

CHAPTER 815. UNEMPLOYMENT INSURANCE

PROPOSED 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 FEBRUARY 14, 2012, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **March 2, 2012**

Estimated End of Comment Period: **April 2, 2012**

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 815, relating to Unemployment Insurance:

Subchapter C. Tax Provisions, §815.110

The Commission proposes amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter C. Tax Provisions, §815.108 and §815.111

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

The purpose of the Chapter 815 amendments is to:

- conform the Subchapter C tax provisions with the requirements of Senate Bill (SB) 638, enacted by the 82nd Texas Legislature, Regular Session (2011);
- modify outdated administrative requirements regarding employer interaction with the Commission; and
- enhance procedures to appropriately transfer compensation experience when required.

In 2007 and 2008, favorable economic conditions and low unemployment led to a surplus in the state's unemployment insurance (UI) trust fund. Many employers qualified for surplus tax credits. Under previous law, the credits went to the entity that paid the wages upon which the credit was based. The problem was if the entity entitled to the credit was acquired by another company, the acquiring company was then considered ineligible for the credit because it did not earn it.

SB 638 amends Subchapter E, Chapter 204 of the Texas Unemployment Compensation Act (Act), by allowing for the transfer of any surplus credit not received by the predecessor to the

successor employing unit if there is an accompanying transfer of compensation experience under §204.083 of the Act.

SB 638 also requires the Commission to adopt rules to implement and enforce these provisions, which, in part, stipulate that only a successor employing unit can apply or receive all or part of a surplus credit previously attributable to the predecessor (§204.0861(f) of the Act).

Currently, Commission rule §815.108(a)(8)(B) requires:

--any individual authorized to sign or file certain Agency forms to obtain such authorization in writing; and

--the written authorization to be sworn to before a notary public or other authorized officer.

The UI tax and benefits business environment includes a large percentage of employers that interact and conduct business with the Agency indirectly through a service provider or agent. The existing rule requires the employer to have the written authorization notarized, but the notary requirement for paper transactions is out of step with the accepted practice for other Agency tax department documents and presents a real burden to both employers and the Agency. Amendments to §815.108 are necessary to eliminate this burden.

Regarding the appropriate transfer of compensation experience, §204.083 of the Act requires a mandatory transfer of compensation experience in the case of any acquisition of an organization, trade, or business (OTB) where substantially common management, control, or ownership exists between the successor and the predecessor entities. In the case of total acquisitions, the Agency applies the contribution-setting provisions of §204.0851; for partial acquisitions, §204.085 controls. Where a mandatory transfer of compensation experience is not required, the successor and predecessor can apply to the Agency for a transfer under §204.084. Such applications will be approved if the criteria in §204.084 are met.

For partial acquisitions where common management, control, and ownership exist, and a mandatory transfer is required, §204.085(a) provides that: (1) if the part of the OTB that was transferred is definitely identifiable and segregable; and (2) that compensation experience can be specifically attributed to that part of the OTB that was transferred, then the contribution rate is calculated under §204.085(b) or (c). Otherwise, the rate is calculated using §204.0851. The statute is silent as to how the Agency is to determine "definitely identifiable and segregable." However, the type of information gleaned from the application for a voluntary transfer described in §204.084 is sufficient to allow the Agency to determine whether the criteria has been met.

In addition to the statutory requirements in the Act, Commission rule §815.111 provides some guidance for employers and Agency staff on transfers of compensation experience, but it does not speak directly to the processes associated with mandatory transfers in the case of partial acquisitions. Amendments to §815.111 will address these mandatory transfers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. TAX PROVISIONS

The Commission proposes the following amendments to Subchapter C:

§815.108. Signatures on Reports and Forms

Section 815.108 removes the requirement that employers notarize the designation of a third-party representative. This amendment eliminates an administrative burden for employers and the Agency.

Certain subparagraphs in this section have been relettered to accommodate deletions.

§815.110. Transfer of Surplus Credit to Successor Employing Unit

New §815.110(a) stipulates that transfer of an available surplus credit from a predecessor employment unit to a successor will be accomplished through:

- (1) an application to the Agency on an Agency-developed form; or
- (2) by any other manner approved by the Agency in writing.

New §815.110(b) states that the Agency-developed form shall:

- (1) contain sufficient information needed to appropriately transfer any unused surplus credit from the predecessor to the successor; and
- (2) be signed by both the predecessor and the successor.

New §815.110(c) mandates that the form shall be submitted to the Agency prior to expiration of any unused surplus credit.

§815.111. Partial Transfer of Compensation Experience

Section 815.111 replaces the title, "Transfer of Compensation Experience" with "Partial Transfer of Compensation Experience."

Section 815.111(a), Voluntary Partial Transfer of Compensation Experience, describes the application process to be used by the Agency and by the successor and predecessor employing units in the case of voluntary partial transfers of compensation experience for the purposes of contribution rate-setting.

Section 815.111(a)(1) adds the phrase "pursuant to §204.084" to specify the origin of the application for transfer of compensation experience.

Section 815.111(a)(2)(B) removes the requirement for the application to be notarized; however the subparagraph clarifies that the application shall be accurate and complete, and signed by an authorized representative. The subparagraph also states that incomplete applications will be returned unprocessed.

Section 815.111(a)(4)(A) - (B) is reorganized for better clarity; the contents remain unchanged.

New §815.111(b), Mandatory Partial Transfer of Compensation Experience, describes for the purposes of contribution rate-setting the requirements to be followed by successor and

predecessor employing units when mandatory transfers of compensation experience are compulsory under §204.083 of the Act.

New §815.111(b)(1) specifies that when a partial acquisition occurs that requires the 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 whether 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.

New §815.111(b)(2)(A) - (C) requires that the submission shall:

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

New §815.111(b)(3)(A) - (B) mandates that to meet the conditions of §204.085(a) of the Act:

- (A) the successor employer shall have acquired a distinct and separable part of the organization, trade, or business, which 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.

Certain subsections, paragraphs, and subparagraphs in this section have been relettered and renumbered to accommodate additions and deletions.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to ensure compliance with federal and state requirements.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Local Workforce Development Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 8, 2011. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4.

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SUBCHAPTER C. TAX PROVISIONS

§815.108. Signatures on Reports and Forms.

- (a) A report or form required by the Agency shall, if signature is called for by the report or form or instructions, be signed by:
- (1) the individual, if the person required to submit the report or form is an individual;
 - (2) the president, vice-president, or other principal officer, if the employing unit required to submit the report or form is a corporation;
 - (3) a partner, if the employing unit required to submit the report or form is a partnership;
 - (4) a duly authorized member or officer having knowledge of its affairs, if the employing unit required to submit the report or form is an unincorporated organization;
 - (5) the fiduciary, if the employing unit required to submit the report or form is a trust or estate;
 - (6) the head of the department (or the department head's designee) having control of the services with respect to which contributions, reimbursements, or other payments are attributable, if the employing unit required to submit the report or form is the State of Texas or a branch, department, instrumentality, or political subdivision thereof;
 - (7) the group representative, if the report or form is being submitted for a group account; or
 - (8) any individual who is authorized in writing to sign for each individual or employing unit.
 - (A) The written authority shall be: filed with the Agency; revocable by either party; and in terms which explicitly authorize the attorney or agent to transact business between the grantor of said power and the Agency. The written authority shall be filed in a manner prescribed by the Agency.
 - (B) ~~It shall be duly sworn to before a notary public or other officer authorized to administer oaths.~~

~~(B)(C)~~ The written authority shall be in full force and effect until it is revoked in a manner prescribed by the Agency.

~~(C)(D)~~ The Agency may reject any written authority that does not conform with this section.

(b) Nothing contained in this section shall in any way affect the power and right of any representative of the Agency to prepare and sign any reports or forms required by the Agency upon the failure or refusal of any of the individuals listed in subsection (a) of this section to do so when requested.

§815.110. Transfer of Surplus Credit to Successor Employing Unit.

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

(1) An Agency-developed form; or

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

(b) The form shall:

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

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

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

§815.111. Partial Transfer of Compensation Experience.

(a) Voluntary Partial Transfer of Compensation Experience

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

(A)(1) forms printed by the Agency;

(B)(2) magnetic or electronic media in a format prescribed by this Agency; or

(C)(3) any other manner approved and prescribed by the Agency in writing.

(2)(b) The application shall:

~~(A)(1)~~ contain all facts and information and documents, including waiver, necessary to make a determination under §204.084 of the Act and in accordance with the requirements of that section; and

~~(B)(2)~~ be accurate, complete, and signed by an authorized representative. and sworn to as true and correct before a notary public; and Incomplete applications will be returned unprocessed.

~~(3)~~ be complete. Incomplete applications will be returned without being processed.

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

~~(4)(d)~~ To satisfy the identifiable and segregable requirements of §204.084(c)(3);

~~(A)~~ the applicants must 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)~~ t-The wages attributable to the acquired part of the organization, trade, or business must shall be separate and distinct from other wages of the predecessor employer and must 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 predecessor employer and shall be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.