who is:

- (A) employed by a hospital or a nurses' training school; and
- (B) enrolled and regularly attending classes in a nurses' training school chartered or approved under state law;
- (2) service as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved under state law; or
- (3) service in the employ of a hospital by a patient of the hospital.

Sec. 201.069. Service of Student

In this subtitle, "employment" does not include:

- (1) service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university;
- (2) service performed by an individual who is enrolled as a student in a full-time program that combines academic instruction with work experience and that is taken for credit at a nonprofit or public educational institution normally maintaining a regular faculty and curriculum and having a regularly organized body of students in attendance at the place where its educational activities are conducted, if the service is an integral part of the program, and the institution has so certified to the employing unit, except:
 - (A) service performed in a program established for an employer or a group of employers;
 - (B) service in an apprenticeship training program; or
 - (C) service performed by a teaching assistant; or
- (3) service by a student in the employ of an organized camp if:
 - (A) the camp:
 - (i) did not operate for more than seven months in the current calendar year and did not operate for more than seven months in the preceding calendar year; or
 - (ii) had average gross receipts for any six months in the preceding calendar year that were not more than 33-1/3 percent of its average gross receipts for the other six months in the preceding calendar year; and
 - (B) the student performed services for the camp for fewer than 13 calendar weeks in the calendar year and the student:

- (i) is enrolled as a full-time student at an educational institution; or
- (ii) is between academic terms or years and:
 - (a) the student was enrolled as a full-time student at an educational institution for the preceding academic term or year; and
 - (b) there is reasonable assurance that the student will be so enrolled for the next academic term or year.

Sec. 201.070. Service as Product Demonstrator; Salesman

In this subtitle, "employment" does not include:

- (1) service by an individual as a product demonstrator if:
 - (A) the service is performed under a written contract between the individual performing the service and a person whose principal business is obtaining the service of a demonstrator for a third person for product demonstration purposes; and
 - (B) in contract and in fact the individual:
 - (i) is not treated as an employee with respect to that service for federal unemployment tax purposes;
 - (ii) is compensated for each demonstration or is compensated based on factors that relate to the work performed;
 - (iii) determines the method of performing the service;
 - (iv) provides each vehicle used to perform the service;
 - (v) is responsible for the completion of a specific job and is liable for failure to complete the job;
 - (vi) may accept or reject a job from a product demonstrator business;
 - (vii) is free from control by the principal business as to where the individual works;
 - (viii) controls solely opportunity for profit or loss; and
 - (ix) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

- (2) service by an individual as a direct seller if:
 - (A) the individual is engaged in the business of:
 - (i) in-person sales of consumer products to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home or in a place other than, and not affiliated with, a permanent retail establishment; or
 - (ii) sales of consumer products in a home or in a place other than, and not affiliated with, a permanent retail establishment;
 - (B) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and
 - (C) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or
- (3) service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler of consumer goods, if the wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a municipality with a population of more than one million.

Sec. 201.071. Service as Insurance Agent

In this subtitle, "employment" does not include service as an insurance agent for which the only remuneration for the service is a commission.

Sec. 201.072. Service as Real Estate Broker

In this subtitle, "employment" does not include:

- (1) service performed by an individual as a real estate broker or salesperson if:
 - (A) the individual engages in activity described by the definition of "**broker**" in Section 1101.002, Occupations Code;
 - (B) the individual is licensed as a broker or salesperson by the Texas Real Estate Commission;

- (C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and
 - (D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or
- (2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesperson if:
- (A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and;
 - (B) the service performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes.

Sec. 201.073. Delivery Service; Newspaper Delivery Service

In this subtitle, "employment" does not include:

- (1) service performed for compensation by an individual for a private for-profit delivery service if the individual:
 - (A) may accept or reject a job from the delivery service;
 - (B) is free from control by the delivery service as to when the individual works;
 - (C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;
 - (D) controls solely the opportunity for profit or loss;
 - (E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;
 - (F) determines the method of performing the service, including selection of routes and order of deliveries;
 - (G) is responsible for completion of a specific job and is liable for failure to complete the job;

- (H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and
 - (I) provides the vehicle used to perform the service; or
- (2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution.

Sec. 201.074. Service by Inmate

In this subtitle, "employment" does not include service performed by an inmate of a custodial or penal institution.

Sec. 201.075. Service on Fishing Vessel

In this subtitle, "employment" does not include service performed on a fishing vessel normally having a crew of fewer than 10 members if:

- (1) the crew member's payment is a share of the catch; and
- (2) the service is not employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

Sec. 201.076. Included and Excluded Service in Pay Period

- (a) All of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during one-half or more of the period is employment.
- (b) None of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during more than one-half of the pay period is not employment.
- (c) This section does not apply to service performed in a pay period by an individual for a person employing the individual that is service that does not constitute employment under Section 201.061.
- (d) In this section, "**pay period**" means the period, not to exceed 31 consecutive days, for which a person employing an individual ordinarily pays wages to the individual.

Sec. 201.077. Service by Landman

In this subtitle, "employment" does not include service performed for a private for-profit person by a landman, as defined by Section 1702.324, Occupations Code, if:

- (1) the compensation paid to the landman directly relates only to the performance of the service; and
- (2) the service performed by the landman is performed under a written contract between the landman and the person for whom the service is performed that provides that the landman is to be treated as an independent contractor and not as an employee with respect to the service provided under the contract.

Sec. 201.078. Service by Nonresident Alien Agricultural Worker

In this subtitle, "employment" does not include service performed by a nonresident alien during the period that the alien is temporarily in the United States under an H2-A visa if the service is not defined as employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3306(c)(19)).

Subchapter F. Definition of Wages

Sec. 201.081. General Definition of Wages

In this subtitle, "wages" means all remuneration for personal services, including:

- (1) the cash value of remuneration paid in a medium other than cash; and
- (2) a gratuity received by an employee in the course of employment to the extent that the gratuity is considered wages in the computation of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

Sec. 201.082. Exceptions to Wages

In this subtitle, "wages" does not include:

- (1) that part of the remuneration paid by an employer to an individual for employment during a calendar year that exceeds remuneration to the individual, excluding remuneration under another subdivision of this section, by the employer, of \$9,000;
- (2) a payment, including an amount the employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity, that is made to or for an employee or the employee's dependent under a plan the employer established for employees generally, or a class of employees, including or excluding the employee's dependents, for:
 - (A) retirement;
 - (B) sickness or accident disability;
 - (C) medical or hospitalization expenses in connection with sickness or accident disability; or

- (D) expenses related to death;
- (3) a payment made to an individual employee for retirement, including an amount an employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity;
- (4) a payment for sickness or accident disability, or medical or hospitalization expenses for sickness or accident disability, an employer makes to or for an individual employee after the expiration of six calendar months after the last calendar month the employee worked for the employer;
- (5) a payment made to or for an employee or the employee's beneficiary:
 - (A) from or to a trust defined by Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), that is exempt from tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)), at the time of payment, unless the payment is made to an employee of the trust as remuneration for service as an employee and not as a beneficiary of the trust; or
 - (B) under or to an annuity plan that, at the time of the payment, is a plan described by Section 403(a), Internal Revenue Code of 1986 (26 U.S.C. Section 403(a));
- (6) a tax an employer pays, without deduction from the remuneration of the employee, that is imposed on the employee under Section 3101, Internal Revenue Code of 1986 (26 U.S.C. Section 3101);
- (7) noncash remuneration paid to an employee for service not in the course of the employer's business;
- (8) a payment, except vacation or sick pay, made to an employee after the month the employee is 65 years of age, if the employee did not work for the employer in the period for which the payment is made; or
- (9) the part of remuneration from a single employer for services in a calendar year that exceeds the amount applicable to the year under Subdivision (1) for which contributions have been paid under a state unemployment law.

Subchapter G. Total and Partial Unemployment

Sec. 201.091. Total and Partial Unemployment

- (a) An individual is totally unemployed in a benefit period during which the individual does not perform services for wages in excess of the greater of:

- (1) \$5; or
 - (2) 25 percent of the benefit amount.
- (b) An individual is partially unemployed in a benefit period of less than full-time work if the individual's wages payable for that benefit period are less than the sum of:
- (1) the benefit amount the individual would be entitled to receive if the individual was totally unemployed; and
 - (2) the greater of:
 - (A) \$5; or
 - (B) 25 percent of the benefit amount.
- (c) For purposes of this subtitle, an individual is considered unemployed if the individual is:
- (1) totally unemployed as defined by Subsection (a); or
 - (2) partially unemployed as defined by Subsection (b).
- (d) Notwithstanding Subsection (b), an individual is not partially unemployed for purposes of this subtitle for a benefit period in which the individual's working hours are reduced by the individual's employer as a result of misconduct connected with the work on the part of the individual. Such limitation will be effective for a maximum of four weeks from the effective date of such a reduction in hours.
- (e) For purposes of this subtitle, an individual is not considered unemployed and is not eligible to receive benefits for any benefit period during which the individual works the individual's customary full-time hours, regardless of the amount of wages the individual earns during the benefit period.
- (f) For purposes of this subtitle, an individual who last worked for a temporary help firm is not considered to be unemployed until three business days have passed since the date the individual's last assignment ended.

Subchapter H. Conformity with Federal Statutes

Sec. 201.101. Conformity with Federal Statutes

If the United States secretary of labor holds that Section 91.044(a-1) or a provision of this subtitle does not conform with a federal statute, the commission may administer Section 91.044(a-1) or this subtitle, as applicable, to conform with the federal statute until the legislature meets in its next session and has an opportunity to amend the applicable law.