

ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

SECTION 815.28 WORK SEARCH REQUIREMENTS

The Texas Workforce Commission (Commission) adopts the repeal of §815.28, Work Search Requirements, to Chapter 815, Unemployment Insurance, Subchapter B, Benefits, Claims and Appeals, without changes as proposed in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8304) and new §815.28 with changes.

The adoption document is organized into four parts:

Part I. Purpose and Background.

Part II. Comment Summaries and Responses.

Part III. Repeal.

Part IV. New Rule.

Part I. Purpose and Background.

A. Purpose. The purpose of the adopted rule is to set forth work search requirements for unemployment insurance claimants (claimants) and the process by which Local Workforce Development Boards (Boards) formulate the minimum number of weekly work search contacts a claimant must perform to continue to be eligible for unemployment benefits.

B. Background: Under Section 207.021, Texas Labor Code, claimants must perform certain activities to receive unemployment insurance benefits, including:

- (1) register for work at a Texas Workforce Center, and
- (2) demonstrate the ability to work and to be available for work.

Consistent with Texas Unemployment Compensation Act, contained in Chapters 201 - 215, Texas Labor Code, demonstration by a claimant of ability to work and availability for work includes providing documentation that the claimant is actively seeking work.

A primary goal of the Commission is to encourage claimants to obtain suitable work at the earliest possible opportunity. The rapid reattachment to the workforce by claimants accomplishes several results. First, employers are able to access the available workers at the earliest possible opportunity and second, claimants are no longer dependent upon unemployment insurance benefits. Reattaching claimants to the workforce at the earliest opportunity also results in a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity.

1. Stronger Links with Boards and Local Labor Market Information. This rule represents the integration of the Unemployment Compensation function and the Boards.

The Boards, through the Workforce Centers, provide claimants with solutions to assist claimants with reattachment to the workforce.

2. Registering for Work. When filing a claim for unemployment insurance benefits, each claimant is instructed to register for Wagner-Peyser work services as required by statute. The claimants are informed that as part of the eligibility requirements to receive unemployment insurance benefits, they must have a work registration on file within seven days of filing an initial claim, and that they may register for work via either the Texas Workforce Commission job matching website or by contacting the Workforce Center nearest the claimant's place of residence. The Commission mails to each claimant immediately after the claimant has filed for unemployment compensation an information packet which includes the name, location and phone number of the nearest Workforce Center.

3. Number of Work Search Contacts. The Commission expects that each claimant should act in the same manner as a reasonably prudent person who is out of work and seeking work. The Commission has determined that to demonstrate that he/she is actively seeking work, a claimant must make at least three weekly work search contacts. The previous minimum number was at least two weekly work search contacts.

The Commission recognizes that the new work search requirement represents an increase over the previous minimum requirement, and that the minimum weekly work search requirement in other states with such a requirement generally ranges from one to three contacts per week. The minimum requirement of three contacts per week therefore places Texas on the leading edge in support of a renewed emphasis on work search for continuing eligibility for unemployment compensation.

Many claimants might make far more than three contacts per week, but the Commission has determined that three contacts per week is the minimum acceptable level for most workforce areas of the state. The Commission has further determined that it may be appropriate to require more than three contacts per week, depending upon local labor market conditions as determined by the Boards. The Commission has also concluded that a review of the assigned number of contacts for each workforce area should be conducted by the Board at least once per year because of potential changes in the economy.

The Commission has determined that the Boards, rather than the Commission, are more knowledgeable about local labor market information and are thus in a better position to set the appropriate minimum number of weekly work search contacts for claimants residing in the applicable workforce area. The rule creates flexibility for Boards to change the minimum required number of weekly work search contacts under certain circumstances. The rule describes the procedure a Board shall use when establishing a number of weekly work search contacts that a claimant residing in its respective workforce area must make in order for the claimant to maintain eligibility for benefits.

In providing for the Boards to set the minimum number of weekly work search contacts, the Commission recognizes that individuals residing in rural counties throughout the state

may have less opportunity to meet work search contact requirements. For that reason, the Commission determined that a reduction in the minimum number of weekly work search contacts may be appropriate for rural counties based on specific local labor market information and conditions. The Commission has determined that it is appropriate to give Boards with rural counties the discretion to consider a reduction in the work search requirement for the rural counties in their workforce areas if local workforce conditions warrant. The Commission defined rural counties on the basis of objective population data, and determined that a county population of not more than 10,000 on July 1 of each year is a clear and justifiable measurement to use.

4. Examples of Work Search Activities. The rule also includes clarification of what constitutes a productive work search by providing examples of productive work search activities. The Commission has determined that to hasten their return to work, claimants will benefit from additional guidance regarding what constitutes a productive work search. The rule now provides several examples of productive work search activities. These activities are examples of the types of activities that the Commission has determined will assist a claimant in obtaining employment.

5. Documentation of Work Search. The Commission continues to stress the importance of work search in instructions to claimants, and they are told to keep a log documenting their weekly work search activities.. Work search log forms are mailed to claimants with benefit warrants. Claimants may also obtain log forms from the Commission web page at <http://www.twc.state.tx.us/ui/bnfts/worksearchlog.html>. In addition, other information is also provided on how to search for work on the Commission web page at <http://www.twc.state.tx.us/ui/bnfts/claimantinfo.html>.

6. Enforcement and Accountability. Regarding the requirement to register for work, verification of compliance with work registration is automated between the unemployment insurance process and the Job Service Matching System, and claimants who do not register for work may be held ineligible for benefits.

Regarding the work search requirement, enforcement includes the Commission requiring claimants to present the work search logs upon request at any time during the benefit year in which the claimant is eligible for benefits. The Commission also verifies the work search of the claimants using random sampling that has been found statistically valid as an enforcement tool. Failure of claimants to maintain work search logs may result in loss of benefits.

7. Coordination Activities. Prior to proposing this new rule, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors, and the Workforce Leadership of Texas (WLT) Policy Committee.

Part II. Comment Summaries and Responses.

The Commission received comments on the rule during the comment period from the following: the Coastal Bend Workforce Development Board and the Texas AFL-CIO.

One commenter disagreed with the rule and one commenter disagreed with one provision within the rule. A summary of the comments and responses to the comments are as follows:

Comment: Two commenters focused on the 10,000 population threshold for designating what constitutes a rural county. The commenters requested that the threshold should be established at the local level.

Response: The Commission has determined, as discussed in Part I.3 of the Preamble, that claimants are more likely to obtain reemployment faster if they make more work search contacts each week. However, in some rural counties with populations less than 10,000, employment opportunities may be limited, especially during an economic downturn. Accordingly, the rule provides Boards with the ability to reduce weekly work search contacts in rural counties when local conditions warrant a reduction. The 10,000 threshold for designating a rural county was determined by the Commission after careful consideration of population data. For these reasons, the Commission sees no need to change the rule.

Comment: One commenter suggested that, in light of the poor unemployment outlook, increasing claimants' weekly numerical work search requirements from the current two-contact per week requirement places an unnecessary burden on claimants.

Response: The Commission has concluded that rapid reemployment, especially during difficult times, requires a greater commitment on the part of claimants to the active work search requirements for Unemployment Compensation eligibility. The Commission has sought to avoid producing an unnecessary burden on claimants by creating a flexible concept for productive work search activities in the new provision. This issue is also discussed throughout Part I of the Preamble. The Commission disagrees that a change in the rule is necessary.

Comment: One commenter suggested that increasing weekly numerical work search requirements will also place an increased burden on employers to handle and keep records of "meaningless" work search contacts.

Response: The rule does not include any recordkeeping requirement for employers. In addition, the rule seeks to minimize the burden on employers by emphasizing that the claimant's work search should be a productive one, focusing on contacts which are likely to result in reemployment. The Commission, therefore, disagrees that a change in the rule is needed.

Comment: One commenter suggested that the resources devoted to enforcing work search requirements could be better spent by redoubling efforts to move people into meaningful work situations.

Response: The Workforce Network has increased its efforts and the resources it invests to move people into meaningful work situations. The Network has established new,

aggressive efficiency measures for Boards placing claimants into suitable work, improved job matching systems, placed increasingly greater emphasis on developing job listings, and has improved claimants' job readiness through workshops and retraining opportunities. Moreover, TWC's fundamental mission is to support a healthy and vibrant state economy by improving the economic well-being and self-sufficiency of Texans. In the Commission's view, encouraging claimants to actively search for work is completely consistent with these efforts. The Commission also believes that the resources devoted to implementation of this rule are appropriate. For these reasons, the rule does not need to be modified.

Comment: One commenter noted that the Legislature has rejected plans to codify similar work search rules into statute, and suggested that the previous version of this rule adequately addressed the Legislature's intent.

Response: The Commission considers that the agency's charge from the Legislature is to implement rules that enforce the statutory eligibility requirements for Unemployment Compensation, including requirements that claimants be able, available, and actively seeking work. Therefore, no modification to the rule is needed.

Comment: One commenter questioned whether the rule changes are consistent with prior actions by the Commission that were based on a cost benefit analysis relating to verifying work search contacts.

Response: The Commission has performed a cost benefit analysis regarding the verification of work search activities by all claimants. The rule, however, does not address the issue of verification methods. Rather, it clarifies what constitutes a sufficient number of work search contacts in a way that reflects local labor market conditions.

Although no changes were made in response to comments, statutory and rule exemptions to the work search requirement are being added to the rule for clarification. Specifically, the Commission has clarified the classification of individuals who are exempt: individuals participating in a Shared Work plan, §215.041(c), Texas Labor Code; individuals participating in Agency approved or Trade Act training, §207.022 and §207.023, Texas Labor Code; individuals who are otherwise exempted by law.

For consistency, the following terms were referenced in the same manner throughout the rule: "Local Workforce Development Boards," "workforce areas," and "minimum number of weekly work search contacts." Also, non-substantive changes were made to subsections (d) through (g) of this rule to clarify whether it is the Board or the Agency that is responsible for the provision.

Part III. Repeal.

The repeal is adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 207.001, Texas Labor Code, which provides that benefits are paid through the Commission in accordance with rules adopted by the Commission and are due and payable under this subtitle only to the extent provided by subtitle A; and

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

The adopted repeal affects Texas Labor Code, Title 4.

SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS

§815.28. Work Search Requirements.

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Part IV. New Rule.

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 207.001, Texas Labor Code, which provides that benefits are paid through the Commission in accordance with rules adopted by the Commission and are due and payable under this subtitle only to the extent provided by subtitle A; and

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

The adopted new rule affects Texas Labor Code, Title 4.

§815.28. Work Search Requirements.

- (a) Purpose. The purpose of this rule is to describe the work search requirements and process that must be met for claimants to continue to receive unemployment compensation benefits. A claimant is required to register for work, to actively seek work and be available for work, as well as accept suitable work. The rule also describes the process to be utilized by Local Workforce Development Boards

(Boards) when formulating the numerical weekly work search contact requirements.

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

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

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

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

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

(E) This rule shall not apply to:

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

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

(iii) individuals who are otherwise exempted by law.

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

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

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

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

- (3) Claimants are required to maintain weekly work search contact logs and may be required to submit weekly work search contact logs, using an acceptable method as determined by the Agency.
 - (4) The Agency shall provide to and publish guidelines for claimants describing the types of activities that may constitute a work search contact for purposes of a productive search for suitable work. Examples of such activities include, but are not limited to:
 - (A) utilizing employment resources available at Workforce Centers that directly lead to obtaining employment, such as:
 - (i) using local labor market information;
 - (ii) identifying skills the claimant possesses that are consistent with targeted or demand occupations in the local workforce development area;
 - (iii) attending job search seminars, or other employment workshops that offer instruction in developing effective work search or interviewing techniques;
 - (iv) obtaining job postings and seeking employment for suitable positions needed by local employers;
 - (B) attending job search seminars, job clubs, or other employment workshops that offer instruction in improving individuals' skills for finding and obtaining employment;
 - (C) interviewing with potential employers, in-person or by telephone;
 - (D) registering for work with a private employment agency, placement facility of a school, or college or university if one is available to the claimant in his or her occupation or profession; and
 - (E) other work search activities as may be provided in Agency guidelines.
 - (5) Failure to comply with work search requirements, without good cause, could result in an ineligibility determination that may result in a loss of benefits.
- (c) Number of Work Search Requirements. The minimum number of weekly contacts assigned shall be three work search contacts for all claimants, unless otherwise provided by this section.
- (d) A Board, based on specific local labor market information and conditions, may advise the Agency that a claimant residing in the workforce area are required to make more than three work search contacts per week.

- (e) Rural Counties. In counties designated as “rural” by the Agency the Board may reduce the minimum number of weekly work search contacts in response to specific local labor market information and conditions. “Rural” counties are defined as those counties having a population estimated by the Texas State Data Center at Texas A&M University to be not more than 10,000 as of July 1 of the most recent year for which county population estimates have been published.
- (f) Local Boards shall have the flexibility within the guidelines provided in this section to formulate the appropriate minimum number of weekly work search contacts for their respective workforce area, using appropriate guidelines to be developed in consultation with agency staff, and shall maintain written documentation. Boards shall review the minimum number of weekly work search contacts for each workforce area at least once per year on a date to be determined by the Agency.
- (g) Local Policies. A Local Board shall develop, adopt, and modify its policies to promulgate the appropriate methodology for formulating the appropriate number of work search contacts for the workforce area in a public process consistent with the procedures required for compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et seq.* A Board shall maintain written copies of the policies that are required by federal and state law or as requested by the Agency and make such policies available to the Agency and the public upon request. A Board shall also submit any modifications, amendments, or new policies to the Agency no later than two weeks after adoption of the policy by the Board.