

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON SEPTEMBER 24, 2013, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **October 11, 2013**
11 Estimated End of Comment Period: **November 11, 2013**
12

13 The Texas Workforce Commission (Commission) proposes amendments to the following
14 sections of Chapter 815, relating to Unemployment Insurance:
15

16 Subchapter C. Tax Provisions, §§815.107, 815.109, 815.113, and 815.133
17

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

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 The purpose of the proposed Chapter 815 amendments is to:
25

26 --provide clear direction for employers on filing required reports and paying contributions,
27 without creating an undue bureaucratic burden in navigating the Unemployment Insurance (UI)
28 Tax systems;

29
30 --ensure operation of efficient, cost-effective systems that fulfill the requirements of state and
31 federal law; and

32
33 --implement Senate Bill (SB) 1286, enacted by the 83rd Texas Legislature, Regular Session
34 (2013), related to professional employer organizations.
35

36 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

37 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
38 therefore, are not discussed in the Explanation of Individual Provisions.)
39

40 **SUBCHAPTER C. TAX PROVISIONS**

41 **The Commission proposes the following amendments to Subchapter C:**
42

43 **§815.107. Reports Required and Their Due Dates**

44 Section 815.107(a)(1)(B) removes magnetic media as an allowable format to submit required
45 reports and forms. Submissions made by magnetic media are very labor intensive, potentially

1 unsecure, and negate cost savings and efficiencies realized by requiring all employers to file
2 reports electronically.

3
4 Section 815.107(a)(3)(A) requires all employers--and their agents--to file summary and detail
5 wage information electronically. The Agency will continue ongoing notification initiatives to
6 ensure that entities are aware of and understand this new requirement. Additionally, employers
7 can request, and the Agency may grant, a hardship exemption from filing reports and forms in
8 the required electronic format.

9
10 Section 815.107(a)(3)(A)(i) is removed based on the proposed requirements in
11 §815.107(a)(3)(A) for all employers and their agents to file reports.

12
13 Section 815.107(a)(3)(A)(ii) is removed based on the proposed requirements in
14 §815.107(a)(3)(A) for all employers and their agents to file reports.

15
16 Section 815.107(a)(3)(B) is removed. Under this rulemaking, magnetic media is removed as an
17 allowable format to submit required reports and forms.

18
19 New §815.107(a)(3)(B) removes the reference to magnetic media. Under this rulemaking,
20 magnetic media is removed as an allowable format to submit required reports and forms.

21
22 New §815.107(a)(3)(C) revises the reference to "a quarterly benefit wage credit" report to "an
23 employer's quarterly" report.

24
25 Certain subparagraphs in this section have been relettered to reflect deletions.

26 27 **§815.109. Payment of Contributions and Reimbursements**

28 Section 815.109(d):

29 --removes the requirement that employers, including agents paying on behalf of multiple
30 employers that paid contributions of \$250,000 or more in the preceding state fiscal year and that
31 anticipate doing the same in the current fiscal year, transfer payment amounts by electronic funds
32 transfer; and

33 --adds the requirement that all employers must transfer payment amounts of contributions by a
34 Commission-approved electronic means. The Agency will continue ongoing notification
35 initiatives to ensure that entities are aware of and understand this new requirement. Additionally,
36 employers can request, and the Agency may grant, a hardship exemption from paying
37 contributions in the required format.

38
39 Section 815.109(g) removes magnetic media as an approved method for an agent or other entity
40 making a payment on behalf of employers to furnish an allocation list. Under this rulemaking,
41 magnetic media is removed as an allowable format to submit required reports and forms.

42 43 **§815.113. Commission Hearings Involving Coverage and Contributions or** 44 **Reimbursements**

45 Section 815.113(e) makes a nonsubstantive technical correction by removing the reference to
46 §815.17(g) and replacing it with the correct reference to §815.17(f).

1
2 **§815.133. Employee Staff Leasing and Temporary Help Firms**

3 Section 815.133 removes the term "Employee Staff Leasing" from the section title and replaces it
4 with the term "Professional Employer Organizations." SB 1286, enacted by the 83rd Texas
5 Legislature, Regular Session (2013), mandates this terminology change.

6
7 Section 815.133(a) removes the term "staff leasing services company" and replaces it with the
8 term "professional employer organization." SB 1286, enacted by the 83rd Texas Legislature,
9 Regular Session (2013), mandates these terminology changes.

10
11 **PART III. IMPACT STATEMENTS**

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

14
15 There are no estimated increases in costs to the state and to local governments expected as a
16 result of enforcing or administering the rules.

17
18 There is an estimated cost reduction to the Agency of approximately \$244,721 in Fiscal Year
19 2014 and \$900,819 per year following if substantially all the employers submit the required
20 reports electronically.

21
22 There are no estimated cost reductions to local governments as a result of enforcing or
23 administering the rule.

24
25 There are no estimated losses or increases in revenue to the state or to local governments as a
26 result of enforcing or administering the rules.

27
28 There are no foreseeable implications relating to costs or revenue of the state or local
29 governments as a result of enforcing or administering the rules, aside from the estimated savings
30 to the Agency noted above.

31
32 There may be anticipated economic costs to persons required to comply with the rules. It is
33 likely that employers will have the minimum requirements to comply with the rule (e.g., a
34 computer and Internet connectivity) or a contractor performing accounting, payroll, or reporting
35 functions that has such resources. Therefore, while there may be anticipated economic costs to
36 persons required to comply with the rules, these costs are not estimated to be significant. Section
37 815.107(a) provides that the Commission may waive the electronic filing requirements for
38 employers requesting a hardship exemption.

39
40 **Economic Impact Statement and Regulatory Flexibility Analysis**

41 There may be anticipated adverse economic impact on small or microbusinesses as a result of
42 enforcing or administering the rules. As employers requesting a hardship exemption under
43 §815.107(a) of the electronic filing requirements may include small and microbusinesses, the
44 Commission's authorization of the exemption would provide appropriate mitigation for those
45 classes of employers.

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

4
5 LaSha Lenzy, Director of the Unemployment Insurance Division, Workforce Development
6 Division, has determined that for each year of the first five years the rules are in effect, the public
7 benefit anticipated as a result of enforcing the proposed rules will be more efficient, secure, and
8 low-cost operations of the UI Tax system.

9
10 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
11 be within the Agency's legal authority to adopt.

12
13 **PART IV. COORDINATION ACTIVITIES**

14 In the development of these rules for publication and public comment, the Commission sought
15 the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding
16 these rule amendments to the Boards for consideration and review on July 12, 2013. The
17 Commission also conducted a conference call with Board executive directors and Board staff on
18 July 19, 2013, to discuss the concept paper. During the rulemaking process, the Commission
19 considered all information gathered in order to develop rules that provide clear and concise
20 direction to all parties involved.

21
22 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
23 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,
24 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
25 The Commission must receive comments postmarked no later than 30 days from the date this
26 proposal is published in the *Texas Register*.

27
28 The rules are proposed under Texas Labor Code §§301.0015 and 302.002(d), which provide the
29 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
30 deems necessary for the effective administration of Agency services and activities.

31
32 The proposed rules affect Texas Labor Code, Title 4.
33
34

1
2 **CHAPTER 815. UNEMPLOYMENT INSURANCE**
3

4 **SUBCHAPTER C. TAX PROVISIONS**
5

6 **§815.107. Reports Required and Their Due Dates.**
7

8 (a) All reports and forms required by the Agency or the Act shall be filed with the
9 Agency in one of the following formats unless a different format is approved in
10 writing by the Agency, a hardship exemption is requested from and granted by the
11 Agency, or as specified in this chapter.
12

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

15 (A) forms printed by the Agency;

16 (B) ~~magnetic or~~ electronic media in a format prescribed by the Agency; or
17

18 (C) any other manner approved and prescribed by the Agency in writing.
19

20 (2) Content. The reports and forms shall contain all facts and information
21 necessary to a determination of the amounts due by the employing unit. The
22 Agency may require the furnishing of additional information as it deems
23 necessary for the proper administration of the Act.
24

25 (3) ~~Magnetic and~~ Electronic Media Reporting.
26

27 (A) Required ~~Magnetic or~~ Electronic Media. All employers and their agents
28 shall file employers' reports, including both summary and detail wage
29 information, as described in ~~Regarding filing of quarterly benefit wage~~
30 credit reports as required by §207.004 of the Act, ~~the following shall file~~
31 benefit wage credit reports on ~~magnetic or~~ electronic media using a
32 format prescribed by the Agency.÷
33

34 ~~(i) Employers who have to file a report on 10 or more employees in any~~
35 ~~one calendar quarter; and~~
36

37 ~~(ii) Other entities, including agents reporting on behalf of multiple~~
38 ~~employers, who have to file reports on a cumulative total of 10 or~~
39 ~~more employees in any one calendar quarter.~~
40

41 ~~(B) Voluntary Use of Magnetic or Electronic Media. Employers, including~~
42 ~~agents reporting on behalf of multiple employers, who file a benefit~~
43 ~~wage credit report on a cumulative total of less than 10 employees in any~~
44
45

1 ~~one calendar quarter, as defined in §207.004 of the Act, may voluntarily~~
2 ~~elect to use magnetic or electronic media reporting.~~

3
4 ~~(B)(C)~~ ~~A magnetic or~~ An electronic media transmission of an employer's
5 quarterly report ~~wage report~~ may contain information from more than
6 one employer.
7

8 ~~(C)(D)~~ An employer's quarterly ~~A quarterly benefit wage credit~~ report filed in
9 an approved medium shall contain both a wage credit report and a
10 summary report.
11

12 (b) General Deadlines for Filing Reports and Forms.

13
14 (1) Unless otherwise provided in this subchapter, any report or form shall be
15 completed and filed with the Agency within 10 days after the requested report
16 or form is:

17
18 (A) mailed to the individual or employing unit at the address on record with
19 the Agency; or

20
21 (B) personally delivered to the individual or employing unit by an Agency
22 representative.
23

24 (2) Failure to receive notice regarding the reports shall not relieve the individual or
25 employing unit of the responsibility of filing the reports by the date the reports
26 are due.
27

28 (3) Good Cause for Extending Deadlines. When good cause is shown, the Agency
29 may extend the due date for filing of a report required under this section;
30 however, the extension shall be effective only if authorized in writing by an
31 Agency representative.
32

33 (c) Status Reports.

34
35 (1) Status Reports in General. Each employing unit shall file with the Agency a
36 status report within 10 days from the date upon which the employing unit
37 becomes subject to the Act.
38

39 (2) Status Reports for New Acquisitions. Any employing unit in the state of Texas
40 that acquires another business or substantially all of the assets of another
41 business shall file a new status report with the Agency within 10 days of the
42 date on which the employing unit made the acquisition.
43

44 (3) Status Reports for Additional Information. Each employing unit shall file
45 additional status reports at any time upon the request of the Agency.
46

- 1 (4) Evidence in Support of Status Reports. Employing units filing status reports
2 with the Agency shall:
3
4 (A) file with the Agency all facts necessary to a determination of the taxable
5 status of the employing unit; and
6
7 (B) if requested, file with the Agency evidence to establish the correctness of
8 information contained in the employing unit's status reports.
9
- 10 (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a
11 domestic employer who has elected to report and pay annually under §201.027(b) of
12 the Act, shall file with the Agency, within the month during which contributions for
13 any period become due, and not later than the date on which contributions are
14 required to be paid to the Agency, an employer's quarterly report showing for the
15 preceding calendar quarter:
16
17 (1) the total amount of remuneration paid for employment (or showing that no
18 remuneration was paid during the quarter);
19
20 (2) the total amount of wages paid for employment (as defined in the Act,
21 §201.081 and §201.082);
22
23 (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004)
24 paid to each individual employee;
25
26 (4) the name and Social Security number of each individual to whom the wages
27 were paid; and
28
29 (5) any other information requested on the employer's quarterly report, including
30 all facts and information necessary to make a determination of the amount of
31 contributions due.
32
- 33 (e) Quarterly Reports from Reimbursing Employers and Group Representatives of a
34 Group Account. Each reimbursing employer and the group representative of a group
35 account shall file an employer's quarterly report, by the end of the month following
36 each calendar quarter, that furnishes the following information for the preceding
37 calendar quarter, information specified in paragraphs (1) - (4) of subsection (d) of
38 this section, and any other information necessary to make a determination of the
39 amount of reimbursements due.
40
- 41 (f) Benefits Financed by the Federal Government. Each employer that has employees
42 whose benefits are to be financed by the federal government shall file a separate
43 quarterly report furnishing the names of the employees, their Social Security
44 numbers, and the wages paid to each. The report shall be filed by the end of the
45 month following each calendar quarter.
46

1 (g) Annual Reports from Domestic Employers.

2
3 (1) Making the Election. An election to report wages paid and pay contributions
4 on an annual basis must be made in a format or on a form authorized by the
5 Agency by the deadline specified in §201.027 of the Act.

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

13
14 (A) The information specified in paragraphs (1) - (4) of subsection (d) of this
15 section subtotaled for each quarter; and

16
17 (B) Other information called for on the domestic employer's annual report
18 including all facts and information necessary to make a determination of
19 the amount of contributions due.

20
21 (3) Penalties and interest incurred under this section shall be the same as
22 applicable to other employer reporting requirements as provided in Chapter
23 213 of the Act and this subchapter.

24
25 **§815.109. Payment of Contributions and Reimbursements.**

26
27 (a) When, in any calendar year, an individual or employing unit becomes an employer
28 (other than a reimbursing employer) subject to this Act, the employer shall, on or
29 before the last day of the month following the month during which the employer
30 became a subject employer, file a report as specified in §815.107 and pay
31 contributions with respect to all completed calendar quarters in the calendar year.
32 Contributions for the quarter during which the employer becomes a subject employer
33 shall be due on the first day of the month immediately following the quarter and shall
34 be paid on or before the last day of the month. Contributions shall accrue quarterly
35 and shall become due on the first day of the month immediately following the
36 calendar quarter. They shall be paid to the Agency on or before the last day of the
37 month. The provisions in [this](#) subsection ~~(a) of this section~~ shall apply unless
38 otherwise provided in §201.027 of the Act.

39
40 (b) Reimbursements shall become due on the last day of the month following the end of
41 each quarter and shall be paid to the Agency on or before the last day of the next
42 month.

43
44 (c) When the last day for payment of contributions or reimbursements falls on a
45 Saturday, Sunday, or a legal holiday on which the Agency office is closed, the
46 payment may be made on the next regular business day.

- 1
2 (d) An employer or other entity, including agents paying on behalf of multiple
3 employers, ~~which paid contributions in the preceding state fiscal year of \$250,000 or~~
4 ~~more, and which is reasonably anticipated to do the same in the current fiscal year,~~ is
5 required to transfer payment amounts of contributions by Commission-approved
6 electronic means~~electronic funds transfer~~ on or before the date the contributions are
7 due, unless the Agency in writing has approved another method or form of payment.
8 ~~Except as otherwise provided in this subsection, employers, including agents, may~~
9 ~~voluntarily transfer payment of contributions by electronic funds transfer on or~~
10 ~~before the date the contributions are due, unless the Agency in writing has approved~~
11 ~~another method or form of payment.~~ The transfers, ~~when applicable,~~ shall be
12 subject to the provisions of ~~the~~ Texas Government Code §404.095, and to rules
13 adopted by the state comptroller pursuant to that section.
14
15 (e) Additional tax resulting from a chargeback adjustment is due on the first day of the
16 second month following the month in which the Agency mailed the statement or
17 letter notifying the employer of the change in tax rate and additional tax due.
18 Amounts due from such chargeback adjustments shall be paid and must be received
19 by the Agency on or before the last day of this second month.
20
21 (f) When good cause is shown, the Agency may extend the due date for the payment of
22 contributions or reimbursements. The extension shall not be effective unless it is
23 authorized in writing by the Agency. In the event the Agency for good cause shown
24 extends the due date for payment of contributions or reimbursements, the payments
25 shall be made to the Agency on or before the thirtieth day following the extended
26 due date.
27
28 (g) An agent or other entity making a payment on behalf of employers shall furnish an
29 allocation list on ~~magnetic or~~ electronic media using a format prescribed by this
30 Agency, unless the Agency has approved another format and method in writing.
31 This list shall be furnished with the remittance, and the remittance shall be allocated
32 to the credit of the employers according to the order in which the employers appear
33 on the list.
34

35 **§815.113. Commission Hearings Involving Coverage and Contributions or**
36 **Reimbursements.**
37

- 38 (a) In all situations not specifically provided for in the Act or in the rules of the Agency,
39 a hearing may, at the discretion of the Commission, be afforded an employing unit
40 upon its written request, in any case involving tax liability or any question relating to
41 contributions or reimbursements. Hearings under this section shall continue to be
42 termed Rule 13 Hearings. The written request for hearing may be filed by hand
43 delivery, mail, common carrier, facsimile (fax) transmission, or other method
44 approved by the Agency in writing, at a local tax office or the Texas Workforce
45 Commission, 101 East 15th Street, Austin, Texas 78778-0001.
46

- 1 (b) The Commission may on its own motion set a hearing to secure the facts to establish
2 the status of any individual or employing unit under any section of the Act.
3
- 4 (c) The Commission may designate a representative to preside over the hearing.
5 Hearings shall be conducted by telephone conference call unless the supervisor of
6 the hearing officers or the supervisor's designee determines that an in-person hearing
7 is necessary. The hearings will be scheduled and, if an in-person hearing, held at a
8 place designated by the supervisor of the hearings officers or the supervisor's
9 designee in accordance with paragraphs (1) - (3) of this ~~subsection~~ and the
10 applicable provisions in this chapter.
11
- 12 (1) Written notice of the date and time of the hearings shall be given to the parties,
13 and the location if it is an in-person hearing, at least 10 days before the date of
14 the hearing; but if a setting at an earlier date is requested by an individual or
15 employing unit, the supervisor of the hearings officers or the supervisor's
16 designee may at the supervisor's discretion grant that request, if the granting of
17 the request will not prejudice the rights of any other party to the proceedings,
18 including the Agency itself. The notice shall be mailed to the parties at their
19 last-known addresses.
20
- 21 (2) In these proceedings before a hearings officer, all parties shall be given an
22 opportunity for full, fair, and impartial hearing. The hearings shall be
23 conducted in the manner deemed most suitable to ascertain the facts and to
24 determine the rights of the parties. All testimony taken shall be under oath and
25 subject to the right of cross-examination by any adverse party, and it shall be
26 recorded. When necessary, the hearing officer may order the taking of
27 depositions. The submission of written briefs, affidavits, and other written
28 memoranda may be required.
29
- 30 (3) A witness, whose attendance at a hearing is required, may be allowed a fee and
31 mileage on the same basis and to the same extent as is provided for witnesses
32 under §815.18 of this chapter (relating to General Rules for Both Appeal
33 Stages).
34
- 35 (d) The Commission, following each hearing, shall issue a decision, which shall resolve
36 the questions involving tax liability or any question relating to contributions or
37 reimbursements which arose at the hearing. Copies of written decisions of the
38 Commission shall be furnished the parties to the hearings.
39
- 40 (e) A decision of the Commission shall become final 30 days after the date of mailing
41 unless, within the ~~30-day period~~ 30-day period, the proceeding is either reopened by a
42 Commission order or by a party to the proceeding filing a written motion for
43 reconsideration in accordance with the provisions of ~~§815.17(f)subsection~~
44 §815.17(g) of this chapter (relating to General Rules for Both Appeal Stages). The
45 motion for reconsideration is sent to the address listed in the decision. A decision is

1 not binding on a person who was not a party to a proceeding conducted under this
2 section.

3
4
5 **§815.133. Professional Employer Organizations~~Employee Staff Leasing~~ and**
6 **Temporary Help Firms.**

- 7
8 (a) A professional employer organization~~staff leasing services company~~ licensed by the
9 Texas Department of Licensing and Regulation under Texas Labor Code Chapter 91
10 shall be the employer of the workers it provides to a client ~~company~~. If the
11 professional employer organization~~staff leasing services company~~ is not licensed by
12 the Texas Department of Licensing and Regulation, then the Agency shall determine
13 that the client is the employer.
14
- 15 (b) A temporary help firm is the employer of an individual employed by the firm as a
16 temporary employee. As defined in the Act, §201.011(21)~~subsection 201.011(21)~~, a
17 temporary help firm is a person who employs individuals for the purpose of
18 assigning those individuals to work for the clients of the temporary help firm to
19 support or supplement a client's workforce during employee absences, temporary
20 skill shortages, seasonal workloads, special assignments and projects, and other
21 similar work situations.
22