

CHAPTER 815. UNEMPLOYMENT INSURANCE

EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **JULY 21, 2009**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date in the *Texas Register*: **August 7, 2009**

The rules take effect: **July 21, 2009**

The Texas Workforce Commission (Commission) adopts on an emergency basis the following new subchapter to Chapter 815 relating to Unemployment Insurance:

Subchapter F. Extended Benefits, §§815.170–815.174

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

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

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

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. EXTENDED BENEFITS

The Commission adopts on an emergency basis new Subchapter F, as follows:

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

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

There are two methods under which a state may trigger on to an extended benefit period:

- (1) a specified threshold under the Insured Unemployment Rate (IUR) methodology; and
- (2) a specified threshold under the Total Unemployment Rate (TUR) methodology.

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

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

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

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

§815.172. Concurrent Emergency Unemployment Compensation Programs

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

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits

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

§815.174. Financing of Extended Benefits

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

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

These rules are adopted on an emergency basis pursuant to:

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

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

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

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

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

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

Chapter 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER F. EXTENDED BENEFITS

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

- (a) In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009, a week is a state "on" indicator week if:
- (1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and
 - (2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.
- (b) In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) of this section result in an "on" indicator.
- (c) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(c) of such law.

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

- (a) If the conditions under §815.170(a) of this subchapter are met except that the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.
- (b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual for the individual's eligibility period is 80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.
- (c) This section applies as long as §815.170 of this subchapter is in effect.

§815.172. Concurrent Emergency Unemployment Compensation Programs.

The Agency shall pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying extended benefits under this subchapter.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

- (a) Notwithstanding other eligibility provisions for extended benefits in the Act, an individual's eligibility period shall include any eligibility period provided for in P.L. 111-5, Division B, Title II, §2005(b).
- (b) This section applies as long as §815.170 of this subchapter is in effect.

§815.174. Financing of Extended Benefits.

- (a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act relating to taxed employers shall not apply.
- (b) The provisions of §209.084, regarding Charges to Governmental Employer, and §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.
- (c) This section applies as long as §815.170 of this subchapter is in effect.