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10



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 (15) Reopened claim--The first claim filed following a break in claim series during  
14 a benefit year which was caused by other than intervening employment, i.e.,  
15 illness, disqualification, unavailability, or failure to report for any reason other  
16 than job attachment. The reopened claim reopens a claim series and is not a  
17 payable claim since it is not a claim for seven days of compensable  
18 unemployment.  
19

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

23 *The provisions of this §815.1 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
24 *amended to be effective September 20, 2010, 35 TexReg 8504; amended to be effective June*  
25 *30, 2014, 39 TexReg 4965; amended to be effective October 12, 2020, 45 TexReg 7273*  
26

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28

29 **§815.2. Mailing Dates and Use of Forms.**  
30

- 31 (a) Except as otherwise provided in Subchapter C of this chapter, when an individual or  
32 an employing unit reports or applies to the Agency in writing upon an Agency form,  
33 for purposes of determining the date the writing was sent, the following dates shall  
34 control, in the order listed:  
35
- 36 (1) the postmark date or the postal meter date (where there is only one or the  
37 other);  
38
- 39 (2) the postmark date if there is both a postmark date and a postal meter date, if  
40 they conflict;  
41
- 42 (3) the date the writing was delivered to a common carrier, which date is equal to a  
43 postmark date;  
44
- 45 (4) a writing received in an envelope bearing no legible postmark, postal meter  
46 date, or date of delivery to the common carrier shall be considered to have

1                   been sent three business days before receipt by the Agency, or on the date of  
2                   the document, if the document date is less than three days earlier than date of  
3                   receipt; or  
4

5                   (5) if the mailing envelope is lost after delivery to the Agency, the date on the  
6                   writing shall control. If the document is undated, the date the writing was sent  
7                   shall be three business days before receipt by the Agency, subject to sworn  
8                   testimony establishing an even earlier date.  
9

10                  (b) Except as provided in Subchapter C of this chapter, the date and time a writing is  
11                  received by the Agency shall control when that writing was sent by facsimile  
12                  transmission (fax), or in an electronic form approved by the Agency in writing.  
13

14                  (c) Except as otherwise provided in Subchapter C of this chapter, when the writing is  
15                  not on an Agency form but furnishes information that is sufficient to indicate clearly  
16                  the purpose or intent of the writing, the controlling date shall be determined as  
17                  described in this section. However, the Agency may require that the individual or  
18                  employing unit furnish the necessary information to the Agency in the manner and  
19                  on a form or forms prescribed by the Agency for the particular purpose.  
20

21                  *The provisions of this §815.2 adopted to be effective November 6, 2000, 25 TexReg 11093*  
22

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24

25                  **§815.3. Addresses.**  
26

27                  (a) In this chapter, each employing unit which has or had individuals in "employment"  
28                  so defined in the Act shall notify the Agency of its correct address and of any change  
29                  in its correct address, and each employing unit shall promptly notify the Agency of  
30                  any change of address. Each individual who is a claimant for benefits, who is liable  
31                  to the Agency for an overpayment pursuant to the Act, Chapter 212 or 214, or who is  
32                  registered for work at an Agency office, or public employment office, including a  
33                  workforce center, shall promptly notify the Agency of any change of address.  
34

35                  (b) In this chapter, a group account, as referred to in the Act, §205.021, shall be treated  
36                  as a single employing unit for the purposes of this section and the Agency shall use  
37                  the address of the group representative as the official address of the group. The group  
38                  representative shall notify the Agency of the correct address and shall promptly  
39                  notify the Agency of any change of address.  
40

41                  (c) In all transactions in which notice is required by the Act or this chapter, the Agency  
42                  shall notify the parties at the last known address as reflected in the Agency records.  
43                  However, when the Agency mails a notice of an initial claim to the employer, the  
44                  Agency shall use the address of the employer for whom the claimant last worked, or  
45                  if the employer has more than one branch or division at different locations, the

1 location of the branch or division for which the claimant last worked, or a mailing  
2 address designated by the employer in the Act, §208.003.

3  
4 *The provisions of this §815.3 adopted to be effective November 6, 2000, 25 TexReg 11093*

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7  
8 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

9  
10 **§815.10. Appeals from Decisions on Chargebacks.**

11 Appeals from decisions on chargebacks under the Act, §§204.021 - 204.027, 208.004(c),  
12 and §212.005(b), shall be to the appeal tribunals and to the Commission within the time  
13 prescribed by the Act. These appeals shall be heard in accordance with the provisions of  
14 §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations),  
15 §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and  
16 §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the  
17 extent that the referenced sections are clearly inapplicable.

18 *The provisions of this §815.10 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
19 *amended to be effective June 30, 2014, 38 TexReg 4965*

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22  
23 **§815.12. Waiver of Repayment and Recovery of Federal Extended Unemployment**  
24 **Compensation Overpayments.**

- 25
- 26 (a) When conforming with an applicable federal extended unemployment compensation  
27 program, this section implements waiver of repayment requirements by setting out  
28 the process that the Agency and Commission shall use to determine whether to waive  
29 the repayment and recovery of non-fraudulent overpayments. The terms repayment  
30 and recovery will be referred to as repayment in this section, and the federal  
31 extended unemployment compensation overpayment will be referred to as  
32 overpayment.
- 33
- 34 (b) When a decision of the Agency or Commission results in a federal extended  
35 unemployment compensation overpayment, the Agency or Commission will also  
36 determine whether the overpayment will be waived.
- 37
- 38 (c) A claimant may appeal the underlying issue that created the overpayment  
39 determination pursuant to the provisions of Chapter 212 of the Act and the  
40 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals  
41 from Determinations), §815.17 of this chapter (relating to Appeals to the  
42 Commission from Decisions), and §815.18 of this chapter (relating to General Rules  
43 for Both Appeal Stages).
- 44

- 1 (d) A claimant may also appeal a denial of a request to waive the repayment of an  
2 overpayment in the same manner as stated in subsection (c) of this section.  
3
- 4 (e) The Agency or Commission will deny a request to waive the repayment of a non-  
5 fraudulent overpayment if it determines that:  
6
- 7 (1) the payment of the federal extended unemployment compensation benefits is  
8 the fault of the claimant, or  
9
- 10 (2) the repayment is not contrary to equity and good conscience.  
11
- 12 (f) The Agency or Commission will waive the repayment of a non-fraudulent  
13 overpayment if it determines that:  
14
- 15 (1) the payment of the federal extended unemployment compensation benefits is  
16 not the fault of the claimant, and  
17
- 18 (2) the repayment is contrary to equity and good conscience.  
19
- 20 (g) In determining whether fault exists, the Agency or Commission shall consider the  
21 following:  
22
- 23 (1) whether a material statement or representation was made by the claimant in  
24 connection with the application for the federal extended unemployment  
25 compensation that resulted in an overpayment, and whether the claimant knew  
26 or should have known that the statement or representation was inaccurate;  
27
- 28 (2) whether the claimant failed or caused another to fail to disclose a material fact,  
29 in connection with an application for the federal extended unemployment  
30 compensation that resulted in an overpayment, and whether the claimant knew  
31 or should have known that the fact was material;  
32
- 33 (3) whether the claimant knew or could have been expected to know that the  
34 claimant was not entitled to the federal extended unemployment compensation  
35 payment; and  
36
- 37 (4) whether, for any other reason, the overpayment resulted directly or indirectly,  
38 and partially or totally, from any act or omission of the claimant or of which  
39 the claimant had knowledge, and which was erroneous or inaccurate or  
40 otherwise wrong.  
41
- 42 (h) In determining whether equity and good conscience exists, the Agency or  
43 Commission shall consider the following factors:  
44
- 45 (1) whether the overpayment is the result of a decision on appeal;  
46

- 1 (2) whether the Agency gave notice to the claimant that the claimant may be  
2 required to repay the overpayment in the event of a reversal of the federal  
3 extended unemployment compensation eligibility determination on appeal; and  
4
- 5 (3) whether repayment of the federal extended unemployment compensation  
6 overpayment will cause financial hardship to the claimant.  
7
- 8 (i) Hearings under this section will be conducted in a fair and impartial manner in  
9 accordance with the provisions of §815.15 of this chapter (relating to Parties with  
10 Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals  
11 from Determinations), §815.17 of this chapter (relating to Appeals to the  
12 Commission from Decisions), and §815.18 of this chapter (relating to General Rules  
13 for Both Appeal Stages), except to the extent that the sections are clearly  
14 inapplicable.  
15
- 16 (j) For the purposes of this section, a federal extended unemployment compensation  
17 program is an unemployment compensation program enacted by Congress that  
18 provides additional federally funded benefits. It does not include Extended Benefits  
19 under Subchapter F of this chapter or Chapter 209 of the Act.  
20

21 *The provisions of this §815.12 adopted to be effective July 16, 2002, 27 TexReg 6339;*  
22 *amended to be effective October 12, 2020, 45 TexReg 7273*

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25  
26 **§815.15. Parties with Appeal Rights.**

- 27
- 28 (a) This section defines the circumstances under which a party has appeal rights. For the  
29 purposes of appeals under this chapter, the term "party of interest" shall be used to  
30 denote a party with appeal rights.  
31
- 32 (b) A claimant may file an appeal from an action of the Agency and/or the Commission  
33 that affects the claimant's right to benefits subject to this chapter and the Act.  
34
- 35 (c) An employer may file an appeal from a determination that affects a claimant's  
36 entitlement to benefits if the employer is a party of interest to the determination. The  
37 paragraphs of this subsection are situations in which the Agency shall treat an  
38 employer as a party of interest in a specific proceeding. Only one employer shall be  
39 a party of interest to a proceeding.  
40
- 41 (1) An employer named as the last work on an initial claim is a party of interest to  
42 a determination(s) ruling on the merits of the claimant's separation and other  
43 specific issues raised by the employer regarding the claimant's entitlement to  
44 benefits, if the employer filed a timely response to notice of the claimant's  
45 initial claim.  
46

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46
- (2) An employer named as the last work on an additional or continued claim is a party of interest to a determination(s) ruling on the merits of that additional or continued claim separation, if the employer filed a timely response to notice of the claimant's additional or continued claim and:
    - (A) was the employer named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim; or
    - (B) is a base period employer whose account has been ruled subject to chargeback.
  
  - (3) A reimbursing employer named as the last work on an additional or continued claim is a party of interest to a determination(s) ruling on the merits of that additional or continued claim separation, if the employer filed a timely response to notice of the claimant's additional or continued claim and:
    - (A) was the employer named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim; or
    - (B) is a base period employer.
  
  - (4) If an employer, during a claimant's benefits year, provides the Agency with information that raises specific issues including, but not limited to, a potential disqualification, ineligibility, or allegations of fraud, each of which affects that claimant's entitlement to benefits, then the employer shall be a party of interest to a determination ruling on the merits of the specific issue raised by the employer as follows:
    - (A) the employer is named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim;
    - (B) the employer is a base period taxed employer whose account has been ruled subject to chargeback (even if that employer was named as the last work on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim); or
    - (C) the employer is a base period reimbursing employer.
  
  - (5) An employer against whom a claimant has alleged entitlement to additional base period wages shall be a party of interest to that issue.
  
  - (6) If an employer has requested a waiver under §815.28(a)(1)(E)(v) of this subchapter and the Agency Executive Director denies the waiver, the employer

1 shall be a party of interest to any benefits appeal where ineligibility results  
2 from that denial.

3  
4 *The provisions of this §815.15 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
5 *amended to be effective August 15, 2004, 29 TexReg 7738*

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8  
9 **§815.16. Appeals to Appeal Tribunals from Determinations.**

10  
11 A party of interest may appeal a determination to the appeal tribunal. Appeals shall be in  
12 accordance with the terms of this section, §815.15 of this chapter (relating to Parties with  
13 Appeal Rights), §815.17 of this chapter (relating to Appeals to the Commission from  
14 Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal  
15 Stages). As used in this section and in §815.17 and §815.18, the term "party" includes a  
16 person's or individual's representative. In this section, a reference to the term "supervisor  
17 of appeals" includes the supervisor's designee.

18  
19 (1) Presentation of appealed claims.

20  
21 (A) A party appealing from a determination made by an examiner under the  
22 provisions of the Act, shall file an appeal by hand delivery, mail,  
23 common carrier, facsimile (fax) transmission, or other method approved  
24 by the Agency in writing. A written appeal that is sent to the Agency  
25 should be addressed to the Texas Workforce Commission, 101 East 15th  
26 Street, Austin, Texas, 78778-0001, or faxed to the number provided in  
27 the determination. A written appeal may be hand delivered to the Texas  
28 Workforce Commission, 101 East 15th Street, Austin, Texas 78778-  
29 0001, a local office of the Agency, or an agent state, or a workforce  
30 center or an office of a Board. The appeal should identify the  
31 determination being appealed, the basis for the appeal, the name of the  
32 party appealing, and the date of the appeal. The provisions of §815.32 of  
33 this chapter (relating to Timeliness) shall determine on what date the  
34 appeal was filed.

35  
36 (B) Upon the scheduling of a hearing on an appeal or a petition to reopen,  
37 notice of the hearing shall be mailed to the parties at least five days  
38 before the date of the hearing. The notice shall identify the decision or  
39 determination appealed from and shall specify the time and date of the  
40 hearing, the party appealing, and the issue to be heard. If the hearing is  
41 an in-person hearing, the notice shall also specify the location of the  
42 hearing.

43  
44 (2) Disqualification of appeal tribunal. The essence of a fair hearing lies in the  
45 impartiality of the appeal tribunal. An appeal tribunal should be free not only  
46 of any personal interest or bias in the appeal before it, but also of any

1 reasonable suspicion of personal interest. No appeal tribunal shall participate  
2 in the hearing of an appeal in which that tribunal has a personal interest in the  
3 outcome of the appeal decision. The appeal tribunal may withdraw from a  
4 hearing to avoid the appearance of impropriety or partiality. Challenges to the  
5 impartiality of any appeal tribunal may be heard and decided by the supervisor  
6 of appeals.  
7

8 (3) Hearing of appeal.  
9

10 (A) Consistent with §212.106 of the Act, all hearings shall be conducted  
11 informally and in a manner to ensure the substantial rights of the parties.  
12 All issues relevant to the appeal shall be considered and ruled upon. The  
13 parties to an appeal before an appeal tribunal may present evidence that  
14 may be material and relevant as determined by an appeal tribunal. The  
15 appeal tribunal shall examine parties and witnesses, if any, and may  
16 allow cross-examination to the extent the appeal tribunal deems  
17 necessary to afford the parties due process. The appeal tribunal, with or  
18 without notice to any of the parties, may take additional evidence that it  
19 deems necessary, provided that a party shall be given an opportunity to  
20 rebut the evidence if it is to be used against the party's interest.  
21

22 (i) In conducting a hearing, the appeal tribunal shall actively develop  
23 the record on the relevant circumstances leading to the separation  
24 for hearings involving the issue of work separation and, for hearings  
25 involving other issues, the relevant facts to resolve those issues. It  
26 is the responsibility of the appeal tribunal to ensure that all relevant  
27 issues are thoroughly explored at the hearing.  
28

29 (ii) The appeal tribunal shall ask any questions necessary to obtain  
30 pertinent facts concerning all events (such as job separation) that are  
31 at issue in the hearing.  
32

33 (B) The parties to an appeal, with the consent of the appeal tribunal, may  
34 stipulate in writing the facts involved. The appeal tribunal may decide  
35 the appeal on the basis of a stipulation or, in its discretion, may set the  
36 appeal for hearing and take any additional evidence it deems necessary  
37 to enable it to determine the appeal.  
38

39 (C) Hearings shall be conducted by telephone conference call unless the  
40 supervisor of appeals determines that an in-person hearing is necessary  
41 because a party with a physical impairment cannot effectively participate  
42 by telephone, because the nature of the evidence to be presented makes a  
43 hearing by telephone impractical, or because the supervisor of appeals  
44 otherwise determines that an in-person hearing is necessary. The rules  
45 and procedures in this chapter govern both in-person and telephone  
46 hearings. A party may request an in-person hearing by informally

1 contacting, orally or in writing or by any other reasonable method of  
2 communication, the appeal tribunal or the supervisor of appeals before  
3 the scheduled time of the hearing and presenting information to support  
4 the request. The supervisor of appeals has the discretion to determine  
5 whether the party's request for an in-person hearing will be granted.  
6

7 (4) Adjournment, continuance, and postponement of hearing.  
8

9 (A) The appeal tribunal shall use its best judgment to determine when to  
10 grant a continuance or postponement of a hearing in order to secure all  
11 the evidence that is necessary and to be fair to the parties.  
12

13 (B) Either prior to or during a hearing, an appeal tribunal, on its own motion  
14 or on the motion of a party of interest, may continue, adjourn, or  
15 postpone a hearing. The continuance, adjournment, or postponement  
16 shall not be for the purpose of delaying the proceeding and may be  
17 granted due to illness of the appellant, death in the immediate family of  
18 the appellant, or a pending criminal prosecution of the appellant. A  
19 continuance, adjournment or postponement may also be granted at the  
20 request of the appellant or appellee when there is a need for an  
21 interpreter, religious observance, jury duty, court appearance, active  
22 military duty, or other reasons approved by the supervisor of appeals.  
23 Prior to the hearing, requests for a continuance or a postponement of a  
24 hearing may be made informally, either orally or in writing, to the appeal  
25 tribunal designated to hear the appeal or to the supervisor of appeals.  
26

27 (5) Reopening of hearing before appeal tribunal.  
28

29 (A) If a party fails to appear for a hearing, the appeal tribunal may hear and  
30 record the evidence of the party present and the witnesses, if any, and  
31 shall proceed to decide the appeal on the basis of the record unless there  
32 appears to be good reason for continuing the hearing. A copy of the  
33 decision shall be promptly mailed to the parties of interest with an  
34 explanation of the manner in which, and time within which a request for  
35 reopening may be submitted.  
36

37 (B) A party of interest to the appeal who fails to appear at a hearing may,  
38 within 14 days from the date the decision is mailed, petition for a new  
39 hearing before the appeal tribunal in the manner set out in subsection  
40 (1)(A) of this section. The petition should identify the party requesting  
41 the reopening, the applicable decision of the appeal tribunal, the date of  
42 the petition, and explain the reason for the failure to appear. The  
43 provisions of §815.32 of this chapter (relating to Timeliness) shall  
44 determine on what date the petition was filed. The petition shall be  
45 granted if it appears to the appeal tribunal that the petitioner has shown  
46 good cause for the petitioner's failure to appear at the hearing. In the

1 event that an appeal to the Commission is filed before the filing of the  
2 petition for reopening by the appeal tribunal, the appeal shall be referred  
3 to the Commission for review.  
4

5 (C) For purposes of this section, the term "appear" shall mean participation  
6 by a party or a party's representative in the proceeding. Actions that may  
7 be considered as participation include offering testimony, examining  
8 witnesses, or presenting oral argument. If the hearing is a telephone  
9 hearing, a party or a party's representative shall appear at a hearing by  
10 calling on the date and at the time of the hearing and participating in the  
11 hearing proceedings. If the hearing is an in-person hearing, a party or a  
12 party's representative shall appear by being at the location of the hearing  
13 on the date and at the time scheduled for the hearing and participating in  
14 the hearing proceedings. Mere submission of written documents,  
15 whether sworn or unsworn, or observation of the proceedings shall not  
16 constitute an appearance.  
17

18 (6) The determination of appeals.  
19

20 (A) As soon as possible following the conclusion of a hearing of an appeal,  
21 the appeal tribunal shall issue its findings of fact and decision with  
22 respect to the appeal. The decision shall be in writing and shall reflect  
23 the name of the appeal tribunal who conducted the hearing and who  
24 rendered the decision. In the decision, the appeal tribunal shall set forth  
25 findings of fact and conclusions of law, with respect to the matters on  
26 appeal, and the reasons for the decision. Copies of the decision shall be  
27 mailed by the appeal tribunal to the parties of interest to the appeal.  
28 Upon request, courtesy copies may be mailed to other parties to the  
29 appeal.  
30

31 (B) At any time during the 14-day period from the date a decision on an  
32 appeal is mailed, unless a party of interest has already appealed to the  
33 Commission, the appeal tribunal or the supervisor of appeals may  
34 assume continuing jurisdiction over the appeal for the purpose of  
35 reconsidering the issues on appeal and issuing a corrected decision.  
36 During the period in which continuing jurisdiction is assumed, the appeal  
37 tribunal, after notice to the parties, may take any additional evidence or  
38 secure any additional information it deems necessary to issue a decision.  
39

40 *The provisions of this §815.16 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
41 *amended to be effective January 26, 2004, 29 TexReg 664*  
42

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45 **§815.17. Appeals to the Commission from Decisions.**  
46

1 (a) The presentation of an appeal to the Commission.  
2

3 (1) A party of interest may appeal a decision of the Appeal Tribunal. A party  
4 appealing from a decision of an appeal tribunal shall file the appeal by hand  
5 delivery, mail, common carrier, facsimile (fax) transmission, or other method  
6 approved by the Agency in writing. A written appeal that is sent to the Agency  
7 should be addressed to the Texas Workforce Commission, 101 East 15th  
8 Street, Austin, Texas, 78778-0001, or faxed to the number provided in the  
9 decision. A written appeal may be hand delivered to the Texas Workforce  
10 Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of  
11 the Agency, or an agent state, or a workforce center or an office of a Board.  
12 The appeal should identify the decision of the appeal tribunal being appealed,  
13 the basis for the appeal, the name of the party appealing, and the date of the  
14 appeal. The provisions of §815.32 of this chapter (relating to Timeliness) shall  
15 determine on what date the appeal was filed.  
16

17 (2) When an appeal to the Commission is filed, all evidence and records pertaining  
18 to the appeal shall be submitted to the Commission for its review.  
19

20 (b) Commission action may include one or more actions as described in this subsection.  
21

22 (1) The Commission may, without further hearing, affirm, reverse or modify any  
23 decision of an appeal tribunal on the basis of the record made before the appeal  
24 tribunal.  
25

26 (2) The Commission may grant a further hearing on the matter and notify the parties to  
27 appear before the Commission, or before a representative of the Agency designated  
28 to hold hearings for the Commission, at a specified time and place for the purpose of  
29 presenting additional evidence and arguments; or the Commission may direct an  
30 appeal tribunal to take additional evidence necessary for the proper disposition of the  
31 appeal. All hearings conducted by the Commission, or before a representative of the  
32 Agency designated to hold hearings for the Commission, shall be conducted in the  
33 manner prescribed by §815.16 of this chapter (relating to Appeals to Appeal  
34 Tribunals from Determinations). Upon completion of the taking of additional  
35 evidence, the complete record involved in the appeal shall be returned to the  
36 Commission for its decision.  
37

38 (3) The Commission may remand a case to the appeal tribunal for the appeal tribunal to  
39 hold a de novo hearing. The appeal tribunal shall set aside the prior appeal tribunal  
40 decision and issue a new decision. The new decision shall be subject to all the  
41 provisions relating to appeals contained in the Act, in this section, in §815.15 of this  
42 chapter (relating to Parties with Appeal Rights), in §815.16 of this chapter (relating  
43 to Appeals to Appeal Tribunals from Determinations), and in §815.18 of this chapter  
44 (relating to General Rules for Both Appeal Stages), just as any other appeal tribunal  
45 decision.  
46

- 1 (c) Assumption of jurisdiction on the Commission's own motion. Within 14 days  
2 following the mailing of a decision of an appeal tribunal, and in the absence of the  
3 filing of an appeal to the Commission by a party of interest, the Commission may on  
4 its own motion acquire jurisdiction of the appeal and act as though a party of interest  
5 had filed an appeal.  
6
- 7 (d) Cases removed from an appeal tribunal. The Commission may remove to itself any  
8 appeal pending before an appeal tribunal. In that event, the Commission may  
9 proceed to decide the case on the evidence previously submitted, may schedule a  
10 hearing conducted by the Commission or its designee, or may direct the appeal  
11 tribunal to take any additional evidence the Commission deems necessary.  
12
- 13 (e) The determination of appeals.
- 14
- 15 (1) The Commission shall render its decision with respect to an appeal as soon as  
16 possible after reviewing the case. The decision shall be in writing and shall  
17 reflect the names of the members of the Commission who participated in the  
18 review.  
19
- 20 (2) If a decision of the Commission is not unanimous, the decision of the majority  
21 shall control, but the minority member may file a dissent from the decision.  
22
- 23 (3) A copy of the Commission's decision shall be mailed to the parties.  
24
- 25 (f) Motions for rehearing.
- 26
- 27 (1) A motion for rehearing may be filed by hand delivery, mail, common carrier,  
28 facsimile (fax) transmission, or other method approved by the Agency in  
29 writing. A motion for rehearing that is sent to the Agency should be addressed  
30 to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas,  
31 78778-0001, or faxed to the number provided in the decision. A written motion  
32 may be hand delivered to the Texas Workforce Commission, 101 East 15th  
33 Street, Austin, Texas 78778-0001, a local office of the Agency, or an agency  
34 state, or a workforce center or an office of a Board. The provisions of §815.32  
35 of this chapter (related to Timeliness) shall determine on what date the motion  
36 was filed.  
37
- 38 (2) A motion for rehearing shall not be granted unless each of the following three  
39 criteria is met:
- 40
- 41 (A) there is an offering of new evidence, which was not presented at the  
42 appeal tribunal level;  
43
- 44 (B) there is a compelling reason why the evidence was not presented earlier;  
45 and  
46

- 1 (C) there is a specific explanation of how consideration of the evidence  
2 would change the outcome of the case.  
3
- 4 (3) Notwithstanding the provisions of paragraph (2) of this subsection, a rehearing  
5 may be granted in the following two situations.  
6
- 7 (A) When a party of interest did not appear before the appeal tribunal,  
8 nevertheless won at that level, and then received an adverse ruling at the  
9 Commission level, the Commission may grant a rehearing to consider  
10 whether there was good cause for the nonappearance. If good cause is  
11 found, the rehearing shall address the merits of the case.  
12
- 13 (B) When a solely jurisdictional or procedural problem is not detected or  
14 recognized until after the Commission decision has been issued, the  
15 Commission may take appropriate action to correct the problem at the  
16 motion for rehearing level.  
17
- 18 (4) The Commission shall deny a request for rehearing unless it can be shown  
19 there are substantial reasons for the Commission to grant the rehearing.  
20

21 *The provisions of this §815.17 adopted to be effective November 6, 2000, 25 TexReg 11093*  
22

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25 **§815.18. General Rules for Both Appeal Stages.**  
26

27 This section shall be applicable to appeals both to the appeal tribunal and to the  
28 Commission.  
29

- 30 (1) Issuance of subpoenas.  
31
- 32 (A) Subpoenas to compel the attendance of witnesses and the production of  
33 records for any hearing of an appeal may be issued at the direction of the  
34 Commission or its designee or an appeal tribunal. A subpoena may be  
35 issued either at the request of a party or on the motion of the  
36 Commission or its designee or the appeal tribunal. The party requesting  
37 a subpoena shall state the nature of the information desired, including  
38 names of any witnesses and the records that the requestor feels are  
39 necessary for the proper presentation of the case. The request shall be  
40 granted only to the extent the records or the testimony of the requested  
41 witnesses appears to be relevant to the issues on appeal.  
42
- 43 (B) A witness subpoenaed to appear before an appeal tribunal, the  
44 Commission or its designee, or a court may be paid a fee and mileage for  
45 the appearance. The fee shall be \$20 per day, and for miles necessarily  
46 traveled to and returning from a hearing, the rate per mile shall be at the

1 rate provided for state employees in the State Appropriations Act, or as  
2 otherwise required by law. The fee as provided in this section and the  
3 mileage shall be paid from the unemployment compensation  
4 administration fund upon proper certification of the appeal tribunal, the  
5 Commission or its designee, or the court, and upon certification of the  
6 witness that the fees and mileage are just, true, and unpaid.  
7

8 (2) Provision of Agency records.  
9

10 (A) Upon the request of a party to a proceeding, the Agency shall provide  
11 copies of all records pertaining to that proceeding, except for records  
12 subject to privileges under state or federal law or regulation. Other  
13 Agency records shall be produced only if the party specifies the exact  
14 information desired, and the necessity of the records to allow the party to  
15 properly present its claim; the production of records shall be subject to  
16 confidentiality limitations and privileges under state or federal law or  
17 regulation.  
18

19 (B) The Agency shall provide copies of the relevant separation and  
20 timeliness information in the Agency's custody to both parties with the  
21 Notice of Hearing, including:  
22

23 (i) all information received from the parties in response to, or in protest  
24 of, a claim for unemployment insurance;  
25

26 (ii) all fact-finding statements relating to the work separation; and  
27

28 (iii) the appeal from the determination of the work separation.  
29

30 (3) Representation before appeal tribunal and the Commission.  
31

32 (A) An individual who is a party to a proceeding may appear before an  
33 appeal tribunal or the Commission or its designee.  
34

35 (B) A partnership may be represented by any of its members or a duly  
36 authorized representative. Any corporation or association may be  
37 represented by an officer or a duly authorized representative.  
38

39 (C) Any party may appear by an attorney at law or by any other individual  
40 who is qualified to represent others.  
41

42 (D) The Commission or its designee or an appeal tribunal may refuse to  
43 allow any individual to represent others in any proceeding before it if the  
44 individual acts or speaks in an unethical manner or if the individual  
45 intentionally and repeatedly fails to observe the provisions of the Act or  
46 the rules of the Agency.

- 1  
2 (4) Removing a party from a proceeding. The Commission or its designee or an  
3 appeal tribunal may, after an appropriate warning, expel from any proceeding  
4 any individuals, whether or not a party, who fail to comport themselves in a  
5 manner befitting the proceeding. The Commission or its designee or an appeal  
6 tribunal may then continue with the proceeding, hear evidence, and render a  
7 decision on the appeal.  
8  
9 (5) Appeal Information. An appeal tribunal decision sent to a party of interest, or  
10 the Commission's decision sent to a party, will include or be accompanied by a  
11 notice specifying the appeal rights of the parties, the procedure for filing  
12 further appeal, and the time period within which an appeal shall be filed.  
13  
14 (6) Retention of Decisions. Copies of decisions of the Commission and of appeal  
15 tribunals shall be kept in accordance with the approved records retention  
16 schedule.  
17

18 *The provisions of this §815.18 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
19 *amended to be effective July 28, 2008, 33 TexReg 5982*  
20

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23 **§815.19. Hearings Involving Forfeiture or Cancellation of Rights to Benefits.**  
24

25 Hearings with respect to forfeiture or cancellation of benefits and rights to benefits in  
26 situations potentially involving willful nondisclosure or misrepresentation as provided in  
27 the Act, §214.003, shall be conducted in a fair and impartial manner in accordance with  
28 the provisions of §815.15 of this chapter (relating to Parties with Appeal Rights), §815.16  
29 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of  
30 this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this  
31 chapter (relating to General Rules for Both Appeal Stages), except to the extent that the  
32 sections are clearly inapplicable.  
33

34 *The provisions of this §815.19 adopted to be effective November 6, 2000, 25 TexReg 11093*  
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38 **§815.20. Claim for Benefits.**  
39

40 An unemployed individual who has no current benefit year and who wishes to claim  
41 benefits shall report to a representative of the Agency in a manner, including telephonic,  
42 Internet, or other means, that the Agency may approve, and file a claim for benefits.  
43 Before receiving benefits a claimant shall register for work with the public employment  
44 office, including workforce centers, serving the individual's area of residence, as provided  
45 in paragraphs (3) and (7) of this section, unless exempt from the requirement.  
46

- 1 (1) In case of a mass layoff by an employer, if the last employing unit involved  
2 makes an appropriate request, the Agency may accept, in lieu of an initial  
3 claim from each individual, a list furnished by the last employer of the  
4 individuals to be laid off and who wish to file initial claims for benefits. The  
5 list shall reflect, with respect to each individual, all information normally  
6 required on the initial claim by the Agency, except the reason for separation.  
7 If the Agency approves the request, the listing then may be used by the Agency  
8 as an initial claim for each individual on the list.  
9
- 10 (2) After an individual files a valid initial claim, which establishes the claimant's  
11 benefit year, the claimant may, during the benefit year, file subsequent  
12 continued claims, weekly or biweekly, by telephonic means, facsimile (fax)  
13 transmission, mail, common carrier, Internet, or other means as the Agency  
14 may approve in writing, but at intervals of no less than seven consecutive days.  
15 A claimant shall file all claims by telephonic means, in writing, or orally,  
16 during the hours, days, and weeks directed by Agency representatives. Internet  
17 filing is available 24 hours each day. If at any time during the benefit year,  
18 more than 30 days have elapsed since the filing of the claimant's last claim, the  
19 claimant shall file an additional or reopened claim for benefits as defined in  
20 §815.1 (relating to Definitions) and shall comply with all eligibility  
21 requirements for the claims. A claimant who exhausts regular benefits may  
22 file continued claims for extended benefits as referenced in §815.26 (relating  
23 to Extended Benefit Period Announcement) in the same manner in which the  
24 claimant filed claims for regular benefits, but the claimant's claims for  
25 extended benefits may be for benefit periods subsequent to the end of the  
26 claimant's benefit year.  
27
- 28 (3) An individual who files a claim for benefits shall comply with all requirements  
29 of the public employment office in which the claimant files an application for  
30 work that are necessary to establish a valid registration for work in that public  
31 employment office. The claimant shall comply with an Agency  
32 representative's requests, whether oral or written, that are reasonably designed  
33 to inform the claimant of the claimant's rights and responsibilities in filing a  
34 claim for benefits. The claimant also shall:  
35
- 36 (A) provide evidence, upon request, to establish the claimant's correct Social  
37 Security account number;  
38
- 39 (B) file all claims in the manner directed by the Agency, whether on Agency-  
40 provided forms or by telephonic, Internet, or other means approved by  
41 the Agency for claims purposes;  
42
- 43 (C) supply all information within the claimant's knowledge, which is  
44 necessary to determine the claimant's rights to benefits under the Act;  
45

- 1 (D) sign all provided claims forms personally for the claims that are filed in  
2 person or by mail or common carrier; and  
3
- 4 (E) submit all claims filed by mail, common carrier, hand delivery, or by  
5 other means, including telephonic or Internet, as instructed by the  
6 Agency, in accordance with the terms of this section.  
7
- 8 (4) An individual may file a claim by mail, common carrier, hand delivery, or by  
9 other means as the Agency may approve, in writing in any of the following  
10 circumstances:  
11
- 12 (A) Conditions exist that make it impracticable for the Agency representative  
13 to take claims by telephonic, Internet, or other approved means; or  
14
- 15 (B) The Agency finds that the claimant has good cause for failing to file a  
16 claim by telephonic, Internet, or other approved means.  
17
- 18 (5) If a claimant's answer to a question on a claim filed with the Agency creates  
19 uncertainty about the claimant's credibility, or a lack of understanding, or the  
20 claimant's record shows that the claimant previously filed a fraudulent claim;  
21 then the claimant may be required to file written claims on an Agency-  
22 approved form in a manner prescribed by the Agency in writing. A claimant  
23 required to file a claim under this section shall continue to file the claim in the  
24 prescribed manner, until the Agency determines that the reason no longer  
25 exists and directs otherwise in writing.  
26
- 27 (6) The following provisions shall apply to the disqualification provisions of the  
28 Act, Chapter 207, Subchapter C, concerning disqualification for benefits.  
29
- 30 (A) The term "employment" in the Act, Chapter 207, Subchapter C, shall be  
31 interpreted and applied to mean employment as defined in the Act.  
32
- 33 (B) The disqualification to be imposed against an individual who has left  
34 work to move with a spouse, as provided in the Act, §207.045(c), shall  
35 be construed to mean both a benefits (money payments) and a benefit  
36 period (time period) disqualification; and such disqualification shall be  
37 restricted in its application to apply only to the range from six weeks to  
38 25 weeks.  
39
- 40 (C) Agency employees are authorized to administer oaths to claimants in an  
41 effort to verify that the requalifying requirements of the Act, Chapter  
42 207, Subchapter C, concerning employment or earnings, have been  
43 satisfied.  
44
- 45 (D) An employer identified as the employer by whom the claimant was  
46 employed, for purposes of satisfying the requalifying requirements of the

1 Act, Chapter 207, Subchapter C, shall be afforded 14 days within which  
2 to respond to notice by the Agency of the filing of an additional claim by  
3 the claimant.  
4

5 (E) In order to satisfy the requirement of the Act, Chapter 207, Subchapter C,  
6 concerning returning to employment and working for six weeks, a "work  
7 week" shall be defined as seven consecutive days during which the  
8 claimant has worked at least 30 hours.  
9

10 (F) Disqualifying separations, new benefit year, and extended benefit period.  
11

12 (i) A claimant filing an initial claim, continued claim, or additional  
13 claim shall be disqualified from receiving benefits if the separation  
14 from the claimant's last work is a disqualifying separation as defined  
15 in the Act, Chapter 207.  
16

17 (ii) If a work separation in a previous benefit year is the last separation  
18 prior to a claimant's filing an initial claim that creates a new benefit  
19 year, then that work separation may result in a disqualification in the  
20 new benefit year in accordance with the provisions of the Act,  
21 Chapter 207.  
22

23 (iii) A disqualification resulting from a work separation in a benefit year  
24 shall continue during the extended benefit period until:  
25

26 (I) the extended benefit period is terminated;  
27

28 (II) the claimant qualifies to file a new initial claim; or  
29

30 (III) the claimant requalifies in accordance with the provisions of  
31 the Act, Chapter 207, under which the disqualification was  
32 imposed.  
33

34 (7) A claimant shall be eligible to receive benefits with respect to any week only if  
35 the individual demonstrates the availability for work required by the Act,  
36 §207.021(a)(4), and, if required by §207.021(a)(8), by participating in  
37 reemployment services, including, but not limited to, job search assistance, if  
38 the claimant has been determined to be likely to exhaust regular benefits and  
39 needs reemployment services pursuant to a profiling system established by the  
40 Agency.  
41

42 (8) The following categories of claimants are exempt from the requirement to  
43 register for work:  
44

45 (A) individuals on temporary layoff with a definite date to return to work;  
46

- 1 (B) members in good standing in unions that maintain a hiring hall; and  
2  
3 (C) individuals participating in a Shared Work plan as defined in the Act,  
4 Chapter 215.  
5  
6 (9) Withholding from Benefits for Federal Income Tax.  
7  
8 (A) An individual filing a new claim for unemployment compensation shall,  
9 at the time of filing the claim, be advised that:  
10  
11 (i) unemployment compensation is subject to federal, state, and local  
12 income tax;  
13  
14 (ii) requirements exist pertaining to estimated tax payments;  
15  
16 (iii) the individual may elect to have federal income tax deducted and  
17 withheld from the individual's payment of unemployment  
18 compensation at the amount specified in the federal Internal  
19 Revenue Code; and  
20  
21 (iv) the individual shall be permitted to change a previously elected  
22 withholding status.  
23  
24 (B) Amounts deducted and withheld from unemployment compensation shall  
25 remain in the unemployment fund until transferred to the federal taxing  
26 authority as a payment of income tax.  
27  
28 (C) The Agency shall follow all procedures specified by the United States  
29 Department of Labor and the federal Internal Revenue Service pertaining  
30 to deducting and withholding of income tax.  
31  
32 (D) Amounts shall be deducted and withheld under this section only after  
33 amounts are deducted and withheld under any other provisions of the  
34 Act.  
35  
36 (10) An employer's protest to an initial, additional, or continued claim made in  
37 accordance with the Act, §208.004, may be delivered by telephonic means,  
38 which includes a verification procedure approved by the Agency in writing,  
39 mail, common carrier, facsimile (fax), Internet, or other means approved by the  
40 Agency in writing and as prescribed in the Agency's notice of claim form.  
41

42 *The provisions of this §815.20 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
43 *amended to be effective February 19, 2007, 32 TexReg 628*  
44

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46

1       **§815.21. Interstate Claims.**  
2

3       This section shall govern the Agency in its administrative cooperation with other states  
4       adopting a similar rule or regulation for the payment of benefits to interstate claimants,  
5       any provision of any other rule to the contrary notwithstanding.  
6

7       (1)   Definitions. As used in this section, the following words and terms shall have  
8       the following meanings, unless the context clearly indicates otherwise.  
9

10       (A)   Agent state--Any state from which or through which an individual files a  
11       claim for benefits from another state.  
12

13       (B)   Benefits--The compensation payable to an individual with respect to the  
14       individual's unemployment, under the unemployment insurance law of  
15       any state.  
16

17       (C)   Interstate benefit payment plan--The plan approved by the Interstate  
18       Conference of Employment Security Agencies under which benefits  
19       shall be payable to unemployed individuals absent from the state (or  
20       states) in which benefit credits have been accumulated.  
21

22       (D)   Interstate claimant--An individual who claims benefits under the  
23       unemployment insurance law of one or more liable states through the  
24       facilities of an agent state, or directly with the liable state. The term  
25       "interstate claimant" shall not include any individual who customarily  
26       commutes from a residence in an agent state to work in a liable state  
27       unless the Agency finds that this exclusion would create undue hardship  
28       on the claimants in specified areas.  
29

30       (E)   Liable state--Any state against which an individual files, through another  
31       state, a claim for benefits.  
32

33       (F)   State--Includes the District of Columbia, Puerto Rico, and the Virgin  
34       Islands.  
35

36       (G)   Week of unemployment--Includes any week of unemployment as  
37       defined in the law of the liable state from which benefits with respect to  
38       the week are claimed.  
39

40       (2)   Registration for work.  
41

42       (A)   The agent state shall register for work each claimant who files through  
43       the agent state, or upon notification of a claim filed directly with the  
44       liable state, as required by the law, regulations, and procedures of the  
45       agent state. The registration shall be accepted as meeting the registration  
46       requirements of the liable state.

1  
2 (B) Each agent state shall duly report, to the liable state in question, each  
3 interstate claimant who fails to meet the registration/re-employment  
4 assistance reporting requirements of the agent state.  
5

6 (3) Benefit rights of interstate claimants.  
7

8 (A) If a claimant files a claim against any state, and it is determined by the  
9 state that the claimant has available benefit credits in the state, then  
10 claims shall be filed only against the state as long as benefit credits are  
11 available in that state. Thereafter, the claimant may file claims against  
12 any other state in which there are available benefit credits.  
13

14 (B) For the purposes of this section, benefit credits shall be deemed to be  
15 unavailable whenever benefits have been exhausted, terminated, or  
16 postponed for an indefinite period or for the entire period in which  
17 benefits would otherwise be payable, or whenever benefits are affected  
18 by the applications of a seasonal restriction.  
19

20 (4) Claims for benefits.  
21

22 (A) Claims for benefits or waiting-period credit filed by an interstate  
23 claimant directly with the liable state shall be filed in accordance with  
24 the liable state's procedures. Claims shall be filed in accordance with the  
25 type of week in use in the agent state. Any adjustments required to fit  
26 the type of week used by the liable state shall be made by the liable state  
27 on the basis of consecutive claims filed.  
28

29 (B) Claims shall be filed in accordance with the agent state's regulations for  
30 intrastate claims in the local employment offices, affiliated sites, one-  
31 stop centers, or at an itinerant service point or by mail, common carrier  
32 or by other means, including telephonic or electronic means, as the  
33 Agency may approve.  
34

35 (i) With respect to claims for weeks of unemployment in which an  
36 individual was not working for the individual's regular employer,  
37 the liable state shall, under circumstances which it considers good  
38 cause, accept a continued claim filed up to one week or one  
39 reporting period late. If a claimant files more than one reporting  
40 period late, an initial interstate claim shall be used to begin a claim  
41 series, and no continued claim for a past period shall be accepted.  
42

43 (ii) With respect to weeks of unemployment during which an individual  
44 is attached to the individual's regular employer, the liable state shall  
45 accept any claim which is filed within the time limit applicable to  
46 the claims under the law of the agent state.

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- (5) Determination of claims.
  - (A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.
  - (B) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for re-employment assistance as required by the agent state. The agent state shall not refuse to take an interstate claim.
- (6) Appellate procedure.
  - (A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
  - (B) With respect to the time limits imposed by the law of a liable state other than Texas, upon the filing of an appeal in connection with a disputed claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's law, regulations, or policies and practices. In interstate appeals in which Texas is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the Texas Unemployment Compensation Act and current Agency policies and precedent decisions applicable to intrastate appeals.
  - (C) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.
- (7) Canadian claims. This section shall apply in all its provisions to claims taken in and for Canada.
- (8) Notification of interstate claim. The liable state shall notify the agent state of each initial claim, reopened file, claim transferred to interstate status, and each week claim filed from the agent state using uniform procedures and record format pursuant to the Interstate Benefit Payment Plan.

1        *The provisions of this §815.21 adopted to be effective November 6, 2000, 25 TexReg 11093*

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4  
5        **§815.22. Special Claim Situations.**

- 6  
7        (a) For adequate cause shown, the Agency may permit retroactive or backdated work  
8            registrations and may permit the filing of retroactive or backdated work registrations  
9            and may permit the filing of retroactive or backdated claims in order to prevent  
10           hardship or injustice. The work registrations and claims shall have the same effect as  
11           though prepared and filed on the earlier date. In the event a request for backdating a  
12           claim is approved prior to the filing of the claim, a claimant must file the backdated  
13           claim within 60 days of the date the backdating was authorized in order for the claim  
14           to be valid.  
15  
16        (b) On a finding by the executive director, or the executive director's designee, that a  
17           foreign conflict creates an emergency situation which prevents the filing of claims in  
18           accordance with all of the provisions of §815.20 of this chapter (relating to Claim for  
19           Benefits) and that the emergency is likely to continue for an extended period, the  
20           executive director may permit the filing and payment of claims not meeting all of the  
21           requirements of §815.20 of this chapter (relating to Claim for Benefits). However,  
22           those requirements may be relaxed only to the extent that the executive director finds  
23           necessary to prevent hardship or injustice that would otherwise be caused by the  
24           emergency.  
25

26        *The provisions of this §815.22 adopted to be effective November 6, 2000, 25 TexReg 11093*

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29  
30        **§815.23. Record of Work and Wages Required of Claimants.**

31  
32        An individual who has registered, in accordance with §815.20 of this chapter (relating to  
33           Claim for Benefits), for work and filed a claim shall keep an accurate record of any work  
34           which the claimant has performed during any day within a benefit period regardless of  
35           whether the work constitutes "employment" as defined in the Act. The record shall  
36           include the names and addresses of the individuals or persons for whom the claimant  
37           worked, the total remuneration earned, and the number of hours worked during the  
38           benefit period. All claimants shall provide the information at the time a continued or  
39           additional claim is filed, in the manner which the Agency may direct.  
40

41        *The provisions of this §815.23 adopted to be effective November 6, 2000, 25 TexReg 11093*

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44  
45        **§815.24. Notice of Appeal Rights.**

1 Each notice of determination which the Agency is required to furnish to the parties shall,  
2 in addition to stating the decision and its reasons, include a notice specifying the party's  
3 appeal rights. The notice of appeal rights shall state clearly the place and manner for  
4 taking an appeal from the determination and the period within which an appeal may be  
5 taken. This section does not grant appeal rights to a party that is not a party of interest.  
6

7 *The provisions of this §815.24 adopted to be effective November 6, 2000, 25 TexReg 11093*  
8

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10  
11 **§815.25. Approval of Training.**  
12

13 (a) The Agency shall approve training, if:

- 14  
15 (1) there is no longer substantial and recurring demand for the individual's skills,  
16 and the lack of employment opportunities in occupations requiring those skills  
17 is expected to continue for an extended period of time, and the individual has  
18 no other skill for which there is an expectation of reemployment in a  
19 reasonable period; and  
20  
21 (2) the training will enhance the individual's ability to secure stable employment  
22 and earning potential in an occupation for which there is substantial and  
23 recurring demand.  
24

25 (b) An individual shall be in approved training if the Agency approves the training for  
26 the individual and the individual is attending the training as shown by the following:  
27

- 28 (1) The individual and/or the training facility agrees to furnish evidence  
29 upon request of the Agency that the individual is regularly attending the  
30 training course and is satisfactorily performing assignments as a trainee;  
31 and  
32  
33 (2) The individual affirms at the time of the claim certification that the  
34 individual has attended the training course during the given training  
35 week or had good cause for the individual's failure to do so.  
36

37 (c) The funding source of the training shall not affect the approval of the training except  
38 that training under the auspices of the Workforce Investment Act; the Texas  
39 Department of Assistive and Rehabilitative Services; the Texas Department of Aging  
40 and Disability Services; federal or state veterans' services, or any other program  
41 specifically designated by the Agency shall be considered approved for the purposes  
42 of the Act §207.022.  
43

44 (d) The Agency shall not deny approval of training solely because the individual resides  
45 outside of the state. Agency staff may rely upon the recommendation of the agent  
46 state regarding whether the training is approved.

1  
2 (e) The Commission shall develop procedural guidelines for use by Agency staff and the  
3 Boards that are consistent with the requirements of this section. Procedures may  
4 include, but are not limited to:

- 5  
6 (1) using a statewide or Board-level demand or targeted occupations list to  
7 determine whether there is substantial and recurring demand for an occupation  
8 or industry; and  
9  
10 (2) using the Agency's job-matching system to assess the individual's existing  
11 skills when determining the individual's likelihood to return to an occupation  
12 or industry requiring those skills.  
13

14 *The provisions of this §815.25 adopted to be effective September 20, 2010, 35 TexReg 8504*

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17  
18 **§815.26. Extended Benefit Period Announcement.**  
19

20 When the Agency receives official notice or determines that an extended benefit period  
21 will become effective in this state, or that an extended benefit period in effect in this state  
22 will be terminated, the Agency shall make an announcement of this fact through the  
23 available news media. The announcement shall contain:

- 24  
25 (1) the beginning or ending date of the extended benefit period, whichever is  
26 appropriate;  
27  
28 (2) in the case of an extended benefit period that is about to begin, a statement of  
29 who may be potential beneficiaries of extended benefits during the extended  
30 benefit period; and  
31  
32 (3) a statement to the effect that any individual who wishes to file a claim for  
33 extended benefits shall file the claim in the same manner in which the claimant  
34 would file a claim for regular benefits, except that the claimant may file  
35 retroactive claims for extended benefits during the first 21 days after the  
36 beginning date of the extended benefit period or during the first 21 days after  
37 the date of the announcement of the extended benefit period, whichever is  
38 later.  
39

40 *The provisions of this §815.26 adopted to be effective November 6, 2000, 25 TexReg 11093*

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3

4 **§815.27. Provisions Applicable to Extended Benefits.**  
5

- 6 (a) Except where the result would be inconsistent with the purpose of the provisions for  
7 extended benefits in the Act, the terms and conditions of the Act and the rules in this  
8 chapter, which apply to claims for, and payment of, regular benefits shall apply to  
9 claims for, and payment of extended benefits, including, but not limited to:  
10  
11 (1) claim filing, claimant reporting, and registration for work;  
12  
13 (2) information to claimants;  
14  
15 (3) notices to claimants and to employers, as appropriate, including notice to  
16 claimants as to the amount and duration of extended benefits for which they  
17 qualify;  
18  
19 (4) determinations, redeterminations, appeals, and reviews;  
20  
21 (5) the week for which benefits are paid;  
22  
23 (6) ability to work, availability for work, and search for work; and  
24  
25 (7) disqualifications, except for the provisions of the Act, Chapter 209, Subchapter  
26 C, concerning failure to accept any offer of suitable work or failure to apply for  
27 any suitable work when so directed by the Agency.  
28  
29 (b) Provisions of the Act which are not applicable to payment of extended benefits are  
30 those relating to:  
31  
32 (1) the waiting period;  
33  
34 (2) monetary qualifying requirements; and  
35  
36 (3) computation of weekly and total regular benefits.

37  
38 *The provisions of this §815.27 adopted to be effective November 6, 2000, 25 TexReg 11093*  
39

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41

42 **§815.28. Work Search Requirements.**  
43

- 44 (a) Purpose. The purpose of this rule is to describe the work search requirements and  
45 process that must be met for claimants to continue to receive unemployment  
46 compensation benefits. A claimant is required to register for work, to actively seek

1 work and be available for work, as well as accept suitable work. The rule also  
2 describes the process to be utilized by Local Workforce Development Boards  
3 (Boards) when formulating the numerical weekly work search contact requirements.  
4

5 (1) A claimant shall be considered available for work during the time the claimant  
6 is making a reasonable search for suitable work as defined by this section.  
7

8 (A) Work registration alone does not establish that the claimant is making a  
9 reasonable search for suitable work.  
10

11 (B) The claimant shall make a personal and diligent search for work.  
12

13 (C) Unreasonable limitations by a claimant as to salary, hours, or conditions  
14 of work indicate that a claimant is not making a reasonable search for  
15 suitable work.  
16

17 (D) The Agency expects each claimant to act in the same manner as a  
18 prudent person who is out of work and seeking work.  
19

20 (E) This section shall not apply to:  
21

22 (i) individuals participating in a Shared Work plan, §215.041(c) of the  
23 Act;  
24

25 (ii) individuals participating in Agency approved or Trade Act training,  
26 §207.022 and §207.023 of the Act;  
27

28 (iii) individuals on temporary layoff with a definite date to return to  
29 work that is within eight weeks or less from the date of layoff;  
30

31 (iv) individuals on temporary layoff with a definite return to work date  
32 that is within eight to 12 weeks from the date of layoff, provided the  
33 exemption from work search requirements is explicitly requested in  
34 writing by the separating employer;  
35

36 (v) individuals on temporary layoff with a definite return to work date  
37 that is more than 12 weeks from the date of layoff provided that a  
38 waiver from work search requirements is requested by the  
39 separating employer and granted by the Agency Executive Director.  
40 The Executive Director's decision is subject to review in any  
41 benefits appeal where ineligibility results from the decision. The  
42 requesting employer is a party of interest to any such appeal, as  
43 described in §815.15(c)(6) of this subchapter;  
44

45 (vi) individuals who are members in good standing of a union that  
46 maintains a nondiscriminatory hiring hall, as that term is defined by

1 the Landrum-Griffin Act, and who maintain contact with and use the  
2 placement services of the hiring hall;

3  
4 (vii) individuals who perform jury service for a period of three days or  
5 longer, during the weeks in which the individual is actively  
6 performing jury service; or

7  
8 (viii) individuals who are otherwise exempted by law.

9  
10 (F) This section shall apply to all claimants unless specifically exempted,  
11 including:

12  
13 (i) recipients of state extended unemployment benefits, who are  
14 required to actively seek work under Texas Labor Code §209.043;

15  
16 (ii) recipients of federal extended unemployment benefits, except that if  
17 the legislation establishing such benefits or administrative directives  
18 for administering such benefits include work search requirements,  
19 which are in conflict with those established herein, the federal  
20 requirements or administrative directives shall apply; or

21  
22 (iii) individuals who are engaged in efforts to establish themselves in a  
23 self-employment venture.

24  
25 (2) The reasonableness of a search for work will, in part, depend upon the  
26 employment opportunities in the claimant's labor market area. A work search  
27 that may be appropriate in a labor market area with limited opportunities may  
28 be totally unacceptable in an area with greater opportunities.

29  
30 (b) General Work Search Requirements. A claimant shall make the minimum number  
31 of weekly work search contacts as required by the Agency.

32  
33 (1) The claimant will be notified of the minimum number of weekly work search  
34 contacts required.

35  
36 (2) If there is a change to the minimum weekly number of work search contacts,  
37 the claimant shall be notified of the change in writing by U.S. mail.

38  
39 (3) Claimants are required to maintain weekly work search contact logs and may  
40 be required to submit weekly work search contact logs, using an acceptable  
41 method as determined by the Agency.

42  
43 (4) The Agency shall provide to and publish guidelines for claimants describing  
44 the types of activities that may constitute a work search contact for purposes of  
45 a productive search for suitable work. Examples of such activities include, but  
46 are not limited to:

- 1  
2 (A) utilizing employment resources available at Workforce Centers that  
3 directly lead to obtaining employment, such as:  
4  
5 (i) using local labor market information;  
6  
7 (ii) identifying skills the claimant possesses that are consistent with  
8 targeted or demand occupations in the local workforce development  
9 area;  
10  
11 (iii) attending job search seminars, or other employment workshops that  
12 offer instruction in developing effective work search or interviewing  
13 techniques;  
14  
15 (iv) obtaining job postings and seeking employment for suitable  
16 positions needed by local employers;  
17  
18 (B) attending job search seminars, job clubs, or other employment workshops  
19 that offer instruction in improving individuals' skills for finding and  
20 obtaining employment;  
21  
22 (C) interviewing with potential employers, in-person or by telephone;  
23  
24 (D) registering for work with a private employment agency, placement  
25 facility of a school, or college or university if one is available to the  
26 claimant in his or her occupation or profession; and  
27  
28 (E) other work search activities as may be provided in Agency guidelines.  
29  
30 (5) Failure to comply with work search requirements, without good cause, could  
31 result in an ineligibility determination that may result in a loss of benefits.  
32  
33 (c) Number of Work Search Requirements. The minimum number of weekly contacts  
34 assigned shall be three work search contacts for all claimants, unless otherwise  
35 provided by this section.  
36  
37 (d) A Board, based on specific local labor market information and conditions, may  
38 advise the Agency that a claimant residing in the workforce area is required to make  
39 more than three work search contacts per week.  
40  
41 (e) Rural Counties. In counties designated as "rural" by the Agency the Board may  
42 reduce the minimum number of weekly work search contacts in response to specific  
43 local labor market information and conditions. "Rural" counties are defined as those  
44 counties having a population estimated by the Texas State Data Center at Texas  
45 A&M University to be not more than 10,000 as of July 1 of the most recent year for  
46 which county population estimates have been published.

1  
2 (f) Local Boards shall have the flexibility within the guidelines provided in this section  
3 to formulate the appropriate minimum number of weekly work search contacts for  
4 their respective workforce area, using appropriate guidelines to be developed in  
5 consultation with Agency staff, and shall maintain written documentation. Boards  
6 shall review the minimum number of weekly work search contacts for each  
7 workforce area at least once per year on a date to be determined by the Agency.  
8

9 (g) Local Policies. A Local Board shall develop, adopt, and modify its policies to  
10 promulgate the appropriate methodology for formulating the appropriate number of  
11 work search contacts for the workforce area in a public process consistent with the  
12 procedures required for compliance with the Texas Open Meetings Act, Texas  
13 Government Code, Chapter 551 *et seq.* A Board shall maintain written copies of the  
14 policies that are required by federal and state law or as requested by the Agency and  
15 make such policies available to the Agency and the public upon request. A Board  
16 shall also submit any modifications, amendments, or new policies to the Agency no  
17 later than two weeks after adoption of the policy by the Board.  
18

19 *The provisions of this §815.28 adopted to be effective December 8, 2003, 28 TexReg 10968;*  
20 *amended to be effective August 15, 2004, 29 TexReg 7738*  
21

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23

24 **§815.32. Timeliness.**  
25

- 26 (a) Unless otherwise specified in this chapter, appeals time frames are generally  
27 determined within these guidelines:  
28  
29 (1) as established in the Texas Unemployment Compensation Act; and  
30  
31 (2) are extended one working day following a deadline which falls on a weekend,  
32 an official state holiday, a state holiday for which minimal staffing is required,  
33 or a federal holiday.  
34  
35 (b) Presumption of receipt. A document mailed to a party is presumed to be received if  
36 the document was mailed to the complete, correct address of record unless:  
37  
38 (1) there is tangible evidence of nondelivery, such as the document being returned  
39 to the Agency by the United States Postal Service; or  
40  
41 (2) credible and persuasive evidence is submitted to the Agency to establish  
42 nondelivery, delayed delivery, or misdelivery of the document.  
43  
44 (c) Address for proper mailing.  
45

- 1 (1) For a claimant, the proper address is the address given by the claimant to the  
2 Agency subject to later changes given by the claimant to the Agency.  
3
- 4 (2) For an employer, the proper address is determined under §815.3 of this chapter  
5 (relating to Addresses) unless the employer has specifically requested a  
6 mailing address change in a protest, appeal, or other correspondence, or at a  
7 hearing.  
8
- 9 (3) For governmental employers, the group account address shall be used, if  
10 applicable.  
11
- 12 (4) Mailing of notice to a party representative, whether or not an attorney, is  
13 required to bind parties to timeliness rules.  
14
- 15 (5) If a party provides the Agency with the party's own incorrect mailing address,  
16 an Agency mailing to that address shall be a proper mailing, even if there is  
17 proof that the document was never received by the party.  
18
- 19 (6) The Agency is not responsible for effectuating an address change when it is  
20 listed in correspondence or merely listed by a party on an appeal filed in  
21 person, unless the Agency is specifically directed by the party to mail  
22 subsequent notices to the address.  
23
- 24 (7) If the Agency improperly addresses a document, the time frame for filing an  
25 appeal shall begin to run as of the actual date of receipt by the party, even if  
26 received by the party within the statutory appeal time frame. However, this  
27 subsection does not apply if the party provided an incorrect address under  
28 subsection (c)(5) of this section.  
29
- 30 (8) Addresses shall be positively verified by hearing officers, who shall also  
31 explain to parties the importance of the address being correct and the fact that  
32 subsequent appeal deadlines run from the date of mailing, not the date of  
33 receipt by the party.  
34
- 35 (d) Receipt Date.  
36
- 37 (1) Receipt date is date of receipt at the earliest of an Agency, or agent state office,  
38 or a workforce center or a Board office.  
39
- 40 (2) If an appeal is received at an agent state office or a workforce center or a  
41 Board office(s), but the appeal is not dated by the receiving entity, and is  
42 forwarded to the appeals (or interstate) processing unit and is dated by that  
43 unit, then the appeal date shall be set at three business days earlier than receipt  
44 in appeals (or interstate).  
45
- 46 (e) Appeal Date.

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- (1) The appeal date for a document received via United States Postal Service shall be the postmark date or the postal meter date (where there is only one or the other); but where there is both a postmark date and a postal meter date and they conflict, the postmark date controls.
  - (2) The date a document is delivered to a common carrier (such as Federal Express, Purolator, or other common carrier) controls as the date the appeal is perfected. (Delivery to carrier is equivalent to delivery to United States Postal Service; date of delivery to carrier is equivalent to postmark date.)
  - (3) An appeal received in an envelope bearing no legible postmark or postal meter date shall be considered to be perfected three business days before receipt by the Agency, or on the date of the document, if the document date is less than three days earlier than date of receipt.
  - (4) If the mailing envelope is lost after delivery to the Agency, appeal document date shall control. If the document is undated, appeal date shall be three business days before receipt by the Agency, subject to sworn testimony establishing an even earlier date.
  - (5) If a determination, decision or other written material provides for an appeal by fax, or in an electronic form approved by the Agency in writing, then the appeal date shall be the date and time the appeal is received by the Agency.
- (f) Sworn testimony can establish a date for an appeal being perfected, which is earlier than the dates established under subsections (d) and (e) of this section. Only in the face of extremely credible evidence shall a party be allowed to establish an appeal date earlier than a postal meter date, or the date of the document itself. When a party alleges filing an appeal which the Agency has never received, the party must present credible and persuasive testimony of timely filing corroborated by testimony of a disinterested party and/or physical evidence specifically linked to the appeal in question.
- (g) Credible and persuasive testimony subject to cross-examination establishing timeliness allows the Agency or the appeal tribunal to rule on the merits.
- (h) If a party submits an address change to the Agency during the appeal period (but after the Agency document was mailed to the old address), address change date shall control and shall be considered as the date the appeal was perfected.
- (i) Exceptions. The substantive nature of certain cases causes, or creates, exceptions to the general timeliness rules, even where notice is proper or response is clearly late.
- (1) Cases fitting into the wage credits/validity of claim category present a one-time exception to the timeliness rules. A late appeal to the appeal tribunal on

1 the issues, if within the same benefit year, shall be deemed timely. However,  
2 once a decision has been issued by the appeal tribunal, the appeal time limits in  
3 the Act, Chapter 212, shall apply.  
4

- 5 (2) In cases dealing with the imposition of fraud and forfeiture provisions of the  
6 Act, §214.003, there is a one-time exception at the appeal tribunal stage, if:  
7  
8 (A) the claimant is out of claim status; and  
9  
10 (B) if the claimant has moved.  
11
- 12 (3) In cases where there is a continuing ineligibility or condition and there is a late  
13 appeal, the appeal tribunal or the Commission can assume jurisdiction 14 days  
14 before the late appeal, and rule on the merits if the facts so warrant.  
15
- 16 (4) If a chargeback ruling is required, but is omitted, the determination or decision  
17 does not become final for the employer; it does become final for the claimant.  
18
- 19 (5) In a case where it is ultimately determined that there has been no separation  
20 from employment, all rulings are void and all rulings can be set aside at any  
21 time.  
22
- 23 (6) When there has been a ruling protecting an employer's account on a separation  
24 in one benefit year, the employer is not required to timely protest or appeal a  
25 ruling on the same separation in a subsequent year.  
26
- 27 (7) Timeliness sanctions shall not apply when an Agency representative or a  
28 representative of a Board or an agent state representative has given misleading  
29 information on appeal rights to a party, if the party:  
30  
31 (A) specifically establishes how the party was misled; or  
32  
33 (B) specifically establishes what the party was told that was misleading and,  
34 if possible, by whom the party was misled.  
35

1 (8) There is no good cause exception to the timeliness rules.

2  
3 *The provisions of this §815.32 adopted to be effective November 6, 2000, 25 TexReg 11093*

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6  
7 **SUBCHAPTER C. TAX PROVISIONS**

8  
9 **§815.101. Scope.**

10  
11 The purpose of this subchapter is to set forth the provisions governing employers'  
12 interaction with the Tax Department as provided by the Act. The rules contained in this  
13 subchapter may be applicable to an Unemployment Insurance function, except that to the  
14 extent of any conflict, the program-specific rule will govern.

15  
16 *The provisions of this §815.101 adopted to be effective November 6, 2000, 25 TexReg 11093*

17  
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19  
20 **§815.102. Mailing Dates and Use of Forms.**

21  
22 (a) Whenever an individual or an employing unit reports or applies to the Agency in  
23 writing upon an Agency form, for purposes of determining the date the writing is  
24 submitted, the following dates shall control, in the order listed:

25  
26 (1) the United States Postal Service postmark date, if legible;

27  
28 (2) the postal meter date, if legible;

29  
30 (3) a writing received in an envelope without a legible postmark or postal meter  
31 date shall be considered to have been sent three business days before receipt by  
32 the Agency, or on the date of the writing, if the date of the writing is less than  
33 three days earlier than date of receipt; or

34  
35 (4) if the mailing envelope is lost after delivery to the Agency, the date on the  
36 writing shall control. If the writing is undated, the date the writing was sent  
37 shall be three business days before receipt by the Agency, subject to sworn  
38 testimony establishing the mailing date.

39  
40 (b) The date the payment of contributions or reimbursements are received shall be  
41 determined in accordance with the provisions of this section.

42  
43 (c) If the writing was filed in an electronic form approved by the Agency in writing, the  
44 date and time stamp the transmission was received by the Agency shall establish the  
45 mailing date.

1 (d) If delivered by a common carrier (i.e., Federal Express, Purolator, or other common  
2 carrier) the receipt date shall be the date the writing is delivered to the Common  
3 Carrier.

4  
5 (e) If delivered in person, the date the writing is delivered to the Agency's Central Tax  
6 Office in Austin or any Agency Tax Office located throughout the state.

7  
8 *The provisions of this §815.102 adopted to be effective November 6, 2000, 25 TexReg 11093*

9  
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11  
12 **§815.103. Digital Signatures.**

13  
14 (a) Within this subchapter a digital signature may be used to authenticate a written  
15 electronic communication sent to the Agency if it complies with the following  
16 factors:

17  
18 (1) it is unique to the person or individual using it;

19  
20 (2) it is capable of independent verification;

21  
22 (3) it is under the sole control of the person or individual using it; and

23  
24 (4) it is transmitted in a manner that shall make it infeasible to change the data in  
25 the communication without invalidating the digital signature.

26  
27 (b) In this section, digital signature means an electronic identifier intended by the person  
28 or individual using it to have the same force and effect as the use of a manual  
29 signature.

30  
31 *The provisions of this §815.103 adopted to be effective November 6, 2000, 25 TexReg 11093*

32  
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34  
35 **§815.104. Remuneration Other than Cash.**

36  
37 (a) If any part of an individual's wages is received in any medium other than cash, the  
38 reasonable cash value of the remuneration other than cash shall be deemed for all  
39 purposes of the Act to be either:

40  
41 (1) the amount which is agreed upon between the employing unit and the  
42 individual if:

43  
44 (A) the terms of the agreement are reported to the Agency; and

45  
46 (B) the Agency determines that the agreed value or amount is reasonable; or

1  
2 (2) the cash value is established to the satisfaction of the Agency.  
3

4 (b) If the Agency determines that the amount agreed upon is unreasonable, or if the  
5 employing unit and the individual fail to agree upon an amount; or if the employing  
6 unit fails to report the terms of an agreement to the Agency, and the employing unit  
7 fails to show the cash value of the noncash remuneration prior to the due date of  
8 contributions with respect to the wages, the Agency shall fix an amount or value  
9 after considering all available information and evidence; and the amount fixed by the  
10 Agency shall be deemed for all purposes of the Act to be the cash value of the wages  
11 received in any medium other than cash.  
12

13 *The provisions of this §815.104 adopted to be effective November 6, 2000, 25 TexReg 11093*  
14

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16

17 **§815.105. Expense Reimbursements.**  
18

19 Allowances, advances of reimbursements paid to an individual in employment for  
20 traveling, and other bona fide expenses incurred or reasonably expected to be incurred in  
21 the business of the individual's employer shall not be treated as wages, provided a  
22 separate payment is made for the expenses, or specific accounting records are kept  
23 indicating the separate amounts where a single payment covers both wages and expenses  
24 combined, and provided further that the amount of payments for expenses excluded from  
25 wages shall not exceed the amount allowable as deductible expenses by income tax  
26 regulations under the United States Internal Revenue Code, 26 U.S.C.A. §62(2) and  
27 §162(a)(2).  
28

29 *The provisions of this §815.105 adopted to be effective November 6, 2000, 25 TexReg 11093*  
30

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32

33 **§815.106. Records of Employing Units.**  
34

35 (a) Each employing unit shall keep true and accurate employment and payroll records,  
36 that shall include, the name and correct address of the employing unit, and the name  
37 and address of each branch or division or establishment operated, owned, or  
38 maintained by the employing unit at different locations in Texas, and the following  
39 information for each and every individual performing services for it:  
40

41 (1) the individual's name, address, and social security number;  
42

43 (2) the dates on which the individual performed services for the employing unit  
44 and the state or states in which the services were performed;  
45

- 1 (3) the amount of wages paid to the individual for each separate payroll period,  
2 date of payment of the wages, and amounts or remuneration paid to the  
3 individual for each separate payroll period other than "wages," as defined in  
4 the Act; and  
5
- 6 (4) whether, during any payroll period the individual worked less than full time,  
7 and if so, the hours and dates worked.  
8
- 9 (b) Each employing unit shall keep, in addition to the records required by subsection (a)  
10 of this section, the records that shall establish and reflect the ownership and any  
11 changes of ownership of the employing unit, the correct address where the  
12 headquarters of the employing unit is located, and the correct mailing address of the  
13 employing unit. The records shall also show clearly the address at which the records  
14 are available for inspection or audit by representatives of the Agency. The records  
15 shall show the addresses of owners of the employing unit; or in the event the  
16 employing unit is a corporation or an unincorporated organization, the records shall  
17 show the addresses of directors, officers, and any individuals on whom subpoenas,  
18 legal processes, or citations may be served in Texas. In the event the employing unit  
19 is a member of a group account, the records shall show the address of the group  
20 representative.  
21
- 22 (c) Wages paid for services excluded from the definition of "employment" under the Act  
23 shall be separately reflected in the employing unit's records so as to show the time of  
24 the service and remuneration for the service that is separate from taxable wages.  
25 With respect to pay periods in which an individual performs services excluded from  
26 the term "employment" as well as service which is "employment," the employing  
27 unit's record shall reflect the hours spent in the excluded service and the hours spent  
28 in "employment." If any remuneration other than monetary wages is paid to or is  
29 received by an individual with respect to services performed by the individual for the  
30 employer, the record shall show the total amount of cash wages and the cash value of  
31 any other remuneration.  
32
- 33 (d) Each reimbursing employer (including the individual component members  
34 comprising a group account) shall maintain the records prescribed in this section.  
35
- 36 (e) Each governmental employer (including the independent component employers  
37 comprising the group account) shall maintain the records prescribed in this section.  
38
- 39 (f) Component members of a group account shall furnish payroll and other information  
40 necessary to the group representative for the representative to prepare consolidated  
41 reports for the group.  
42
- 43 (g) All records shall be kept and maintained as to establish clearly the correctness of all  
44 reports which the employing unit is required to file with the Agency and shall be  
45 readily accessible to authorized representatives of the Agency within the  
46 geographical boundaries of the State of Texas; and in the event the records are not

1 maintained or are not available within Texas, the employing unit shall pay to the  
2 Agency the expenses and costs incurred when a representative of the Agency is  
3 required to go outside the State of Texas to inspect or audit the employing unit's  
4 records.

5  
6 (h) Each employing unit, upon request by the Agency, shall furnish a job description of  
7 duties performed by any individual or group of individuals who are performing or  
8 have performed services for the employing unit.

9  
10 (i) The records prescribed by this subchapter and the Act shall be preserved for four  
11 years.

12  
13 *The provisions of this §815.106 adopted to be effective November 6, 2000, 25 TexReg 11093*

14  
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16  
17 **§815.107. Reports Required and Their Due Dates.**

18  
19 (a) All reports and forms required by the Agency or the Act shall be filed with the  
20 Agency in one of the following formats unless a different format is approved in  
21 writing by the Agency, a hardship exemption is requested from and granted by the  
22 Agency, or as specified in this chapter.

23  
24 (1) General Format of Reports and Forms and Methods of Submission. The  
25 reports and forms referenced in this section shall be filed using:

26  
27 (A) forms printed by the Agency;

28  
29 (B) electronic media in a format prescribed by the Agency; or

30  
31 (C) any other manner approved and prescribed by the Agency in writing.

32  
33 (2) Content. The reports and forms shall contain all facts and information  
34 necessary to a determination of the amounts due by the employing unit. The  
35 Agency may require the furnishing of additional information as it deems  
36 necessary for the proper administration of the Act.

37  
38 (3) Electronic Media Reporting.

39  
40 (A) Required Electronic Media. All employers and their agents shall file  
41 employers' reports, including both summary and detail wage information,  
42 as described in §207.004 of the Act, on electronic media using a format  
43 prescribed by the Agency.

44  
45 (B) An electronic media transmission of an employer's report may contain  
46 information from more than one employer.

1  
2 (C) An employer's report filed in an approved medium shall contain both a  
3 wage credit report and a summary report.  
4

5 (b) General Deadlines for Filing Reports and Forms.  
6

7 (1) Unless otherwise provided in this subchapter, any report or form shall be  
8 completed and filed with the Agency within 10 days after the requested report  
9 or form is:

10 (A) mailed to the individual or employing unit at the address on record with  
11 the Agency; or  
12

13 (B) personally delivered to the individual or employing unit by an Agency  
14 representative.  
15

16 (2) Failure to receive notice regarding the reports shall not relieve the individual or  
17 employing unit of the responsibility of filing the reports by the date the reports  
18 are due.  
19

20 (3) Good Cause for Extending Deadlines. When good cause is shown, the Agency  
21 may extend the due date for filing of a report required under this section;  
22 however, the extension shall be effective only if authorized in writing by an  
23 Agency representative.  
24

25 (c) Status Reports.  
26

27 (1) Status Reports in General. Each employing unit shall file with the Agency a  
28 status report within 10 days from the date upon which the employing unit  
29 becomes subject to the Act.  
30

31 (2) Status Reports for New Acquisitions. Any employing unit in the state of Texas  
32 that acquires another business or substantially all of the assets of another  
33 business shall file a new status report with the Agency within 10 days of the  
34 date on which the employing unit made the acquisition.  
35

36 (3) Status Reports for Additional Information. Each employing unit shall file  
37 additional status reports at any time upon the request of the Agency.  
38

39 (4) Evidence in Support of Status Reports. Employing units filing status reports  
40 with the Agency shall:  
41

42 (A) file with the Agency all facts necessary to a determination of the taxable  
43 status of the employing unit; and  
44  
45

1 (B) if requested, file with the Agency evidence to establish the correctness of  
2 information contained in the employing unit's status reports.  
3

4 (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a  
5 domestic employer who has elected to report and pay annually under §201.027(b) of  
6 the Act, shall file with the Agency, within the month during which contributions for  
7 any period become due, and not later than the date on which contributions are  
8 required to be paid to the Agency, an employer's quarterly report showing for the  
9 preceding calendar quarter:

- 10
- 11 (1) the total amount of remuneration paid for employment (or showing that no  
12 remuneration was paid during the quarter);
  - 13
  - 14 (2) the total amount of wages paid for employment (as defined in the Act,  
15 §201.081 and §201.082);
  - 16
  - 17 (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004)  
18 paid to each individual employee;
  - 19
  - 20 (4) the name and Social Security number of each individual to whom the wages  
21 were paid; and
  - 22
  - 23 (5) any other information requested on the employer's quarterly report, including  
24 all facts and information necessary to make a determination of the amount of  
25 contributions due.
  - 26

27 (e) Quarterly Reports from Reimbursing Employers and Group Representatives of a  
28 Group Account. Each reimbursing employer and the group representative of a group  
29 account shall file an employer's quarterly report, by the end of the month following  
30 each calendar quarter, that furnishes the following information for the preceding  
31 calendar quarter, information specified in paragraphs (1) - (4) of subsection (d) of  
32 this section, and any other information necessary to make a determination of the  
33 amount of reimbursements due.  
34

35 (f) Benefits Financed by the Federal Government. Each employer that has employees  
36 whose benefits are to be financed by the federal government shall file a separate  
37 quarterly report furnishing the names of the employees, their Social Security  
38 numbers, and the wages paid to each. The report shall be filed by the end of the  
39 month following each calendar quarter.  
40

41 (g) Annual Reports from Domestic Employers.

- 42
- 43 (1) Making the Election. An election to report wages paid and pay contributions  
44 on an annual basis must be made in a format or on a form authorized by the  
45 Agency by the deadline specified in §201.027 of the Act.  
46

1 (2) Each domestic employer that qualifies under the Act and who has made an  
2 election as referenced in paragraph (1) of this subsection, shall file with the  
3 Agency, by January 31 of the year after the wages were paid, in a format  
4 consistent with subsection (a) of this section, a domestic employer's annual  
5 report showing the following for the preceding calendar year in which wages  
6 were paid.

7  
8 (A) The information specified in paragraphs (1) - (4) of subsection (d) of this  
9 section subtotaled for each quarter; and

10  
11 (B) Other information called for on the domestic employer's annual report  
12 including all facts and information necessary to make a determination of  
13 the amount of contributions due.

14  
15 (3) Penalties and interest incurred under this section shall be the same as  
16 applicable to other employer reporting requirements as provided in Chapter  
17 213 of the Act and this subchapter.

18  
19 *The provisions of this §815.107 adopted to be effective January 28, 2002, 27 TexReg 615;*  
20 *amended to be effective February 19, 2007, 32 TexReg 628; amended to be effective January*  
21 *6, 2014, 39 TexReg 114*

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24  
25 **§815.108. Signatures on Reports and Forms.**

26  
27 (a) A report or form required by the Agency shall, if signature is called for by the report  
28 or form or instructions, be signed by:

29  
30 (1) the individual, if the person required to submit the report or form is an  
31 individual;

32  
33 (2) the president, vice-president, or other principal officer, if the employing unit  
34 required to submit the report or form is a corporation;

35  
36 (3) a partner, if the employing unit required to submit the report or form is a  
37 partnership;

38  
39 (4) a duly authorized member or officer having knowledge of its affairs, if the  
40 employing unit required to submit the report or form is an unincorporated  
41 organization;

42  
43 (5) the fiduciary, if the employing unit required to submit the report or form is a  
44 trust or estate;

- 1 (6) the head of the department (or the department head's designee) having control  
2 of the services with respect to which contributions, reimbursements, or other  
3 payments are attributable, if the employing unit required to submit the report or  
4 form is the State of Texas or a branch, department, instrumentality, or political  
5 subdivision thereof;  
6  
7 (7) the group representative, if the report or form is being submitted for a group  
8 account; or  
9  
10 (8) any individual who is authorized in writing to sign for each individual or  
11 employing unit.  
12  
13 (A) The written authority shall be: filed with the Agency; revocable by either  
14 party; and in terms which explicitly authorize the attorney or agent to  
15 transact business between the grantor of said power and the Agency. The  
16 written authority shall be filed in a manner prescribed by the Agency.  
17  
18 (B) The written authority shall be in full force and effect until it is revoked in  
19 a manner prescribed by the Agency.  
20  
21 (C) The Agency may reject any written authority that does not conform with  
22 this section.  
23  
24 (b) Nothing contained in this section shall in any way affect the power and right of any  
25 representative of the Agency to prepare and sign any reports or forms required by the  
26 Agency upon the failure or refusal of any of the individuals listed in subsection (a) of  
27 this section to do so when requested.  
28

29 *The provisions of this §815.108 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
30 *amended to be effective June 18, 2012, 37 TexReg 4431*  
31

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33

34 **§815.109. Payment of Contributions and Reimbursements.**  
35

- 36 (a) When, in any calendar year, an individual or employing unit becomes an employer  
37 (other than a reimbursing employer) subject to this Act, the employer shall, on or  
38 before the last day of the month following the month during which the employer  
39 became a subject employer, file a report as specified in §815.107 and pay  
40 contributions with respect to all completed calendar quarters in the calendar year.  
41 Contributions for the quarter during which the employer becomes a subject employer  
42 shall be due on the first day of the month immediately following the quarter and shall  
43 be paid on or before the last day of the month. Contributions shall accrue quarterly  
44 and shall become due on the first day of the month immediately following the  
45 calendar quarter. They shall be paid to the Agency on or before the last day of the

1 month. The provisions in this subsection shall apply unless otherwise provided in  
2 §201.027 of the Act.

- 3
- 4 (b) Reimbursements shall become due on the last day of the month following the end of  
5 each quarter and shall be paid to the Agency on or before the last day of the next  
6 month.
- 7
- 8 (c) When the last day for payment of contributions or reimbursements falls on a  
9 Saturday, Sunday, or a legal holiday on which the Agency office is closed, the  
10 payment may be made on the next regular business day.
- 11
- 12 (d) An employer or other entity, including agents paying on behalf of multiple  
13 employers, is required to transfer payment amounts of contributions by Commission-  
14 approved electronic means on or before the date the contributions are due, unless the  
15 Agency in writing has approved another method or form of payment. The transfers  
16 shall be subject to the provisions of Texas Government Code §404.095, and to rules  
17 adopted by the state comptroller pursuant to that section.
- 18
- 19 (e) Additional tax resulting from a chargeback adjustment is due on the first day of the  
20 second month following the month in which the Agency mailed the statement or  
21 letter notifying the employer of the change in tax rate and additional tax due.  
22 Amounts due from such chargeback adjustments shall be paid and must be received  
23 by the Agency on or before the last day of this second month.
- 24
- 25 (f) When good cause is shown, the Agency may extend the due date for the payment of  
26 contributions or reimbursements. The extension shall not be effective unless it is  
27 authorized in writing by the Agency. In the event the Agency for good cause shown  
28 extends the due date for payment of contributions or reimbursements, the payments  
29 shall be made to the Agency on or before the thirtieth day following the extended  
30 due date.
- 31
- 32 (g) An agent or other entity making a payment on behalf of employers shall furnish an  
33 allocation list on electronic media using a format prescribed by this Agency, unless  
34 the Agency has approved another format and method in writing. This list shall be  
35 furnished with the remittance, and the remittance shall be allocated to the credit of  
36 the employers according to the order in which the employers appear on the list.

37  
38 *The provisions of this §815.109 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
39 *amended to be effective January 28, 2002, 27 TexReg 615; amended to be effective August*  
40 *15, 2004, 29 TexReg 7738; amended to be effective February 19, 2007, 32 TexReg 628;*  
41 *amended to be effective January 6, 2014, 39 TexReg 114*

42  
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1       **§815.110. Transfer of Surplus Credit to Successor Employing Unit.**  
2

3       (a) An application to transfer a surplus credit described under §204.0861 of the Act shall  
4       be filed in one of the following formats:

5  
6       (1) An Agency-developed form; or

7  
8       (2) Any other manner approved or prescribed by the Agency in writing.  
9

10      (b) The form shall:

11  
12      (1) contain all facts and information necessary to transfer a surplus credit to a  
13      successor employing unit pursuant to §204.0861 of the Act; and

14  
15      (2) be signed by the predecessor and successor employing units.  
16

17      (c) The form shall be filed with the Agency before the expiration of the surplus credit.  
18

19      *The provisions of this §815.110 adopted to be effective June 18, 2012, 37 TexReg 4431*  
20

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22

23      **§815.111. Partial Transfer of Compensation Experience.**  
24

25      (a) Voluntary Partial Transfer of Compensation Experience

26  
27      (1) An application for transfer of compensation experience pursuant to §204.084  
28      of the Act shall be filed with the Agency in one of the following formats:

29  
30      (A) forms printed by the Agency;

31  
32      (B) magnetic or electronic media in a format prescribed by this Agency; or

33  
34      (C) any other manner approved and prescribed by the Agency in writing.  
35

36      (2) The application shall:

37  
38      (A) contain all facts and information and documents, including waiver,  
39      necessary to make a determination under §204.084 of the Act and in  
40      accordance with the requirements of that section; and

41  
42      (B) be accurate, complete, and signed by an authorized representative.  
43      Incomplete applications will be returned unprocessed.  
44

45      (3) An application under this section must be filed with the Agency within one  
46      year of the date the partial transfer is completed.

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46

(4) To satisfy the identifiable and segregable requirements of §204.084(c)(3):

(A) the applicants shall show that the successor employer acquired a distinct and separable part of the organization, trade, or business that is capable of operating independently and separately from the predecessor employer; and

(B) the wages attributable to the acquired part of the organization, trade, or business shall be separate and distinct from other wages of the predecessor employer and shall be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.

(b) Mandatory Partial Transfer of Compensation Experience

(1) When a partial acquisition occurs that requires transfer of compensation experience pursuant to §204.083, the employing units involved shall file with the Agency, in one of the following formats, the information necessary to determine if the conditions of §204.085(a) are met:

(A) Forms printed by the Agency;

(B) Magnetic or electronic media in a format prescribed by the Agency; or

(C) Any other manner approved and prescribed by the Agency in writing.

(2) The required submission shall:

(A) contain all facts, information, and documents necessary to make a determination under, and in accordance with, the requirements of §204.085;

(B) be accurate, complete, and signed by an authorized representative; and

(C) be filed with the Agency within one year of the date the partial transfer is completed.

(3) To satisfy the conditions of §204.085(a):

(A) the successor employer shall have acquired a distinct and separable part of the organization, trade, or business that is capable of operating independently and separately from the predecessor employer; and

(B) the wages attributable to the acquired part of the organization, trade, or business shall be separate and distinct from other wages of the

1 predecessor employer and shall be solely attributable to services  
2 provided on behalf of the acquired part of the organization, trade, or  
3 business.  
4

5 *The provisions of this §815.111 adopted to be effective October 7, 2002, 27 TexReg 9395;*  
6 *amended to be effective June 18, 2012, 37 TexReg 4431; amended to be effective April 26,*  
7 *2016, 41 TexReg 2972*  
8

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10  
11 **§815.112. Refunds to Employing Units.**  
12

13 A claim for refund or adjustment shall be made on a form supplied by the Agency or by  
14 magnetic or electronic media using a format prescribed by the Agency. All grounds and  
15 details and all facts alleged in support of the claim shall be clearly set forth. The claim  
16 shall be filed by the employing unit which paid the contributions, interest, or penalty or  
17 by a duly authorized representative thereof. In addition, the Agency may require the  
18 claim to be filed under oath.  
19

20 *The provisions of this §815.112 adopted to be effective November 6, 2000, 25 TexReg 11093*  
21

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23  
24 **§815.113. Commission Hearings Involving Coverage and Contributions or**  
25 **Reimbursements.**  
26

- 27 (a) In all situations not specifically provided for in the Act or in the rules of the Agency,  
28 a hearing may, at the discretion of the Commission, be afforded an employing unit  
29 upon its written request, in any case involving tax liability or any question relating to  
30 contributions or reimbursements. Hearings under this section shall continue to be  
31 termed Rule 13 Hearings. The written request for hearing may be filed by hand  
32 delivery, mail, common carrier, facsimile (fax) transmission, or other method  
33 approved by the Agency in writing, at a local tax office or the Texas Workforce  
34 Commission, 101 East 15th Street, Austin, Texas 78778-0001.  
35
- 36 (b) The Commission may on its own motion set a hearing to secure the facts to establish  
37 the status of any individual or employing unit under any section of the Act.  
38
- 39 (c) The Commission may designate a representative to preside over the hearing.  
40 Hearings shall be conducted by telephone conference call unless the supervisor of  
41 the hearing officers or the supervisor's designee determines that an in-person hearing  
42 is necessary. The hearings will be scheduled and, if an in-person hearing, held at a  
43 place designated by the supervisor of the hearings officers or the supervisor's  
44 designee in accordance with paragraphs (1) - (3) of this subsection and the applicable  
45 provisions in this chapter.  
46

- 1 (1) Written notice of the date and time of the hearings shall be given to the parties,  
2 and the location if it is an in-person hearing, at least 10 days before the date of  
3 the hearing; but if a setting at an earlier date is requested by an individual or  
4 employing unit, the supervisor of the hearings officers or the supervisor's  
5 designee may at the supervisor's discretion grant that request, if the granting of  
6 the request will not prejudice the rights of any other party to the proceedings,  
7 including the Agency itself. The notice shall be mailed to the parties at their  
8 last-known addresses.  
9
- 10 (2) In these proceedings before a hearings officer, all parties shall be given an  
11 opportunity for full, fair, and impartial hearing. The hearings shall be  
12 conducted in the manner deemed most suitable to ascertain the facts and to  
13 determine the rights of the parties. All testimony taken shall be under oath and  
14 subject to the right of cross-examination by any adverse party, and it shall be  
15 recorded. When necessary, the hearing officer may order the taking of  
16 depositions. The submission of written briefs, affidavits, and other written  
17 memoranda may be required.  
18
- 19 (3) A witness, whose attendance at a hearing is required, may be allowed a fee and  
20 mileage on the same basis and to the same extent as is provided for witnesses  
21 under §815.18 of this chapter (relating to General Rules for Both Appeal  
22 Stages).  
23
- 24 (d) The Commission, following each hearing, shall issue a decision, which shall resolve  
25 the questions involving tax liability or any question relating to contributions or  
26 reimbursements which arose at the hearing. Copies of written decisions of the  
27 Commission shall be furnished the parties to the hearings.  
28
- 29 (e) A decision of the Commission shall become final 30 days after the date of mailing  
30 unless, within the 30-day period, the proceeding is either reopened by a Commission  
31 order or by a party to the proceeding filing a written motion for reconsideration in  
32 accordance with the provisions of §815.17(f) of this chapter (relating to General  
33 Rules for Both Appeal Stages). The motion for reconsideration is sent to the address  
34 listed in the decision. A decision is not binding on a person who was not a party to a  
35 proceeding conducted under this section.  
36

37 *The provisions of this §815.113 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
38 *amended to be effective January 6, 2014, 39 TexReg 114*  
39

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41  
42 **§815.114. Employer Elections to Cover Multistate Workers.**  
43

- 44 (a) Scope. This section shall govern the Texas Workforce Commission in its  
45 administrative cooperation with other states subscribing to the Interstate Reciprocal  
46 Coverage Arrangement (arrangement).

- 1  
2 (b) Definitions. As used in this section, the following words and terms shall have the  
3 following meanings, unless the context clearly indicates otherwise.  
4  
5 (1) Agency--Any officer, board, the Texas Workforce Commission, or other  
6 authority charged with the administration of the unemployment compensation  
7 law of a participating jurisdiction.  
8  
9 (2) Interested jurisdiction--Any participating jurisdiction to which an election  
10 submitted under this section is sent for its approval; and "interested agency"  
11 means the agency of that jurisdiction.  
12  
13 (3) Jurisdiction--Any state of the United States, the District of Columbia, Puerto  
14 Rico, the Virgin Islands, or, with respect to the federal government the  
15 coverage of any federal unemployment compensation law.  
16  
17 (4) Participating jurisdiction--A jurisdiction whose administrative agency has  
18 subscribed to the arrangement and whose adherence thereto has not terminated.  
19  
20 (5) Services "customarily performed" by an individual in more than one  
21 jurisdiction--Services performed in more than one jurisdiction during a  
22 reasonable period, if: the nature of the services gives reasonable assurance that  
23 the services will continue to be performed in more than one jurisdiction; or the  
24 services are required or expected to be performed in more than one jurisdiction  
25 under the election.  
26  
27 (c) Submission and approval of coverage elections under the Interstate Reciprocal  
28 Coverage Arrangement.  
29  
30 (1) Any employing unit may file an election, on a form provided by the Texas  
31 Workforce Commission, to cover under the law of a single participating  
32 jurisdiction all of the services performed for the employing unit by any  
33 individual who customarily works for the employing unit in more than one  
34 participating jurisdiction.  
35  
36 (2) The employing unit's election may be filed, with respect to an individual, with  
37 any participating jurisdiction in which:  
38  
39 (A) any part of the individual's services are performed;  
40  
41 (B) the individual has a residence; or  
42  
43 (C) the employing unit maintains a place of business to which the  
44 individual's services bear a reasonable relation.  
45

- 1 (3) The agency of the elected jurisdiction (thus selected and determined) shall  
2 initially approve or disapprove the election.  
3
- 4 (4) If the agency approves the election, it shall forward a copy thereof to the  
5 agency of each other participating jurisdiction named by the election under  
6 whose unemployment compensation law the individual or individuals in  
7 question might, in the absence of the election, be covered. Each interested  
8 agency shall promptly approve or disapprove the election, and shall notify the  
9 agency of the elected jurisdiction.  
10
- 11 (5) In case its law so requires, an interested agency may, before taking an action,  
12 require from the electing employing unit satisfactory evidence that the affected  
13 employees have been notified of, and have acquiesced in, the election.  
14
- 15 (6) If the agency of the elected jurisdiction, or the agency of any interested  
16 jurisdiction, disapproves the election, the disapproving agency shall notify the  
17 elected jurisdiction and the electing employing unit of its action and of its  
18 reason therefor.  
19
- 20 (7) An election shall take effect as to the elected jurisdiction only if approved by  
21 its agency and by one or more interested agencies.  
22
- 23 (8) An election that is approved shall take effect, as to any interested agency, only  
24 if it is approved by the interested agency.  
25
- 26 (9) In case an election approved only in part, or disapproved by some of the  
27 interested agencies, the electing employing unit may withdraw its election  
28 within 10 days after being notified of the action.  
29

30 (d) Effective period of elections.

31 (1) Commencement.

32 (A) An election duly approved under this section shall become effective at  
33 the beginning of the calendar quarter in which the election was  
34 submitted, unless the election, as approved, specifies the beginning of a  
35 different calendar quarter.  
36

37 (B) If the electing unit requests an earlier effective date than the beginning of  
38 the calendar quarter in which the election is submitted, the earlier date  
39 may be approved solely as to those interested jurisdictions in which the  
40 employer had no liability to pay contributions for the earlier period in  
41 question.  
42

43 (2) Termination.  
44  
45  
46

- 1 (A) The application of an election to any individual under this section shall  
2 terminate, if the agency of the elected jurisdiction finds that the nature of  
3 the services customarily performed by the individual for the electing unit  
4 has changed, so that they are no longer customarily performed in more  
5 than one participating jurisdiction. The termination shall be effective as  
6 of the close of the calendar quarter in which notice of the finding is  
7 mailed to all parties affected.  
8
- 9 (B) Except as provided in subparagraph (A) of this paragraph, each election  
10 approved shall remain in effect through the close of the calendar year in  
11 which it is submitted, and until the close of the calendar quarter in which  
12 the electing unit gives written notice of its termination to all affected  
13 agencies.  
14
- 15 (C) Whenever an election hereunder ceases to apply to any individual, under  
16 subparagraphs (A) or (B) of this paragraph, the electing unit shall notify  
17 the affected individual accordingly.  
18

19 (e) Reports and notices by the electing unit.  
20

- 21 (1) The electing unit shall promptly notify each individual affected by its approved  
22 election on a form approved by the elected jurisdiction and shall furnish the  
23 elected agency a copy of the notice.  
24
- 25 (2) Whenever an individual covered by an election hereunder is separated from  
26 employment, the electing unit shall again notify the individual, forthwith, as to  
27 the jurisdiction under whose unemployment compensation law the individual's  
28 services have been covered. If at the time of termination the individual is not  
29 located in the elected jurisdiction, the electing unit shall notify the individual  
30 as to the procedure for filing interstate benefit claims.  
31
- 32 (3) The electing unit shall immediately report to the elected jurisdiction any  
33 change which occurs in the conditions of employment pertinent to its election,  
34 such as cases where an individual's services for the employer cease to be  
35 customarily performed in more than one participating jurisdiction or where a  
36 change in the work assigned to an individual requires the individual to perform  
37 services in a new participating jurisdiction.  
38

- 39 (f) Approval of reciprocal coverage elections. The executive director, or the executive  
40 director's designee, has the authority to approve or disapprove reciprocal coverage  
41 elections in accordance with this section.  
42

43 *The provisions of this §815.114 adopted to be effective November 6, 2000, 25 TexReg 11093*  
44

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2  
3 **§815.115. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid**  
4 **under Shipping Articles.**

5  
6 This section shall govern contribution and wage reports covering seamen and seamen's  
7 wages paid under shipping articles.

- 8  
9 (1) Pay period. For the purpose of this section, the term "pay period" established  
10 by "shipping articles" means the period of the voyage or engagement of the  
11 crew under "articles of agreement" pursuant to 46 U.S.C.A. §564.  
12  
13 (2) Current reports.  
14  
15 (A) Contribution reports and wage reports with respect to wages, including  
16 advances, allotments, and payment in kind, such as board and lodging,  
17 earned in any pay period established by "shipping articles" shall be  
18 submitted as of the calendar quarter in which any of the wages in cash  
19 were actually paid or any of the wages in kind were furnished.  
20  
21 (B) Reports on wages falling within the purview of this section need not be  
22 filed prior to the time reports regarding wages paid at the termination of  
23 the period shall be filed. However, separate reports shall in that event be  
24 filed for each calendar quarter involved during which wages in cash were  
25 paid and wages in kind were furnished.  
26  
27 (3) Special reports. The employer shall, upon request of the Agency, promptly  
28 furnish a statement of the wages of a seaman, whenever the statement is  
29 necessary in order to determine a seaman's eligibility for and rate of benefits.  
30 The statement shall be prepared and submitted in the manner the Agency may  
31 prescribe in each case.  
32

33 *The provisions of this §815.115 adopted to be effective November 6, 2000, 25 TexReg 11093*

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36  
37 **§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses.**

- 38  
39 (a) An electronic method of tracking the reporting of employees and wages will be  
40 employed by the Agency to assist in ascertaining instances of improper reporting by  
41 employers.  
42  
43 (b) To aid the Agency in this determination, upon request and as determined necessary  
44 by the Agency, employers shall provide information sufficient to enable the Agency  
45 to determine:  
46

- 1 (1) the status of the employing unit under investigation and whether the employer  
2 is liable under the Act;
- 3
- 4 (2) the proper employer of the employees reported and whether the wages are  
5 reported by the proper entity;
- 6
- 7 (3) the relationship between the predecessor or successor entity and whether a  
8 mandatory transfer of compensation experience is required under §204.083 of  
9 the Act; and
- 10
- 11 (4) the correct calculation of the tax rate assigned to the employer.
- 12

13 *The provisions of this §815.116 adopted to be effective February 19, 2007, 32 TexReg 628*

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15 **§815.117. Employing Units: Common Paymaster.**

- 16
- 17
- 18
- 19 (a) Scope. This section shall govern the Texas Workforce Commission in its  
20 administration of the Common Paymaster provisions authorized under  
21 §201.011(11) of the Act.
- 22
- 23 (b) Definitions. The following definitions shall apply to §201.011(11) of the Act:
  - 24
  - 25 (1) Common Paymaster--A Common Paymaster of a group of related  
26 corporations is any member thereof that disburses remuneration to  
27 employees of two or more of those corporations on their behalf and that  
28 is responsible for keeping books and records for the payroll with respect  
29 to those employees. The following are also incorporated into this  
30 definition:
    - 31
    - 32 (A) The Common Paymaster is not required to disburse remuneration  
33 to all the employees of those two or more related corporations, but  
34 the provisions of this section do not apply to any remuneration to  
35 an employee that is not disbursed through a Common Paymaster;
    - 36
    - 37 (B) group of related corporations may only have one Common  
38 Paymaster for the group. A group of related corporations may not  
39 be subdivided to facilitate multiple Common Paymasters; and
    - 40
    - 41 (C) When two or more related corporations concurrently employ the  
42 same individual and compensate that individual through a Common  
43 Paymaster, which is one of the related corporations for which the  
44 individual performs services, each of the corporations is considered  
45 to have paid only the remuneration it actually disburses to that

1 individual, unless the disbursing corporation fails to remit the taxes  
2 due.

3  
4 (2) Related Corporations--Two or more corporations shall be considered  
5 related corporations for an entire calendar quarter if they satisfy any of  
6 the following tests at any time during that calendar quarter:

7  
8 (A) Parent-subsidiary controlled group. The common parent  
9 corporation owns stock possessing more than 50 percent of the total  
10 combined voting power of all classes of stock entitled to vote or  
11 more than 50 percent of the total value of shares of all classes of  
12 stock of at least one of its subsidiaries, AND one or more of the  
13 corporations, common parent included, owns stock possessing  
14 more than 50 percent of the total combined voting power of all  
15 classes of stock entitled to vote or more than 50 percent of the total  
16 value of shares of all classes of stock of each of the subsidiaries;

17  
18 (B) Brother-sister controlled group. Five or fewer persons who are  
19 individuals, estates, or trusts own more than 50 percent of the total  
20 combined voting power of all classes of stock entitled to vote or  
21 more than 50 percent of the total value of all classes of stock of  
22 each corporation, taking into account the stock ownership of each  
23 person only to the extent such stock ownership is identical with  
24 respect to each such corporation;

25  
26 (C) Combined group. A group of three or more corporations if:

27  
28 (i) Each such corporation is a member of either a parent-subsidiary  
29 controlled group of corporations or a brother-sister controlled  
30 group of corporations; and

31  
32 (ii) At least one of such corporations is the common parent of a  
33 parent-subsidiary controlled group and also is a member of a  
34 brother-sister controlled group;

35  
36 (D) When a corporation that does not issue stock is involved, either:

37  
38 (i) 50 percent or more of the members of one corporation's board of  
39 directors (or other governing body) are members of the other  
40 corporation's board of directors (or other governing body); or

41  
42 (ii) The holders of 50 percent or more of the voting power to select  
43 members of one corporation's board of directors (or other  
44 governing body) are concurrently the holders of more than 50  
45 percent of that power with respect to the other corporation;

46

- (E) 50 percent or more of one corporation's officers are concurrently officers of the other corporation; or
- (F) 30 percent or more of one corporation's employees are concurrently employees of the other corporation.

(3) Concurrent Employment--means the simultaneous existence of an employment relationship between an individual and two or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations, in exchange for remuneration. The following are also incorporated into this definition:

- (A) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;
- (B) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;
- (C) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation; and
- (D) A corporation which has no employees performing services for it in Texas cannot be the Common Paymaster for Texas employees of its related corporations.

(c) Submission and approval of Common Paymaster.

- (1) Related corporations which compensate their employees through a Common Paymaster shall file with the Agency the details of their plan on a form prescribed by the Agency. The details shall include the names of the related corporations, the name of the Common Paymaster corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in subsection (b)(2) of this section and that employees are the concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.
- (2) Plans and plan amendments submitted pursuant to this rule shall be filed within the 30-day period following the end of the calendar quarter in

1 which the plan is in effect. Eligibility of an employee to be compensated  
2 through a Common Paymaster shall be determined on a quarterly basis.

3  
4 (d) Allocation of employment taxes.

- 5  
6 (1) A Common Paymaster making disbursements on behalf of related  
7 corporations to employed individuals shall be responsible for taxes,  
8 interest and penalties on all wages disbursed by it.  
9  
10 (2) If the Common Paymaster fails to remit taxes, interest and penalties on  
11 all wages disbursed by it as required:  
12  
13 (A) the Agency may hold each of the related corporations liable for a  
14 proportionate share of the obligation. Such proportionate share may  
15 be based on sales, property, corporate payroll or any other  
16 reasonable basis that reflects the distribution of services of the  
17 pertinent employees between the related corporations; or  
18  
19 (B) if there is no reasonable basis for allocating the amount owed, it  
20 shall be divided equally among the related corporations. If a related  
21 corporation fails to pay any amount allocated to it pursuant to this  
22 section, the Agency may hold any or all of the other related  
23 corporations liable for the full amount of the unpaid taxes, interest  
24 and penalties.  
25  
26 (3) A Common Paymaster is not a successor corporation pursuant to Texas  
27 Labor Code Chapter 204, Subchapter E, for concurrent employees unless  
28 the related corporation ceases operations and is acquired in its entirety by  
29 the paymaster corporation.  
30  
31 (4) Wages paid by separate employing units may not be aggregated or  
32 combined for purposes of reporting, except as provided in this rule,  
33 unless there is an actual transfer of entity and experience rating as  
34 provided by Texas Labor Code Chapter 204, Subchapter E.  
35

36 (e) Benefits.

- 37  
38 (1) For purposes of charging benefits paid and mailing notices to base year  
39 employers, the Common Paymaster shall be considered the employer for  
40 all wages disbursed to individuals by the Common Paymaster whether  
41 payment was for services performed for the Common Paymaster or for a  
42 related corporation.  
43  
44 (2) An employer seeking to establish a Common Paymaster arrangement  
45 shall designate a mailing address for benefit claim notices with the  
46 Agency per §208.003 of the Act.

1  
2 (f) Examples.  
3

4 (1) Common Paymaster. S, T, U, and V are related corporations with 2,000  
5 employees collectively. Forty of these employees are concurrently  
6 employed and perform services for S and at least one other of the related  
7 corporations, during a calendar quarter. The four corporations arrange for  
8 S to disburse remuneration to thirty of these forty employees for their  
9 services. Under these facts, S is the Common Paymaster of S, T, U, and  
10 V with respect to the thirty employees. S is not a Common Paymaster  
11 with respect to the remaining employees.  
12

13 (2) Related Corporations:  
14

15 (A) Parent-subsidiary controlled group.  
16

17 (i) P Corporation owns stock possessing 51 percent of the total  
18 combined voting power of all classes of stock entitled to vote of S  
19 Corporation. P is the common parent of a parent-subsidiary  
20 controlled group consisting of member corporations P and S.  
21

22 (ii) Assume the same facts as in clause (i) of this subparagraph.  
23 Assume further that S owns stock possessing 51 percent of the  
24 total value of shares of all classes of stock of X Corporation. P  
25 is the common parent of a parent-subsidiary controlled group  
26 consisting of member corporations P, S, and X. The result  
27 would be the same if P, rather than S, owned the X stock.  
28

29 (iii) P Corporation owns 51 percent of the only class of stock of S  
30 Corporation and S, in turn, owns 30 percent of the only class of  
31 stock of X Corporation. P also owns 51 percent of the only  
32 class of stock of Y Corporation and Y, in turn, owns 30 percent  
33 of the only class of stock of X. P is the common parent of a  
34 parent-subsidiary controlled group consisting of member  
35 corporations P, S, X, and Y.  
36

37 (B) Brother-sister controlled group. The outstanding stock of  
38 corporations X and Y, which have only one class of stock  
39 outstanding, is owned by the following unrelated individuals: A  
40 owns 40% of X and 20% of Y; B owns 10% of X and 30% of Y; C  
41 owns 30% of X and 40% of Y; D owns 20% of X; and E owns  
42 10% of Y. The result is that Corporations X and Y have 3 common  
43 owners - A, B, and C. D and E are disregarded from the brother-  
44 sister test because they don't have ownership in both companies.  
45 A, B, and C have the following Identical Ownership (the lesser of  
46 X or Y): A has 20%; B has 10%; and C has 30%. A, B, and C

1 meet the identical ownership test because their identical ownership  
2 is more than 50 percent of X and Y.

3  
4 (C) Combined group.

5  
6 (i) A, an individual, owns stock possessing 100 percent of the total  
7 combined voting power of all classes of the stock of  
8 corporations X and Y. Y, in turn, owns stock possessing 51  
9 percent of the total combined voting power of all classes of the  
10 stock of corporation Z. X, Y, and Z are members of the same  
11 combined group since X, Y, and Z are each members of either a  
12 parent-subsidiary or brother-sister controlled group of  
13 corporations AND Y is the common parent of a parent-  
14 subsidiary controlled group of corporations consisting of Y and  
15 Z, and also is a member of a brother-sister controlled group of  
16 corporations consisting of X and Y.

17  
18 (ii) Assume the same facts as in clause (i) of this subparagraph and  
19 further assume that corporation X owns 51 percent of the total  
20 value of shares of all classes of stock of corporation S. X, Y, Z,  
21 and S are members of the same combined group.

22  
23 (3) Concurrent Employment. M, N, and O are related corporations which  
24 use N as a Common Paymaster. Their respective headquarters are located  
25 in three separate cities several hundred miles apart. A is an officer of M,  
26 N, and O who performs substantial services for each corporation. A does  
27 not work a set length of time at each corporate headquarters, and when A  
28 leaves one corporate headquarters, it is not known when A will return,  
29 although it is expected that A will return. Under these facts, A is  
30 concurrently employed by the three corporations.

31  
32 *The provisions of this §815.117 adopted to be effective January 27,2020, 45 TexReg 589*

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35  
36 **§815.119. Payment of Voluntary Contributions.**

37  
38 Texas Labor Code, §204.048(a), provides that an employer that is eligible for an annual  
39 Experience Rate calculation under §204.041, Labor Code, may elect to make a voluntary  
40 payment of contributions to the agency.

41  
42 (1) The agency will notify employers eligible for an annual rate calculation under  
43 §204.041, Labor Code, of the experience tax rate for the following year and the  
44 amount of charges that were used in calculating that rate.

- 1 (2) Voluntary contribution shall be due not later than the 60th day after the date on  
2 which the commission mails the employer's annual tax rate notice. When the  
3 last day for payment of voluntary contributions falls on a Saturday, Sunday, or  
4 a legal holiday on which the agency office is closed, the payment may be made  
5 on the next regular business day.  
6
- 7 (3) The agency may extend the due date for the payment of voluntary  
8 contributions; however, the extension may not exceed 75 days from the date on  
9 which the commission mails the employer's annual rate notice. In no situation  
10 may the extension exceed the date imposed by the deadline in §204.048(e),  
11 Labor Code.  
12
- 13 (4) If the voluntary contribution payment is insufficient to cause a decrease in the  
14 tax rate, the agency will notify the employer and grant an extension, not to  
15 exceed 75 days from the date on which the commission mails the employer's  
16 annual tax rate notice to remit additional voluntary contributions, subject to the  
17 limitations imposed by §204.048(e), Labor Code.  
18

19 *The provisions of this §815.119 adopted to be effective October 27, 2003, 28 TexReg 9293*  
20

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22

23 **§815.128. Group Accounts.**  
24

- 25 (a) Two or more eligible reimbursing employers may file a joint application with the  
26 Agency for establishment of a group account on forms furnished by the Agency,  
27 upon application being filed. The application shall be filed upon a form furnished by  
28 the Agency and shall not be valid until approved by an authorized representative of  
29 the Agency in writing.  
30
- 31 (b) The application shall identify and authorize an individual to act as the group's  
32 representative. The individual shall be authorized by all members of the group to  
33 maintain records, to prepare and sign reports, to secure and furnish a surety bond for  
34 the group when directed by the Agency, to furnish information to the Agency  
35 pertaining to the group and its members, to collect and to pay all reimbursements and  
36 other amounts due to the Agency, to specify those members that have failed to  
37 submit payments due, and to assist the Agency in securing unpaid amounts due to the  
38 Agency from a member or members of the group.  
39
- 40 (c) When the group account's application has been approved by the Agency in writing,  
41 the group account shall be established and remain active for not less than two years  
42 or until terminated. Application to terminate the group account after two years shall  
43 be made by the group representative no later than December 1 to be effective at the  
44 beginning of the next calendar year.  
45

- 1 (d) At the discretion of the Agency, the group account may be terminated at the end of a  
2 calendar year for failure to: file reports accurately and timely; furnish information  
3 pertaining to the group or its members; furnish a surety bond when requested; or pay  
4 reimbursements, penalties, and other amounts due from the group.  
5
- 6 (e) Each member shall be liable for reimbursement of benefits paid and other amounts  
7 which accrue after the group account has been terminated in accordance with total  
8 wages paid by each member and by the group during the last quarter that the group  
9 account was active and in which wages were paid.  
10
- 11 (f) Addition of a new member or members to the group shall not be valid unless a joint  
12 application, approved by all members of the group, to add the member or members is  
13 filed with the Agency. The application shall be filed upon a form furnished by the  
14 Agency, upon application being made therefor, and shall be valid if approved in  
15 writing by an authorized representative of the Agency. The application shall be  
16 effective as of the beginning of the calendar quarter in which the Agency receives  
17 the application and each new member or new members of the group shall be liable  
18 for reimbursements during that and succeeding calendar quarters to the same extent  
19 as those members previously a part of the group.  
20
- 21 (g) Withdrawal of an active member or members shall be valid as of the end of a  
22 calendar quarter provided that a joint application for withdrawal of the member or  
23 members is filed with and approved by the Agency during the quarter. The  
24 remaining member or members of the group account shall be liable for  
25 reimbursements during succeeding calendar quarters for all benefits paid which are  
26 attributable to service in the employ of withdrawn members. The application shall  
27 be filed upon a form furnished by the Agency, upon application being made therefor,  
28 and shall not be valid until approved by an authorized representative of the Agency  
29 in writing. At the discretion of the Agency, the application may be denied if the  
30 group account has failed to pay all reimbursements and other amounts due to the  
31 Agency on the date that the withdrawal application is filed.  
32
- 33 (h) "Total wages paid" with respect to determining liability for amounts due by members  
34 of a group means total payment of "wages" as defined in the Act, except that the  
35 \$9,000 limitation in the Act, §201.082 shall not be applicable.  
36

37 *The provisions of this §815.128 adopted to be effective November 6, 2000, 25 TexReg 11093*  
38

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40

41 **§815.129. Surety Bond.**  
42

- 43 (a) A governmental employer, a nonprofit organization, or the group representative of a  
44 group account that elects to become liable for reimbursements shall furnish a surety  
45 bond on a form furnished or approved by the Agency within 30 days after a request

1 by the Agency for the bond is mailed to the governmental employer, nonprofit  
2 organization, or group representative.

3  
4 (b) The amount of the surety bond shall be a percentage of the projected amount of  
5 wages which would be subject to tax if the employer was an employer liable for  
6 contributions under the Act. The percentage used in determining the amount of the  
7 bond shall be equal to the maximum tax rate that any employer who is liable for  
8 contributions during the year would have to pay under the Act. The amount of  
9 taxable wages which the employer is expected to pay during the next 12 months shall  
10 be determined by the Agency after considering all available information.

11  
12 (c) The surety bond shall be executed by a licensed surety company authorized to do  
13 business in the State of Texas, and the surety bond must be approved by the Agency.

14  
15 *The provisions of this §815.129 adopted to be effective November 6, 2000, 25 TexReg 11093*

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18  
19 **§815.130. Landmen Contracts.**

20  
21 For purposes of the Act, §201.077, a contract covering services by a landman shall  
22 contain provisions which would support a finding that the landman is to be treated as an  
23 independent contractor. A statement that the landman is to be treated as an independent  
24 contractor will not be sufficient. When the Agency determines that a written contract  
25 does not accurately reflect the relationship between the parties because the landman is  
26 being treated as an employee, then this exemption will not apply.

27  
28 *The provisions of this §815.130 adopted to be effective November 6, 2000, 25 TexReg 11093*

29  
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31  
32 **§815.131. Computation of Contribution Rates.**

33  
34 (a) Computations of contribution rates under the Act, Chapter 204, will be made in  
35 accordance with work sheets that may be obtained from the Texas Workforce  
36 Commission, 101 East 15th Street, Austin, Texas 78778-0001.

37  
38 (b) In calculating the replenishment ratio and replenishment rate for a calendar year, the  
39 Agency shall determine the amount of benefits that are paid during the 12 month  
40 period ending September 30 of the preceding year that are charged to employers'  
41 accounts after the employers have reached maximum liability because of the  
42 maximum tax rate. An employer who, at the computation date at the beginning of  
43 the 12-month period, was eligible for an experience tax rate, and who had a general  
44 tax rate of 6.0% as of January 1 of the 12-month period, will be included in the  
45 calculation of benefits charged to the employers after the employers have reached  
46 maximum liability, and will be included for the entire 12-month period. Any other

1 employer with a general tax rate of 6.0% for one or more calendar quarters within  
2 the 12-month period will be included in the calculation, but only for the quarters for  
3 which the employer has a general tax rate of 6.0%. For any employer included in  
4 this calculation, the amount charged to the employer's account after the employer has  
5 reached maximum liability because of the maximum tax rate will be the amount by  
6 which the benefits charged to the employer's account exceed 6.0% of the employer's  
7 wages (as defined in the Act, §§201.081 - 201.082), with both the benefits charged  
8 and the wages being for the period for which the employer is included in the  
9 calculation as previously defined.

10  
11 *The provisions of this §815.131 adopted to be effective November 6, 2000, 25 TexReg 11093*

12  
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14  
15 **§815.132. Computation of Unemployment Obligation Assessment.**

- 16  
17 (a) Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an  
18 unemployment obligation assessment, also referred to as an assessment, from each  
19 employer eligible for an experience tax rate if, after January 1 of a year, an interest  
20 payment on an advance from the federal trust fund will be due and the estimated  
21 amount necessary to make the interest payment is not available in the obligation trust  
22 fund or available otherwise; or bond obligations are due and the amount necessary to  
23 pay in full those obligations, including bond administrative expenses, is not available  
24 in the obligation trust fund or available otherwise.  
25
- 26 (b) When the Commission determines that an assessment as referred to in the paragraph  
27 above will be due after January 1 of a year, the Commission shall compute the  
28 assessment rate using the formulas set out below in this section, before November  
29 20th of the year prior to the year of the assessment. This rate shall be published in  
30 the *Texas Register*.  
31
- 32 (c) The calculation for the unemployment obligation assessment rate is the sum of  
33 subsection (d) and (e) of this section.  
34
- 35 (d) The rate for the portion of the assessment that is to be used to pay an interest  
36 payment on federal loans shall not exceed two tenths of one percent. The rate shall  
37 be calculated by dividing two hundred percent (200%) of the additional amount  
38 estimated to be needed to pay interest due, as determined by the Agency, by the  
39 estimated total taxable wages for the 1st and 2nd quarters of the year in which the  
40 interest is due, and rounded up to the next hundredth.  
41
- 42 (e) The rate for the portion of the assessment that is to be used to pay a bond obligation  
43 is a percentage of the product of the unemployment obligation assessment ratio and  
44 the sum of the employer's prior year general tax rate, the replenishment tax rate and  
45 the deficit tax rate. The percentage, to be determined by Commission resolution,  
46 shall not exceed 200%.

- 1  
2 (1) The Unemployment Obligation Assessment Ratio is computed by:  
3  
4 (A) dividing the numerator computed under paragraph (2) of this subsection  
5 by the denominator described in paragraph (3) of this subsection; and  
6  
7 (B) rounding that result up to the next hundredth.  
8  
9 (2) The numerator is computed by adding the total principal, interest and  
10 administrative expenses on all outstanding bonds determined to be due during  
11 the next year. However, if the Commission determines that there will be  
12 excess funds available in the obligation trust fund that are not anticipated to be  
13 expended for the purposes set out in Texas Labor Code, §203.258 (2) - (4), the  
14 numerator may be reduced by the amount of that excess.  
15  
16 (3) The denominator is the amount of contributions due under the general tax rate  
17 and the replenishment tax rate for the four calendar quarters ending the  
18 preceding June 30 from employers entitled to an experience rate on the tax rate  
19 computation date.  
20

21 *The provisions of this §815.132 adopted to be effective September 15, 2003, 28 TexReg 8002*  
22

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24

25 **§815.133. Professional Employer Organizations and Temporary Help Firms.**  
26

- 27 (a) A professional employer organization licensed by the Texas Department of  
28 Licensing and Regulation under Texas Labor Code Chapter 91 shall be the employer  
29 of the workers it provides to a client. If the professional employer organization is  
30 not licensed by the Texas Department of Licensing and Regulation, then the Agency  
31 shall determine that the client is the employer.  
32  
33 (b) A temporary help firm is the employer of an individual employed by the firm as a  
34 temporary employee. As defined in the Act, §201.011(21), a temporary help firm is  
35 a person who employs individuals for the purpose of assigning those individuals to  
36 work for the clients of the temporary help firm to support or supplement a client's

1 workforce during employee absences, temporary skill shortages, seasonal workloads,  
2 special assignments and projects, and other similar work situations.

3  
4 *The provisions of this §815.133 adopted to be effective November 6, 2000, 25 TexReg 11093;*  
5 *amended to be effective January 6, 2014, 39 TexReg 114*

6  
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8  
9 **§815.134. Employment Status: Employee or Independent Contractor.**

- 10  
11 (a) Subject to specific inclusions and exceptions to employment enumerated in Chapter  
12 201 of the Act, the Agency and the Commission shall use the guidelines referenced  
13 in §821.5 of this title as the official guidelines for use in determining employment  
14 status.  
15
- 16 (b) Notwithstanding subsection (a) of this section, in Title 4, Subtitle A of the Texas  
17 Labor Code, "employment" does not include a marketplace contractor that satisfies  
18 the requirements of paragraph (2) of this subsection.  
19
- 20 (1) For purposes of this subsection:
- 21
- 22 (A) The term "digital network" means an online-enabled application or  
23 website offered by a marketplace platform for the public (including  
24 third-party individuals and entities) to use to find and contact a  
25 marketplace contractor to perform one or more needed services.  
26
- 27 (B) The term "marketplace platform" means a corporation, partnership, sole  
28 proprietorship, or other entity operating in this state that:
- 29
- 30 (i) uses a digital network to connect marketplace contractors to the  
31 public (including third-party individuals and entities) seeking the  
32 type of service or services offered by the marketplace contractors;  
33
- 34 (ii) accepts service requests from the public (including third-party  
35 individuals and entities) only through its digital network, and does  
36 not accept service requests by telephone, by facsimile, or in person  
37 at physical retail locations; and  
38
- 39 (iii) does not perform the services offered by the marketplace contractor  
40 at or from a physical business location that is operated by the  
41 platform in the state.  
42
- 43 (C) The term "marketplace contractor" or "contractor" means any individual,  
44 corporation, partnership, sole proprietorship, or other entity that enters  
45 into an agreement with a marketplace platform to use the platform's  
46 digital network to provide services to the public (including third-party

1 individuals or entities) seeking the type of service or services offered by  
2 the marketplace contractor.

3  
4 (2) A marketplace contractor shall not be treated as being in employment of the  
5 marketplace platform for the purposes of Title 4, Subtitle A of the Texas Labor  
6 Code, if in contract and in fact all of the following conditions are met:

7  
8 (A) That all or substantially all of the payment paid to the contractor shall be  
9 on a per-job or transaction basis;

10  
11 (B) The marketplace platform does not unilaterally prescribe specific hours  
12 during which the marketplace contractor must be available to accept  
13 service requests from the public (including third-party individuals or  
14 entities) submitted through the marketplace platform's digital network;

15  
16 (C) The marketplace platform does not prohibit the marketplace contractor  
17 from using a digital network offered by any other marketplace platform;

18  
19 (D) The marketplace platform does not restrict the contractor from engaging  
20 in any other occupation or business;

21  
22 (E) The marketplace contractor is free from control by the marketplace  
23 platform as to where and when the marketplace contractor works and  
24 when the marketplace contractor accesses the marketplace platform's  
25 digital network;

26  
27 (F) The marketplace contractor bears all or substantially all of the  
28 contractor's own expenses that are incurred by the contractor in  
29 performing the service or services;

30  
31 (G) The marketplace contractor is responsible for providing the necessary  
32 tools, materials, and equipment to perform the service or services;

33  
34 (H) The marketplace platform does not control the details or methods for the  
35 services performed by a marketplace contractor by requiring the  
36 marketplace contractor to follow specified instructions governing how to  
37 perform the services; and

38  
39 (I) The marketplace platform does not require the contractor to attend  
40 mandatory meetings or mandatory training.

41  
42 (3) This section shall not apply to any of the following:

43  
44 (A) Services performed in the employ of a state, or any political subdivision  
45 of the state, or in the employ of an Indian tribe, or any instrumentality of  
46 a state, any political subdivision of a state, or any Indian tribe that is

1 wholly owned by one or more states or political subdivisions or Indian  
2 tribes, but only if the services are excluded from employment as defined  
3 in the Federal Unemployment Tax Act, 26 U.S.C. §3301 - 3311, solely  
4 by reason of §3306(c)(7) of that Act.  
5

6 (B) Services performed by an individual in the employ of a religious,  
7 charitable, educational, or other organization, but only if the services are  
8 excluded from employment as defined in the Federal Unemployment  
9 Tax Act, 26 U.S.C. §§3301 - 3311, solely by reason of §3306(c)(8) of  
10 that Act.  
11

12 (C) Services performed by marketplace platforms regulated as Professional  
13 Employer Organizations and professional employer services under  
14 §§91.001(14) and (15) of the Texas Labor Code.  
15

16 (D) Services performed by temporary employees and temporary help firms as  
17 defined in §§201.011(20) and (21) of the Texas Labor Code.  
18

19 (E) Services explicitly exempted under any other state law.  
20

21 *The provisions of this §815.134 adopted to be effective February 19, 2007, 32 TexReg 628;*  
22 *amended to be effective April 29, 2019, 44 TexReg 2160*  
23

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25

26 **§815.135. Voluntary Election by Employers.**  
27

28 (a) Each employer electing coverage under Chapter 206 of the Act shall make this  
29 election in writing on an Agency-specified form or electronic equivalent.  
30

31 (b) Each employer electing to pay reimbursements for benefits, rather than  
32 contributions, shall make this election:  
33

34 (1) in writing on the Agency-specified form or electronic equivalent; and  
35

36 (2) in compliance with the requirements of Chapter 205, Subchapter A, of the Act.  
37

38 *The provisions of this §815.135 adopted to be effective February 19, 2007, 32 TexReg 628*  
39

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41

42 **§815.136. Earned Income Tax Credit.**  
43

44 This section provides information to employers on the acceptable information to be  
45 provided to employees on the federal Earned Income Tax Credit (EITC) as required by  
46 Texas Labor Code, Chapter 104. The information regarding general eligibility

1 requirements for the federal EITC in Texas Labor Code §104.002 means IRS Notice 797  
2 or a written statement that provides the same wording as IRS Notice 797.

3  
4 *The provisions of this §815.136 adopted to be effective September 20, 2010, 35 TexReg 8504*

5  
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7  
8 **SUBCHAPTER D. FARM AND RANCH LABOR**

9  
10 **§815.150. Definition of Terms.**

11  
12 The following words and terms shall apply to the Act, §§201.028, 201.047, and 204.009,  
13 concerning farm and ranch labor, and shall have the following meanings unless the  
14 statute or context clearly indicates otherwise.

- 15  
16 (1) Agricultural association--Any nonprofit or cooperative association of farmers,  
17 growers, or ranchers incorporated or qualified under state law, which recruits,  
18 solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural  
19 workers.  
20  
21 (2) Agricultural employer--Any individual who owns or operates a farm, ranch,  
22 processing establishment, cannery, gin, packing shed, or nursery or who  
23 produces or conditions seed, and who either recruits, solicits, hires, employs,  
24 furnishes, or transports any migrant or seasonal agricultural workers.  
25  
26 (3) Farm labor contracting activity--The recruiting, soliciting, hiring, employing,  
27 furnishing, or transporting of migrant or seasonal agricultural workers.  
28  
29 (4) Farm labor contractor--Any individual, other than an agricultural employer, an  
30 agricultural association, or an employee of an agricultural employer or  
31 agricultural association, who, for any money or other valuable consideration  
32 paid or promised to be paid, performs any farm labor contracting activity.  
33  
34 (5) Farm and ranch labor--Includes all services performed:  
35  
36 (A) On a farm or ranch in the employ of an individual in connection with  
37 cultivating the soil; raising or harvesting an agricultural or horticultural  
38 commodity, including the raising, shearing, feeding, caring for, training,  
39 and management of livestock, bees, poultry, and fur bearing wildlife; or  
40  
41 (B) In the employ of the owner, tenant, or other operator of a farm or ranch,  
42 in connection with the operation, management, conservation,  
43 improvement, or maintenance of such farm or ranch and its tools and  
44 equipment, if the major part of such service is performed on a farm or  
45 ranch.  
46

- 1 (6) Labor agent--An individual in Texas, who for a fee offers, attempts to procure,  
2 or procures employment for employees; or without a fee offers, attempts to  
3 procure, or procures employment for common or agricultural workers; or any  
4 individual, who for a fee attempts to procure or procures employees for an  
5 employer; or without a fee offers or attempts to procure common or  
6 agricultural workers for employers; or any individual, regardless of whether a  
7 fee is received or due, who offers, attempts to supply, or supplies the services  
8 of common or agricultural workers to any individual.  
9
- 10 (7) Migrant worker--An individual who is employed in farm or ranch labor of a  
11 seasonal or temporary nature and who is required to be absent overnight from  
12 his or her permanent place of residence, provided the individual is not a  
13 temporary nonimmigrant alien who is authorized to work in agricultural  
14 employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and  
15 §1184(c).  
16
- 17 (8) Orchard--A farm devoted primarily to the planting, cultivating, growing, or  
18 harvesting of fruits or nuts.  
19
- 20 (9) Other farm or ranch laborer--An individual employed in farm or ranch labor or  
21 who is neither a seasonal worker nor a migrant worker.  
22
- 23 (10) Seasonal worker--An individual who is employed in farm or ranch labor of a  
24 seasonal or temporary nature and is not required to be absent overnight from  
25 his or her permanent place of residence, provided the individual is not a  
26 temporary nonimmigrant alien who is authorized to work in agricultural  
27 employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and  
28 §1184(c).  
29
- 30 (11) Truck farm--A farm on which fruits, garden vegetables for human  
31 consumption, potatoes, sugar beets, or vegetable seeds are produced for  
32 market.  
33
- 34 (12) Vineyard--A farm devoted primarily to the planting, cultivating, growing, or  
35 harvesting of grapes.  
36

37 *The provisions of this §815.150 adopted to be effective February 19, 2007, 32 TexReg 628*  
38

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40

41 **SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE**  
42 **UNEMPLOYMENT COMPENSATION INFORMATION**  
43

44 **§815.161. Scope and Purpose.**  
45

- 1 (a) The purpose of this subchapter is to implement the federal regulations, 20 C.F.R.  
2 Part 603, and state law, Texas Labor Code, Chapter 301, Subchapter F, regarding the  
3 confidentiality, custody, use, preservation, and disclosure of unemployment  
4 compensation information.  
5
- 6 (b) This subchapter is limited to the confidentiality requirements in federal and state laws  
7 and regulations specifically regarding unemployment information. Other laws and  
8 regulations may impose additional limitations on the release, custody, use,  
9 preservation, and disclosure of information maintained in unemployment insurance  
10 records.  
11
- 12 (c) This subchapter does not:
- 13
- 14 (1) limit or waive any right or obligation of the Agency, party to a claim,  
15 employer, or third party to invoke limitations or confidentiality requirements  
16 based on such separate laws or regulations; or  
17
- 18 (2) address any right or obligation a party to an unemployment compensation  
19 claim may have to redisclose unemployment insurance information regarding  
20 his or her own claim or unemployment insurance tax records obtained lawfully  
21 from the Agency.  
22

23 *The provisions of this §815.161 adopted to be effective July 28, 2008, 33 TexReg 5982*  
24

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26

27 **§815.162. Definitions.**  
28

29 The following words and terms, when used in this subchapter, shall have the following  
30 meanings, unless the context clearly indicates otherwise.  
31

- 32 (1) Confidential unemployment compensation information--Unemployment  
33 compensation information in Agency records, including identifying  
34 information regarding any individual or past or present employer or employing  
35 unit, or any information that foreseeably could be combined with other  
36 publicly available information to reveal identifying information regarding the  
37 individual, employer, or employing unit.  
38
- 39 (2) Informed consent release--A written grant of authorization that meets the  
40 requirements of §815.166 of this subchapter made by an individual or  
41 employer to a third party to allow access to confidential unemployment  
42 compensation information. When a written release is impossible or  
43 impracticable to obtain, the third party may present such other form of consent  
44 as is permitted by the Agency.  
45

- 1 (3) Party--The employer or claimant to whom the confidential unemployment  
2 compensation information relates. A party includes a base period employer  
3 that has appealed a notice of chargeback regarding a specific claim. A party  
4 does not include any past or present employer or claimant who is not the  
5 subject of the particular claim, except an employer that appealed a notice of  
6 chargeback relating to an employee in the chargeback period.  
7
- 8 (4) Public official--  
9
- 10 (A) An official, agency, or public entity within the executive branch of  
11 federal, state, or local government with responsibility for administering  
12 or enforcing a law; or  
13
- 14 (B) An elected official in the federal, state, or local government.  
15
- 16 (5) Unemployment compensation information--Information in the Agency's  
17 records that pertains to the administration of the Texas Unemployment  
18 Compensation Act, including any information collected, received, developed,  
19 or maintained in the administration of unemployment compensation benefits,  
20 the unemployment compensation tax system, or the unemployment  
21 compensation benefit and tax appeal system.  
22

23 *The provisions of this §815.162 adopted to be effective July 28, 2008, 33 TexReg 5982*  
24

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26

27 **§815.163. Disclosure of Confidential Unemployment Compensation Information.**  
28

- 29 (a) The Agency shall not disclose confidential unemployment compensation information  
30 except in compliance with federal law, state law, and this subchapter.  
31
- 32 (b) Notwithstanding any other provision of this chapter, confidential unemployment  
33 compensation information shall not be disclosed if such disclosure interferes with the  
34 efficient administration of the state unemployment compensation law. In evaluating  
35 interference with efficient administration, the Agency may consider factors  
36 including, but not limited to, the burdensomeness of the request and whether the  
37 request places an employer's or individual's privacy at unacceptable risk.  
38

39 *The provisions of this §815.163 adopted to be effective July 28, 2008, 33 TexReg 5982*  
40

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42

43 **§815.164. Mandatory and Permissive Disclosures.**  
44

- 1 (a) The Agency shall disclose confidential unemployment compensation information if  
2 disclosure is necessary for the proper administration of the unemployment  
3 compensation program.  
4
- 5 (b) Disclosure necessary for the proper administration of the unemployment  
6 compensation program includes, but is not limited to, disclosure required under 20  
7 C.F.R. §603.6 and disclosure to claimants, employers, and third parties, as necessary,  
8 for purposes of unemployment administration and adjudication processes under this  
9 chapter.

10  
11 *The provisions of this §815.164 adopted to be effective July 28, 2008, 33 TexReg 5982*

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14  
15 **§815.165. Exceptions to Confidentiality Requirements.**

- 16
- 17 (a) The Agency may disclose public domain information. For purposes of this section,  
18 public domain information includes directory information about the organization of  
19 the state, the Commission, and appellate authorities, as well as the names and  
20 positions of officials and employees; information about the state unemployment  
21 compensation law (and applicable federal law), provisions, rules, regulations, and  
22 interpretations, including statements of general policy and interpretations of general  
23 applicability; and any agreement relating to the administration of the state  
24 unemployment compensation law. Commission-designated precedent case digests  
25 from which all individually identifiable information has been removed constitute  
26 public domain information. Public domain information does not include information  
27 historically excepted from disclosure under the Public Information Act, Chapter 552,  
28 Texas Government Code, including, but not limited to, attorney/client privileged  
29 information; interagency memoranda containing advice, opinion, or recommendation  
30 to policy makers or decision makers; or other items historically excepted from  
31 disclosure under the Public Information Act.  
32
- 33 (b) The Agency may disclose confidential unemployment compensation information  
34 about an individual or employer to that individual or employer, respectively, but in  
35 no event does this restrict the Agency from withholding information historically  
36 excepted from disclosure, including, but not limited to, confidential informant or  
37 attorney-client privileged information, or tax audit techniques.  
38
- 39 (c) The Agency may disclose confidential unemployment compensation information if  
40 the requestor provides a written release signed by the individual or the employer  
41 whose records are requested, and if the written release demonstrates informed  
42 consent.  
43
- 44 (d) The Agency may disclose confidential unemployment compensation information,  
45 based on informed consent, to the following:  
46

- 1 (1) An agent acting for or in the place of an individual or an employer by the  
2 authority of that individual or employer if the agent presents a written release  
3 signed by the party to be represented. If a written release is impossible or  
4 impracticable to obtain, the Agency may accept other documentation sufficient  
5 to establish informed consent.  
6
- 7 (2) An elected official performing constituent services provided the official  
8 presents reasonable evidence of authorization to obtain the information, such  
9 as a letter from the individual or employer requesting the elected official's  
10 assistance or a written record of a telephone request from the individual or  
11 employer that the individual or employer has authorized such disclosure.  
12
- 13 (3) A licensed attorney retained for purposes unrelated to the state's  
14 unemployment compensation law; if the attorney provides a written statement  
15 declaring that he or she has been retained to represent the individual or  
16 employer, the requirements of a written release will have been met. An  
17 attorney retained for purposes related to the state's unemployment  
18 compensation law may assert that he or she is representing the individual or  
19 employer, and such assertion need not be in writing.  
20
- 21 (4) A third party that is not acting as an agent, only if that entity provides the  
22 Commission with a copy of an informed consent release consistent with the  
23 requirements of §815.166 of this subchapter.  
24
- 25 (5) A third party seeking confidential information on an ongoing basis, only if that  
26 entity submits an informed consent release consistent with the requirements of  
27 §815.166 of this subchapter. This requirement applies even if the third party is  
28 an agent seeking information on an ongoing basis.  
29
- 30 (e) The Agency may disclose confidential unemployment compensation information to a  
31 public official for use in the performance of his or her official duties, including the  
32 administration or enforcement of law or execution of the official responsibilities of a  
33 federal, state, or local elected official. Administration of law includes research  
34 related to the law administered by the public official. Execution of official  
35 responsibilities does not include solicitation of contributions or expenditures to or on  
36 behalf of a candidate for public or political office or a political party.  
37
- 38 (f) The Agency may disclose confidential unemployment compensation information to a  
39 public official's agent or contractor if such disclosure is permissible under 20 C.F.R.  
40 §603.5(e) and only after evaluating the following factors:  
41
  - 42 (1) The potential threat to the employer's or individual's privacy posed by an  
43 entity's collection, storage, maintenance, use, and possible misuse of  
44 confidential unemployment compensation information;
  - 45 (2) The costs associated with such disclosure;
- 46

1  
2 (3) The agent or contractor's ability to comply with the requirements in 20 C.F.R.  
3 §603.9 regarding safeguards and security of confidential unemployment  
4 compensation information;

5  
6 (4) The costs of enforcement, including investigation and assessment of penalties  
7 for misuse of data;

8  
9 (5) The costs to develop, monitor, and maintain systems sufficient to allow audit  
10 of the information;

11  
12 (6) The personnel, travel, and equipment expenses associated with periodic  
13 monitoring and on-site audits required by 20 C.F.R. §603.10; and

14  
15 (7) Whether the disclosure is for purposes of solicitation of contributions or  
16 expenditures to or on behalf of a candidate for public or political office or a  
17 political party.

18  
19 (g) The Agency may disclose confidential unemployment compensation information to  
20 parties for purposes of claims adjudications, hearings, and appeals, consistent with  
21 this chapter.

22  
23 (h) The Agency may disclose confidential unemployment compensation information  
24 to a federal official for purposes of UC program oversight and audits, including  
25 disclosures under 20 C.F.R. Parts 29 and 601, as well as under C.F.R. Parts 96 and  
26 97.

27  
28 (i) The confidentiality requirements of this chapter do not apply to information collected  
29 exclusively for statistical purposes under a cooperative agreement with the Bureau of  
30 Labor Statistics (BLS). Further, this chapter's requirements do not restrict or impose  
31 any condition on the transfer of any other information to BLS under an agreement, or  
32 the disclosure or use of such information by BLS.

33  
34 *The provisions of this §815.165 adopted to be effective July 28, 2008, 33 TexReg 5982*

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37  
38 **§815.166. Informed Consent Release.**

39  
40 The Agency may disclose confidential unemployment compensation information upon  
41 submission of an informed consent release as set forth in this section. An informed  
42 consent release is a written release that must be signed by the individual or employer, and  
43 must specify the following:

44  
45 (1) The information to be disclosed;

- 1 (2) That the information will be obtained through access of state government files;
- 2
- 3 (3) The purpose or purposes for which the information is sought;
- 4
- 5 (4) That the information obtained under the release will be used only for that
- 6 purpose;
- 7
- 8 (5) The individuals or entities that may receive the information; and
- 9
- 10 (6) A purpose limited to assisting the individual with obtaining a service or
- 11 benefit, or meeting a federal or state law requirement for the administration or
- 12 evaluation of a public program to which the release pertains.
- 13

14 *The provisions of this §815.166 adopted to be effective July 28, 2008, 33 TexReg 5982*

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16 **§815.167. Subpoenas and Court Orders.**

17

18 The Agency may disclose confidential unemployment compensation information in

19 compliance with:

- 20 (1) a court order specifically requiring such disclosure; or
- 21
- 22 (2) a subpoena issued by a local, state, or federal official, other than a court clerk,
- 23 provided the official possesses legal authority to obtain such information by
- 24 subpoena under state or federal law.
- 25
- 26
- 27
- 28

29 *The provisions of this §815.167 adopted to be effective July 28, 2008, 33 TexReg 5982*

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31 **§815.168. Charges for Disclosure of Unemployment Compensation Information.**

- 32
- 33 (a) The Agency shall recoup the cost of providing unemployment compensation
- 34 information consistent with 20 C.F.R. §603.8. The Agency may charge actual
- 35 charges and may set standardized charges for items routinely requested.
- 36
- 37
- 38 (b) The Agency may only release unemployment compensation information for non-
- 39 unemployment compensation purposes to the following individuals if the
- 40 unemployment compensation program is reimbursed and there is a written,
- 41 enforceable confidentiality agreement:
- 42
- 43 (1) Third-party requestors;
- 44
- 45 (2) Public officials; and
- 46

- 1  
2 (3) Contractors of a public official provided the public official remains liable for  
3 the actions of the contractor.  
4

5 *The provisions of this §815.168 adopted to be effective July 28, 2008, 33 TexReg 5982*  
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9 **SUBCHAPTER F. EXTENDED BENEFITS**  
10

11 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**  
12

- 13 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is  
14 available, a week is a state "on" indicator week if:  
15  
16 (1) the average rate of total unemployment in Texas (seasonally adjusted), as  
17 determined by the US Secretary of Labor, for the period consisting of the most  
18 recent three months for which data for all states are published before the close  
19 of such week equals or exceeds 6.5 percent; and  
20  
21 (2) the average rate of total unemployment in Texas (seasonally adjusted), as  
22 determined by the US Secretary of Labor, for the three-month period referred  
23 to in paragraph (1) of this subsection, equals or exceeds 110 percent of such  
24 average rate for either, or both, of the corresponding three-month periods  
25 ending in the two preceding calendar years.  
26  
27 (b) There is a state "off" indicator for a week if either the requirements of subsection  
28 (a)(1) or (a)(2) of this section are not satisfied.  
29  
30 (c) Notwithstanding this section, any week for which there would otherwise be a state  
31 "on" indicator under §209.022 of the Act, shall continue to be such a week and shall  
32 not be determined to be a week for which there is a state "off" indicator.  
33

34 *The provisions of this §815.170 adopted to be effective November 2, 2009, 34 TexReg 7655;*  
35 *amended to be effective May 2, 2011, 36 TexReg 2735; amended to be effective October 12,*  
36 *2020, 45 TexReg 7273*  
37

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39

40 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**  
41

- 42 (a) If the conditions under §815.170(a) of this subchapter are met, and the average rate  
43 of total unemployment equals or exceeds 8 percent, a high unemployment period  
44 shall exist.  
45

- 1 (b) Effective with respect to weeks beginning in a high unemployment period, the total  
2 extended benefit amount payable to an eligible claimant for the claimant's eligibility  
3 period is the lesser of:  
4
- 5 (1) 80 percent of the total amount of regular compensation payable to the claimant  
6 during the claimant's benefit year under the Act;  
7
- 8 (2) 20 times the claimant's average weekly benefit amount; or  
9
- 10 (3) 46 times the claimant's average weekly benefit amount, reduced by the regular  
11 compensation paid, during the claimant's benefit year under the Act.  
12
- 13 (c) Pursuant to §209.025 of the Act, if the full federal funding for Extended Benefits  
14 provides for an additional extended benefit amount payable to an eligible claimant in  
15 excess of that provided for in subsection (b) of this section, that amount shall be the  
16 total extended benefit amount.  
17

18 *The provisions of this §815.171 adopted to be effective November 2, 2009, 34 TexReg 7655;*  
19 *amended to be effective May 2, 2011, 36 TexReg 2735; amended to be effective October 12,*  
20 *2020, 45 TexReg 7273*  
21

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23

24 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**  
25

26 The Agency may pay unemployment compensation benefits under other emergency  
27 unemployment compensation programs that may be in effect prior to paying Extended  
28 Benefits under this subchapter.  
29

30 *The provisions of this §815.172 adopted to be effective November 2, 2009, 34 TexReg 7655;*  
31 *amended to be effective October 12, 2020, 45 TexReg 7273*  
32

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34

35 **§815.174. Financing of Extended Benefits.**  
36

- 37 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is  
38 available, the provisions of §209.082, Charges to Reimbursing Employer, and  
39 §209.083, Charges to Taxed Employer, of the Act shall not apply.  
40
- 41 (b) The provisions of §209.084, Charges to Governmental Employer, and §209.0845,  
42 Charges to Indian Tribe, of the Act shall continue to apply.  
43

44 *The provisions of this §815.174 adopted to be effective November 2, 2009, 34 TexReg 7655;*  
45 *amended to be effective October 12, 2020, 45 TexReg 7273*  
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2  
3 **SUBCHAPTER G. CARES ACT PROVISIONS**

4  
5 **§815.180. Definitions.**

6  
7 The following definitions shall apply to this subchapter:

- 8  
9 (1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security  
10 Act, Public Law 116 - 136; TITLE II--Assistance for American Workers,  
11 Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.  
12  
13 (2) FPUC--refers to the Federal Pandemic Unemployment Compensation  
14 provisions of §2104 of the CARES Act.  
15  
16 (3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of  
17 §2105 of the CARES Act.  
18  
19 (4) PEUC--refers to the Pandemic Emergency Unemployment Compensation  
20 provisions of §2107 of the CARES Act.  
21  
22 (5) PUA--refers to the Pandemic Unemployment Assistance provisions of §2102  
23 of the CARES Act.  
24

25 *The provisions of this §815.180 adopted to be effective October 12, 2020, 45 TexReg 7273*

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28  
29 **§815.181. Coordination of CARES Act Programs.**

- 30  
31 (a) For a claimant who is eligible for regular compensation, including Unemployment  
32 Compensation for Federal Employees (UCFE) and Unemployment Compensation  
33 for Ex-servicemembers (UCX), the following order of payment applies:  
34  
35 (1) The claimant must first apply for and receive regular compensation. The  
36 amount and duration of these benefits are as defined by the Act;  
37  
38 (2) if the claimant exhausts regular compensation, the claimant may then be  
39 eligible to receive PEUC;  
40  
41 (3) if the claimant exhausts PEUC and the state has "triggered on" to Extended  
42 Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible  
43 to receive EB;  
44  
45 (4) if the State is not "triggered on" to EB or the claimant exhausts EB, the  
46 claimant may then be eligible to receive PUA. If the State "triggers on" to EB

1 during the period in which the claimant is collecting PUA and the claimant has  
2 not previously exhausted entitlement to EB for the respective benefit year, then  
3 the claimant must stop collecting PUA and file for EB; and  
4

5 (5) if the claimant meets the qualifications to receive Trade Readjustment  
6 Allowances (TRA), such benefits will be payable after regular compensation,  
7 PEUC, and EB if "triggered on", but prior to PUA.  
8

9 (b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA,  
10 and who meets the federal requirements, the claimant may be eligible to collect  
11 PUA.  
12

13 (c) FPUC provides for additional compensation to a claimant collecting regular  
14 compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the  
15 Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive  
16 FPUC payments concurrently with payments under these programs. This applies for  
17 the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020  
18 unless subsequently amended by federal law.  
19

20 *The provisions of this §815.181 adopted to be effective October 12, 2020, 45 TexReg 7273*  
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23

24 **§815.182. Appeals.**  
25

26 (a) A claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination  
27 pursuant to the provisions and timeframes of Chapter 212 of the Act and the  
28 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals  
29 from Determinations), §815.17 of this chapter (relating to Appeals to the  
30 Commission from Decisions), and §815.18 of this chapter (relating to General Rules  
31 for Both Appeal Stages).  
32

33 (b) An employer is not a "party of interest", pursuant to §815.15(c) of this chapter  
34 (relating to Parties with Appeal Rights), to a FPUC, FRWW, PEUC, or PUA  
35 determination and therefore does not have appeal rights. An employer may appear at  
36 a FPUC, FRWW, PEUC, or PUA hearing to offer evidence when appropriate.  
37

38 (c) When considering an appeal involving FPUC, the Appeal Tribunal and Commission  
39 shall look to the merits of the denial of the underlying benefit when determining  
40 eligibility for FPUC payments.  
41

42 *The provisions of this §815.182 adopted to be effective October 12, 2020, 45 TexReg 7273*  
43

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45

46 **§815.183. Waiver.**

- 1  
2 (a) FPUC, the FRWW, and PEUC are federal extended unemployment compensation  
3 programs and therefore subject to §815.12 of this chapter (relating to Waiver of  
4 Repayment and Recovery of Federal Extended Unemployment Compensation  
5 Overpayments).  
6  
7 (b) PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment  
8 Assistance programs regulated under Title 20, Part 625, Code of Federal  
9 Regulations. Therefore, PUA does not constitute a federal extended unemployment  
10 compensation program and the waiver provisions of §815.12 of this chapter do not  
11 apply.  
12

13 *The provisions of this §815.183 adopted to be effective October 12, 2020, 45 TexReg 7273*

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16  
17 **§815.184. Overpayments.**

- 18  
19 (a) Unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is  
20 waived, the Agency shall, during the three-year period after the date the claimant  
21 received the payment of FPUC, FRWW, or PEUC to which the claimant was not  
22 entitled, recover the overpayment by deductions from any sums payable to the  
23 claimant. No single deduction may exceed 50 percent of the amount otherwise  
24 payable to the claimant.  
25  
26 (b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the  
27 overpayment by deductions from any sums payable to the claimant. A PUA  
28 overpayment may not be waived per §815.183(b) of this chapter and is not subject to  
29 the three-year period limitation stated in subsection(a) of this section. No single  
30 deduction may exceed 50 percent of the amount otherwise payable to the claimant.  
31  
32 (c) If a claimant has an unemployment benefits overpayment with an appropriate agency  
33 in another state, and the Agency has a reciprocal arrangement with that other state  
34 agency under §211.004 of the Act, the Agency shall deduct 50 percent per each  
35 single deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable  
36 to the claimant.  
37

38 *The provisions of this §815.184 adopted to be effective October 12, 2020, 45 TexReg 7273*

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41  
42 **§815.185. Fraud.**

- 43  
44 (a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not  
45 apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.  
46

1 (b) The Agency and the Commission shall examine the underlying payment or statement  
2 which precipitated the fraud determination when examining FPUC fraud.

3  
4 (c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R.  
5 §625.14(i) shall apply.

6  
7 *The provisions of this §815.185 adopted to be effective October 12, 2020, 45 TexReg 7273*

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