

CHAPTER 817. CHILD LABOR

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 **MAY 13, 2014**, 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*: **May 30, 2014**

Estimated End of Comment Period: **June 30, 2014**

The Texas Workforce Commission (Commission) proposes the following amendments to Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §817.2

Subchapter B. Limitations on the Employment of Children, §817.21 and §817.23

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Texas Labor Code, Chapter 51, is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, and well-being. Texas Labor Code §51.023 provides that the Commission can adopt rules as necessary to promote the purpose of Chapter 51. The purpose of this rulemaking is to:

- define terms commonly used in this chapter or Texas Labor Code, Chapter 51; and
- add language to support future renumbering of federal regulations referenced in §817.21 and §817.23.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§817.2. Definitions

To properly understand the requirements of safely employing children, it is necessary to define some of the terms used in Texas Labor Code, Chapter 51, and Chapter 817. Defining commonly used terms as they are currently used in the administration of child labor laws and rules:

- ensures that employers, parents, teachers, and the public understand the circumstances under which the law—and exemptions from the law—apply; and

--assists parents and employers in avoiding unintended violations of the child labor laws while still ensuring the safety, health, and well-being of children.

Section 817.2(2), the definition of "child," is removed.

New §817.2(2) defines "business or enterprise operated by a parent or custodian," as "a business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity, and to ensure that parents understand the law and when exemptions from the law apply.

Section 817.2(3), the definition of "child actor," is removed.

New §817.2(3) defines "business or enterprise owned by a parent or custodian" as "a business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(4), the definition of "Texas Workforce Commission," is removed; the definition of "Commission" is set forth in §800.2(7) of this title.

New §817.2(4) defines "casual employment" as "employment that is irregular or intermittent and not on a scheduled basis." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who provide consent to have their own children employed in a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(5), the definition of "executive director," is removed.

New §817.2(5) sets forth the definition of "child," previously located in §817.2(2).

New §817.2(6) sets forth the definition of "child actor," previously located in §817.2(3).

New §817.2(7) defines "child actor extra" as "a child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance." The definition clarifies the term to establish special authorization for child actors to be employed as extras without the need for child actor authorization, and removes concerns and barriers for the entertainment business when employing children as extras.

New §817.2(8) defines "direct supervision of the parent or custodian" as "a child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in

a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

The terms "employee," "employer," and "employment" are used throughout this chapter and in Texas Labor Code, Chapter 51. The new definitions clarify that these terms are to be interpreted in the same manner as in Texas Labor Code, Chapter 61 (the Texas Payday Law) and the Fair Labor Standards Act, thus providing consistent definitions for all employers.

New §817.2(9) defines "employee" as "an individual who is employed by an employer for compensation."

New §817.2(10) defines "employer" as "an entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee."

New §817.2(11) defines "employment" as "any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied."

New §817.2(12) sets forth the definition of "executive director," previously located in §817.2(5).

New §817.2(13) defines "private school," as set forth in Texas Education Code, Chapter 5, as "a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity." The definition clarifies that homeschooled children are subject to the same restrictions on hours of work contained in Texas Labor Code, Chapter 51, as those children attending public schools or traditional private schools.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

The Commission proposes the following amendments to Subchapter B:

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children

Section 817.21 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary to continue to adopt these federal regulations as state rules governing the employment of 14- and 15-year-old children in Texas.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children

Section 817.23 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary in order to continue to adopt those federal regulations as state rules governing the employment of 16- and 17-year-old children in Texas.

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 cost reductions 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.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. 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.

Paul Carmona, Director, Regulatory Integrity 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 rules will be to provide clear understanding of terms used in the enforcement of the child labor law.

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' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on March 5, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on March 7, 2014, to discuss the concept paper. 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.

Comments must be received or 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 2.

Chapter 817. CHILD LABOR

SUBCHAPTER A. GENERAL PROVISIONS

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings, ~~unless the context clearly indicates otherwise.~~

(1) Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.

~~(2) Child--An individual under 18 years of age.~~

(2) Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.

~~(3) Child actor--A child under the age of 14 who is to be employed as an actor or other performer.~~

(3) Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.

~~(4) Commission--Texas Workforce Commission.~~

(4) Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.

~~(5) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.~~

(5) Child--An individual under 18 years of age.

(6) Child actor--A child under the age of 14 who is to be employed as an actor or other performer.

(7) Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.

- (8) Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.
- (9) Employee--An individual who is employed by an employer for compensation.
- (10) Employer--An entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.
- (11) Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.
- (12) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.
- (13) Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children.

The Commission adopts by reference 29 Code of Federal Regulations (CFR) §§570.31 through 570.34 and §§570.70 through 570.72 of Title 29 of the Code of Federal Regulations in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 14- and 15-year-old children in Texas, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code (USC) §201, et seq. In the event of any inconsistency between federal regulations and the FLSA, the FLSA shall take precedence. ~~The Commission adopts these regulations as state rules governing the employment of 14 and 15 year old children in Texas.~~ These rules will apply to such employment whether or not that employment is subject to FLSA the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq. The application of this section rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children.

The Commission adopts by reference 29 CFR §§570.50 through 570.68 of Title 29 of the Code of Federal Regulations in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 16- and 17-year-old children in Texas, to the extent that they are consistent with ~~the Fair Labor Standards Act (FLSA), 29 USC United States~~

~~Code~~ §201, et seq. In the event of any inconsistency between federal regulations and ~~the~~ FLSA, ~~the~~ FLSA shall take precedence. ~~The Commission adopts these regulations as state rules governing the employment of 16 and 17 year old children in Texas.~~ These rules ~~will~~ apply to such employment whether or not that employment is subject to ~~the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq.~~ The application of this [section rule](#) is limited to the extent it is consistent with Texas Labor Code, Chapter 51.