

CHAPTER 815. UNEMPLOYMENT INSURANCE

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1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§815.1. Definitions.**

6 The following words and terms, when used in this chapter, shall have the following
7 meanings, unless the statute or context in which the word or phrase is used clearly
8 indicates otherwise.

- 9 (1) Act--The Texas Unemployment Compensation Act, Texas Labor Code
10 Annotated, Title 4, Subtitle A, as amended.
- 11
12 (2) Additional claim--A notice of new unemployment filed at the beginning of a
13 second or subsequent series of claims within a benefit year or within a period
14 of eligibility when a break of one week or more has occurred in the claim
15 series with intervening employment. The employer named on an additional
16 claim will have 14 days from the date notice of the claim is mailed to reply to
17 the notice. The additional claim reopens a claim series and is not a payable
18 claim since it is not a claim for seven days of compensable unemployment.
- 19
20 (3) Adequate notification--A notification of adverse facts, including any
21 subsequent notification, affecting a claim for benefits, as provided in the Act,
22 Chapter 208.
- 23
24 (A) Notification to the Commission is adequate as long as the employer or its
25 agent gives a reason, supported by facts, directly related to the allegation
26 raised regarding the claimant's right to benefits.
- 27
28 (B) The employer or its agent may demonstrate good cause for failing to
29 provide adequate notice. Good cause is established solely by showing
30 that the employer or its agent was prevented from providing adequate
31 notification due to compelling circumstances beyond the control of the
32 employer or its agent.
- 33
34 (C) Examples of adequate notification of adverse facts include, but are not
35 limited to, the following:
- 36
37 (i) The claimant was discharged for misconduct connected with his
38 work because he was fighting on the job in violation of written
39 company policy.
- 40
41 (ii) The claimant abandoned her job when she failed to contact her
42 supervisor in violation of written company policy and previous
43 warnings.
- 44

1 (D) A notification is not adequate if it provides only a general conclusion
2 without substantiating facts. A general statement that a worker has been
3 discharged for misconduct connected with the work is inadequate. The
4 allegation may be supported by a summary of the events, which may
5 include facts documenting the specific reason for the worker's discharge,
6 such as, but not limited to:

7
8 (i) policies or procedures;

9
10 (ii) warnings;

11
12 (iii) performance reviews;

13
14 (iv) attendance records;

15
16 (v) complaints; and

17
18 (vi) witness statements.
19

20 (4) Agency--The unit of state government that is presided over by the Commission
21 and under the direction of the executive director, which operates the integrated
22 workforce development system and administers the unemployment
23 compensation insurance program in this state as established under Texas Labor
24 Code, Chapter 301. It may also be referred to as the Texas Workforce
25 Commission.
26

27 (5) Appeal--A submission by a party requesting the Agency or the Commission to
28 review a determination or decision that is adverse to that party. The
29 determination or decision must be appealable and pertain to entitlement to
30 unemployment benefits; chargeback as provided in the Act, Chapter 204,
31 Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax
32 coverage or contributions or reimbursements. This definition does not grant
33 rights to a party.
34

35 (6) Base period with respect to an individual--The first four consecutive completed
36 calendar quarters within the last five completed calendar quarters immediately
37 preceding the first day of the individual's benefit year, or any other alternate
38 base period as allowed by the Act.
39

40 (7) Benefit period--The period of seven consecutive calendar days, ending at
41 midnight on Saturday, with respect to which entitlement to benefits is claimed,
42 measured, computed, or determined.
43

44 (8) Benefit wage credits--Wages used to determine an individual's monetary
45 eligibility for benefits. Benefit wage credits consist of those wages an
46 individual received for employment from an employer during the individual's

1 base period as well as any wages ordered to be paid to an individual by a final
2 Commission order, pursuant to its authority under Texas Labor Code, Chapter
3 61. Benefit wage credits awarded by a final Commission order that were due to
4 be paid to the individual by an employer during the individual's base period
5 shall be credited to the quarter in which the wages were originally due to be
6 paid.
7

- 8 (9) Board--Local Workforce Development Board created pursuant to Texas
9 Government Code §2308.253 and certified by the Governor pursuant to Texas
10 Government Code §2308.261. This includes a Board when functioning as the
11 Local Workforce Investment Board as described in the Workforce Investment
12 Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth
13 Council, as provided for under the Workforce Investment Act §117(i) (also
14 referred to as an LWDB).
15
- 16 (10) Commission--The three-member body of governance composed of Governor-
17 appointed members in which there is one representative of labor, one
18 representative of employers, and one representative of the public as established
19 in Texas Labor Code §301.002, which includes the three-member governing
20 body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings
21 involving unemployment insurance issues regarding tax coverage,
22 contributions or reimbursements.
23
- 24 (11) Day--A calendar day.
25
- 26 (12) Landman--An individual who is qualified to do field work in the purchasing of
27 right-of-way and leases of mineral interests, record searches, and related real
28 property title determinations, and who is primarily engaged in performing the
29 field work.
30
- 31 (13) Person--May include a corporation, organization, government or governmental
32 subdivision or agency, business trust, estate, trust, partnership, association, and
33 any other legal entity.
34
- 35 (14) Reopened claim--The first claim filed following a break in claim series during
36 a benefit year which was caused by other than intervening employment, i.e.,
37 illness, disqualification, unavailability, or failure to report for any reason other
38 than job attachment. The reopened claim reopens a claim series and is not a
39 payable claim since it is not a claim for seven days of compensable
40 unemployment.
41
- 42 (15) Week--A period of seven consecutive calendar days ending at midnight on
43 Saturday.

1
2 *The provisions of this §815.1 adopted to be effective November 6, 2000, 25 TexReg 11093;*
3 *amended to be effective September 20, 2010, 35 TexReg 8504; amended to be effective June*
4 *30, 2014, 39 TexReg 4965*

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7
8 **§815.2. Mailing Dates and Use of Forms.**

- 9
10 (a) Except as otherwise provided in Subchapter C of this chapter, when an individual or
11 an employing unit reports or applies to the Agency in writing upon an Agency form,
12 for purposes of determining the date the writing was sent, the following dates shall
13 control, in the order listed:
14
15 (1) the postmark date or the postal meter date (where there is only one or the
16 other);
17
18 (2) the postmark date if there is both a postmark date and a postal meter date, if
19 they conflict;
20
21 (3) the date the writing was delivered to a common carrier, which date is equal to a
22 postmark date;
23
24 (4) a writing received in an envelope bearing no legible postmark, postal meter
25 date, or date of delivery to the common carrier shall be considered to have
26 been sent three business days before receipt by the Agency, or on the date of
27 the document, if the document date is less than three days earlier than date of
28 receipt; or
29
30 (5) if the mailing envelope is lost after delivery to the Agency, the date on the
31 writing shall control. If the document is undated, the date the writing was sent
32 shall be three business days before receipt by the Agency, subject to sworn
33 testimony establishing an even earlier date.
34
35 (b) Except as provided in Subchapter C of this chapter, the date and time a writing is
36 received by the Agency shall control when that writing was sent by facsimile
37 transmission (fax), or in an electronic form approved by the Agency in writing.
38
39 (c) Except as otherwise provided in Subchapter C of this chapter, when the writing is
40 not on an Agency form but furnishes information that is sufficient to indicate clearly
41 the purpose or intent of the writing, the controlling date shall be determined as
42 described in this section. However, the Agency may require that the individual or
43 employing unit furnish the necessary information to the Agency in the manner and
44 on a form or forms prescribed by the Agency for the particular purpose.

45
46 *The provisions of this §815.2 adopted to be effective November 6, 2000, 25 TexReg 11093*

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2
3 **§815.3. Addresses.**

- 4
- 5 (a) In this chapter, each employing unit which has or had individuals in "employment"
6 so defined in the Act shall notify the Agency of its correct address and of any change
7 in its correct address, and each employing unit shall promptly notify the Agency of
8 any change of address. Each individual who is a claimant for benefits, who is liable
9 to the Agency for an overpayment pursuant to the Act, Chapter 212 or 214, or who is
10 registered for work at an Agency office, or public employment office, including a
11 workforce center, shall promptly notify the Agency of any change of address.
12
- 13 (b) In this chapter, a group account, as referred to in the Act, §205.021, shall be treated
14 as a single employing unit for the purposes of this section and the Agency shall use
15 the address of the group representative as the official address of the group. The group
16 representative shall notify the Agency of the correct address and shall promptly
17 notify the Agency of any change of address.
18
- 19 (c) In all transactions in which notice is required by the Act or this chapter, the Agency
20 shall notify the parties at the last known address as reflected in the Agency records.
21 However, when the Agency mails a notice of an initial claim to the employer, the
22 Agency shall use the address of the employer for whom the claimant last worked, or
23 if the employer has more than one branch or division at different locations, the
24 location of the branch or division for which the claimant last worked, or a mailing
25 address designated by the employer in the Act, §208.003.
26

27 *The provisions of this §815.3 adopted to be effective November 6, 2000, 25 TexReg 11093*

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30
31 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

32
33 **§815.10. Appeals from Decisions on Chargebacks.**

34 Appeals from decisions on chargebacks under the Act, §§204.021 - 204.027, 208.004(c),
35 and §212.005(b), shall be to the appeal tribunals and to the Commission within the time
36 prescribed by the Act. These appeals shall be heard in accordance with the provisions of
37 §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations),
38 §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and
39 §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the
40 extent that the referenced sections are clearly inapplicable.

41 *The provisions of this §815.10 adopted to be effective November 6, 2000, 25 TexReg 11093;*
42 *amended to be effective June 30, 2014, 38 TexReg 4965*

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2
3 **§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment**
4 **Compensation Overpayments.**

- 5
6 (a) This section implements the Temporary Extended Unemployment Compensation
7 (TEUC) waiver of repayment program by setting out the process that the Agency and
8 Commission shall use to determine whether to waive the repayment and recovery of
9 non-fraudulent overpayments. The terms repayment and recovery will be referred to
10 as repayment in this section, and Temporary Extended Unemployment
11 Compensation overpayment will be referred to as overpayment.
12
- 13 (b) When a decision of the Agency or Commission results in an overpayment, an
14 appealable determination and a request for waiver of repayment of an overpayment
15 are mailed to the claimant.
16
- 17 (c) A claimant may appeal an overpayment determination pursuant to the provisions of
18 Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating
19 to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter
20 (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter
21 (relating to General Rules for Both Appeal Stages).
22
- 23 (d) A claimant's written request for waiver of repayment of an overpayment must be
24 filed within 14 days of the date a request to waive the repayment of an overpayment
25 notification is mailed by the Agency. The waiver request must be filed in
26 accordance with §815.16(1)(A) of this chapter (relating to Appeals to Appeal
27 Tribunals from Determinations) or mailed to the address on the request form.
28
- 29 (e) The Agency or Commission will deny a request to waive the repayment of a non-
30 fraudulent overpayment if it determines that:
31
- 32 (1) the payment of TEUC benefits is the fault of the claimant, or
 - 33 (2) the repayment is not contrary to equity and good conscience.
- 34
35
- 36 (f) The Agency or Commission will waive the repayment of a non-fraudulent
37 overpayment if it determines that:
38
- 39 (1) the payment of TEUC benefits is not the fault of the claimant, and
 - 40 (2) the repayment is contrary to equity and good conscience.
- 41
42
- 43 (g) In determining whether fault exists, the Agency or Commission shall consider the
44 following:
45

- 1 (1) whether a material statement or representation was made by the claimant in
2 connection with the application for TEUC that resulted in an overpayment, and
3 whether the claimant knew or should have known that the statement or
4 representation was inaccurate;
5
- 6 (2) whether the claimant failed or caused another to fail to disclose a material fact,
7 in connection with an application for TEUC that resulted in an overpayment,
8 and whether the claimant knew or should have known that the fact was
9 material;
10
- 11 (3) whether the claimant knew or could have been expected to know that the
12 claimant was not entitled to the TEUC payment; and
13
- 14 (4) whether, for any other reason, the overpayment resulted directly or indirectly,
15 and partially or totally, from any act or omission of the claimant or of which
16 the claimant had knowledge, and which was erroneous or inaccurate or
17 otherwise wrong.
18
- 19 (h) In determining whether equity and good conscience exists, the Agency or
20 Commission shall consider the following factors:
21
- 22 (1) whether the overpayment is the result of a decision on appeal;
23
- 24 (2) whether the Agency gave notice to the claimant that the claimant may be
25 required to repay the overpayment in the event of a reversal of a TEUC
26 eligibility determination on appeal; and
27
- 28 (3) whether repayment of the TEUC overpayment will cause financial hardship to
29 the claimant.
30
- 31 (i) The Commission has determined that requiring the claimant to repay a TEUC
32 overpayment will cause financial hardship to the claimant, because in order to
33 receive TEUC benefits, the claimant had to have been unemployed for an extended
34 period of time.
35
- 36 (j) A claimant may appeal a denial of a request to waive the repayment of an
37 overpayment pursuant to subsection (c) of this Section.

- 1
2 (k) Hearings under this Section will be conducted in a fair and impartial manner in
3 accordance with the provisions of §815.15 of this chapter (relating to Parties with
4 Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals
5 from Determinations), §815.17 of this chapter (relating to Appeals to the
6 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
7 for Both Appeal Stages), except to the extent that the sections are clearly
8 inapplicable.
9

10 *The provisions of this §815.12 adopted to be effective July 16, 2002, 27 TexReg 6339*

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13
14 **§815.15. Parties with Appeal Rights.**

- 15
16 (a) This section defines the circumstances under which a party has appeal rights. For the
17 purposes of appeals under this chapter, the term "party of interest" shall be used to
18 denote a party with appeal rights.
19
20 (b) A claimant may file an appeal from an action of the Agency and/or the Commission
21 that affects the claimant's right to benefits subject to this chapter and the Act.
22
23 (c) An employer may file an appeal from a determination that affects a claimant's
24 entitlement to benefits if the employer is a party of interest to the determination. The
25 paragraphs of this subsection are situations in which the Agency shall treat an
26 employer as a party of interest in a specific proceeding. Only one employer shall be
27 a party of interest to a proceeding.
28
29 (1) An employer named as the last work on an initial claim is a party of interest to
30 a determination(s) ruling on the merits of the claimant's separation and other
31 specific issues raised by the employer regarding the claimant's entitlement to
32 benefits, if the employer filed a timely response to notice of the claimant's
33 initial claim.
34
35 (2) An employer named as the last work on an additional or continued claim is a
36 party of interest to a determination(s) ruling on the merits of that additional or
37 continued claim separation, if the employer filed a timely response to notice of
38 the claimant's additional or continued claim and:
39
40 (A) was the employer named as the last work on the claimant's initial claim
41 and the employer filed a timely response to notice of the claimant's initial
42 claim; or
43
44 (B) is a base period employer whose account has been ruled subject to
45 chargeback.
46

- 1 (3) A reimbursing employer named as the last work on an additional or continued
2 claim is a party of interest to a determination(s) ruling on the merits of that
3 additional or continued claim separation, if the employer filed a timely
4 response to notice of the claimant's additional or continued claim and:
5
6 (A) was the employer named as the last work on the claimant's initial claim
7 and the employer filed a timely response to notice of the claimant's initial
8 claim; or
9
10 (B) is a base period employer.
11
12 (4) If an employer, during a claimant's benefits year, provides the Agency with
13 information that raises specific issues including, but not limited to, a potential
14 disqualification, ineligibility, or allegations of fraud, each of which affects that
15 claimant's entitlement to benefits, then the employer shall be a party of interest
16 to a determination ruling on the merits of the specific issue raised by the
17 employer as follows:
18
19 (A) the employer is named as the last work on the claimant's initial claim and
20 the employer filed a timely response to notice of the claimant's initial
21 claim;
22
23 (B) the employer is a base period taxed employer whose account has been
24 ruled subject to chargeback (even if that employer was named as the last
25 work on the claimant's initial claim and did not timely respond to notice
26 of the claimant's initial claim); or
27
28 (C) the employer is a base period reimbursing employer.
29
30 (5) An employer against whom a claimant has alleged entitlement to additional
31 base period wages shall be a party of interest to that issue.
32
33 (6) If an employer has requested a waiver under §815.28(a)(1)(E)(v) of this
34 subchapter and the Agency Executive Director denies the waiver, the employer
35 shall be a party of interest to any benefits appeal where ineligibility results
36 from that denial.
37

38 *The provisions of this §815.15 adopted to be effective November 6, 2000, 25 TexReg 11093;*
39 *amended to be effective August 15, 2004, 29 TexReg 7738*

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42 **§815.16. Appeals to Appeal Tribunals from Determinations.**

43
44
45 A party of interest may appeal a determination to the appeal tribunal. Appeals shall be in
46 accordance with the terms of this section, §815.15 of this chapter (relating to Parties with

1 Appeal Rights), §815.17 of this chapter (relating to Appeals to the Commission from
2 Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal
3 Stages). As used in this section and in §815.17 and §815.18, the term "party" includes a
4 person's or individual's representative. In this section, a reference to the term "supervisor
5 of appeals" includes the supervisor's designee.
6

7 (1) Presentation of appealed claims.
8

9 (A) A party appealing from a determination made by an examiner under the
10 provisions of the Act, shall file an appeal by hand delivery, mail,
11 common carrier, facsimile (fax) transmission, or other method approved
12 by the Agency in writing. A written appeal that is sent to the Agency
13 should be addressed to the Texas Workforce Commission, 101 East 15th
14 Street, Austin, Texas, 78778-0001, or faxed to the number provided in
15 the determination. A written appeal may be hand delivered to the Texas
16 Workforce Commission, 101 East 15th Street, Austin, Texas 78778-
17 0001, a local office of the Agency, or an agent state, or a workforce
18 center or an office of a Board. The appeal should identify the
19 determination being appealed, the basis for the appeal, the name of the
20 party appealing, and the date of the appeal. The provisions of §815.32 of
21 this chapter (relating to Timeliness) shall determine on what date the
22 appeal was filed.
23

24 (B) Upon the scheduling of a hearing on an appeal or a petition to reopen,
25 notice of the hearing shall be mailed to the parties at least five days
26 before the date of the hearing. The notice shall identify the decision or
27 determination appealed from and shall specify the time and date of the
28 hearing, the party appealing, and the issue to be heard. If the hearing is
29 an in-person hearing, the notice shall also specify the location of the
30 hearing.
31

32 (2) Disqualification of appeal tribunal. The essence of a fair hearing lies in the
33 impartiality of the appeal tribunal. An appeal tribunal should be free not only
34 of any personal interest or bias in the appeal before it, but also of any
35 reasonable suspicion of personal interest. No appeal tribunal shall participate
36 in the hearing of an appeal in which that tribunal has a personal interest in the
37 outcome of the appeal decision. The appeal tribunal may withdraw from a
38 hearing to avoid the appearance of impropriety or partiality. Challenges to the
39 impartiality of any appeal tribunal may be heard and decided by the supervisor
40 of appeals.
41

42 (3) Hearing of appeal.
43

44 (A) Consistent with §212.106 of the Act, all hearings shall be conducted
45 informally and in a manner to ensure the substantial rights of the parties.
46 All issues relevant to the appeal shall be considered and ruled upon. The

1 parties to an appeal before an appeal tribunal may present evidence that
2 may be material and relevant as determined by an appeal tribunal. The
3 appeal tribunal shall examine parties and witnesses, if any, and may
4 allow cross-examination to the extent the appeal tribunal deems
5 necessary to afford the parties due process. The appeal tribunal, with or
6 without notice to any of the parties, may take additional evidence that it
7 deems necessary, provided that a party shall be given an opportunity to
8 rebut the evidence if it is to be used against the party's interest.
9

10 (i) In conducting a hearing, the appeal tribunal shall actively develop
11 the record on the relevant circumstances leading to the separation
12 for hearings involving the issue of work separation and, for hearings
13 involving other issues, the relevant facts to resolve those issues. It
14 is the responsibility of the appeal tribunal to ensure that all relevant
15 issues are thoroughly explored at the hearing.
16

17 (ii) The appeal tribunal shall ask any questions necessary to obtain
18 pertinent facts concerning all events (such as job separation) that are
19 at issue in the hearing.
20

21 (B) The parties to an appeal, with the consent of the appeal tribunal, may
22 stipulate in writing the facts involved. The appeal tribunal may decide
23 the appeal on the basis of a stipulation or, in its discretion, may set the
24 appeal for hearing and take any additional evidence it deems necessary
25 to enable it to determine the appeal.
26

27 (C) Hearings shall be conducted by telephone conference call unless the
28 supervisor of appeals determines that an in-person hearing is necessary
29 because a party with a physical impairment cannot effectively participate
30 by telephone, because the nature of the evidence to be presented makes a
31 hearing by telephone impractical, or because the supervisor of appeals
32 otherwise determines that an in-person hearing is necessary. The rules
33 and procedures in this chapter govern both in-person and telephone
34 hearings. A party may request an in-person hearing by informally
35 contacting, orally or in writing or by any other reasonable method of
36 communication, the appeal tribunal or the supervisor of appeals before
37 the scheduled time of the hearing and presenting information to support
38 the request. The supervisor of appeals has the discretion to determine
39 whether the party's request for an in-person hearing will be granted.
40

41 (4) Adjournment, continuance, and postponement of hearing.
42

43 (A) The appeal tribunal shall use its best judgment to determine when to
44 grant a continuance or postponement of a hearing in order to secure all
45 the evidence that is necessary and to be fair to the parties.
46

1 (B) Either prior to or during a hearing, an appeal tribunal, on its own motion
2 or on the motion of a party of interest, may continue, adjourn, or
3 postpone a hearing. The continuance, adjournment, or postponement
4 shall not be for the purpose of delaying the proceeding and may be
5 granted due to illness of the appellant, death in the immediate family of
6 the appellant, or a pending criminal prosecution of the appellant. A
7 continuance, adjournment or postponement may also be granted at the
8 request of the appellant or appellee when there is a need for an
9 interpreter, religious observance, jury duty, court appearance, active
10 military duty, or other reasons approved by the supervisor of appeals.
11 Prior to the hearing, requests for a continuance or a postponement of a
12 hearing may be made informally, either orally or in writing, to the appeal
13 tribunal designated to hear the appeal or to the supervisor of appeals.
14

15 (5) Reopening of hearing before appeal tribunal.
16

17 (A) If a party fails to appear for a hearing, the appeal tribunal may hear and
18 record the evidence of the party present and the witnesses, if any, and
19 shall proceed to decide the appeal on the basis of the record unless there
20 appears to be good reason for continuing the hearing. A copy of the
21 decision shall be promptly mailed to the parties of interest with an
22 explanation of the manner in which, and time within which a request for
23 reopening may be submitted.
24

25 (B) A party of interest to the appeal who fails to appear at a hearing may,
26 within 14 days from the date the decision is mailed, petition for a new
27 hearing before the appeal tribunal in the manner set out in subsection
28 (1)(A) of this section. The petition should identify the party requesting
29 the reopening, the applicable decision of the appeal tribunal, the date of
30 the petition, and explain the reason for the failure to appear. The
31 provisions of §815.32 of this chapter (relating to Timeliness) shall
32 determine on what date the petition was filed. The petition shall be
33 granted if it appears to the appeal tribunal that the petitioner has shown
34 good cause for the petitioner's failure to appear at the hearing. In the
35 event that an appeal to the Commission is filed before the filing of the
36 petition for reopening by the appeal tribunal, the appeal shall be referred
37 to the Commission for review.
38

39 (C) For purposes of this section, the term "appear" shall mean participation
40 by a party or a party's representative in the proceeding. Actions that may
41 be considered as participation include offering testimony, examining
42 witnesses, or presenting oral argument. If the hearing is a telephone
43 hearing, a party or a party's representative shall appear at a hearing by
44 calling on the date and at the time of the hearing and participating in the
45 hearing proceedings. If the hearing is an in-person hearing, a party or a
46 party's representative shall appear by being at the location of the hearing

1 on the date and at the time scheduled for the hearing and participating in
2 the hearing proceedings. Mere submission of written documents,
3 whether sworn or unsworn, or observation of the proceedings shall not
4 constitute an appearance.
5

6 (6) The determination of appeals.
7

8 (A) As soon as possible following the conclusion of a hearing of an appeal,
9 the appeal tribunal shall issue its findings of fact and decision with
10 respect to the appeal. The decision shall be in writing and shall reflect
11 the name of the appeal tribunal who conducted the hearing and who
12 rendered the decision. In the decision, the appeal tribunal shall set forth
13 findings of fact and conclusions of law, with respect to the matters on
14 appeal, and the reasons for the decision. Copies of the decision shall be
15 mailed by the appeal tribunal to the parties of interest to the appeal.
16 Upon request, courtesy copies may be mailed to other parties to the
17 appeal.
18

19 (B) At any time during the 14-day period from the date a decision on an
20 appeal is mailed, unless a party of interest has already appealed to the
21 Commission, the appeal tribunal or the supervisor of appeals may
22 assume continuing jurisdiction over the appeal for the purpose of
23 reconsidering the issues on appeal and issuing a corrected decision.
24 During the period in which continuing jurisdiction is assumed, the appeal
25 tribunal, after notice to the parties, may take any additional evidence or
26 secure any additional information it deems necessary to issue a decision.
27

28 *The provisions of this §815.16 adopted to be effective November 6, 2000, 25 TexReg 11093;*
29 *amended to be effective January 26, 2004, 29 TexReg 664*
30

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32

33 **§815.17. Appeals to the Commission from Decisions.**
34

35 (a) The presentation of an appeal to the Commission.
36

37 (1) A party of interest may appeal a decision of the Appeal Tribunal. A party
38 appealing from a decision of an appeal tribunal shall file the appeal by hand
39 delivery, mail, common carrier, facsimile (fax) transmission, or other method
40 approved by the Agency in writing. A written appeal that is sent to the Agency
41 should be addressed to the Texas Workforce Commission, 101 East 15th
42 Street, Austin, Texas, 78778-0001, or faxed to the number provided in the
43 decision. A written appeal may be hand delivered to the Texas Workforce
44 Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of
45 the Agency, or an agent state, or a workforce center or an office of a Board.
46 The appeal should identify the decision of the appeal tribunal being appealed,

1 the basis for the appeal, the name of the party appealing, and the date of the
2 appeal. The provisions of §815.32 of this chapter (relating to Timeliness) shall
3 determine on what date the appeal was filed.
4

5 (2) When an appeal to the Commission is filed, all evidence and records pertaining
6 to the appeal shall be submitted to the Commission for its review.
7

8 (b) Commission action may include one or more actions as described in this subsection.
9

10 (1) The Commission may, without further hearing, affirm, reverse or modify any
11 decision of an appeal tribunal on the basis of the record made before the appeal
12 tribunal.
13

14 (2) The Commission may grant a further hearing on the matter and notify the parties to
15 appear before the Commission, or before a representative of the Agency designated
16 to hold hearings for the Commission, at a specified time and place for the purpose of
17 presenting additional evidence and arguments; or the Commission may direct an
18 appeal tribunal to take additional evidence necessary for the proper disposition of the
19 appeal. All hearings conducted by the Commission, or before a representative of the
20 Agency designated to hold hearings for the Commission, shall be conducted in the
21 manner prescribed by §815.16 of this chapter (relating to Appeals to Appeal
22 Tribunals from Determinations). Upon completion of the taking of additional
23 evidence, the complete record involved in the appeal shall be returned to the
24 Commission for its decision.
25

26 (3) The Commission may remand a case to the appeal tribunal for the appeal tribunal to
27 hold a de novo hearing. The appeal tribunal shall set aside the prior appeal tribunal
28 decision and issue a new decision. The new decision shall be subject to all the
29 provisions relating to appeals contained in the Act, in this section, in §815.15 of this
30 chapter (relating to Parties with Appeal Rights), in §815.16 of this chapter (relating
31 to Appeals to Appeal Tribunals from Determinations), and in §815.18 of this chapter
32 (relating to General Rules for Both Appeal Stages), just as any other appeal tribunal
33 decision.
34

35 (c) Assumption of jurisdiction on the Commission's own motion. Within 14 days
36 following the mailing of a decision of an appeal tribunal, and in the absence of the
37 filing of an appeal to the Commission by a party of interest, the Commission may on
38 its own motion acquire jurisdiction of the appeal and act as though a party of interest
39 had filed an appeal.
40

41 (d) Cases removed from an appeal tribunal. The Commission may remove to itself any
42 appeal pending before an appeal tribunal. In that event, the Commission may
43 proceed to decide the case on the evidence previously submitted, may schedule a
44 hearing conducted by the Commission or its designee, or may direct the appeal
45 tribunal to take any additional evidence the Commission deems necessary.
46

1 (e) The determination of appeals.
2

3 (1) The Commission shall render its decision with respect to an appeal as soon as
4 possible after reviewing the case. The decision shall be in writing and shall
5 reflect the names of the members of the Commission who participated in the
6 review.
7

8 (2) If a decision of the Commission is not unanimous, the decision of the majority
9 shall control, but the minority member may file a dissent from the decision.
10

11 (3) A copy of the Commission's decision shall be mailed to the parties.
12

13 (f) Motions for rehearing.
14

15 (1) A motion for rehearing may be filed by hand delivery, mail, common carrier,
16 facsimile (fax) transmission, or other method approved by the Agency in
17 writing. A motion for rehearing that is sent to the Agency should be addressed
18 to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas,
19 78778-0001, or faxed to the number provided in the decision. A written motion
20 may be hand delivered to the Texas Workforce Commission, 101 East 15th
21 Street, Austin, Texas 78778-0001, a local office of the Agency, or an agency
22 state, or a workforce center or an office of a Board. The provisions of §815.32
23 of this chapter (related to Timeliness) shall determine on what date the motion
24 was filed.
25

26 (2) A motion for rehearing shall not be granted unless each of the following three
27 criteria is met:
28

29 (A) there is an offering of new evidence, which was not presented at the
30 appeal tribunal level;
31

32 (B) there is a compelling reason why the evidence was not presented earlier;
33 and
34

35 (C) there is a specific explanation of how consideration of the evidence
36 would change the outcome of the case.
37

38 (3) Notwithstanding the provisions of paragraph (2) of this subsection, a rehearing
39 may be granted in the following two situations.
40

41 (A) When a party of interest did not appear before the appeal tribunal,
42 nevertheless won at that level, and then received an adverse ruling at the
43 Commission level, the Commission may grant a rehearing to consider
44 whether there was good cause for the nonappearance. If good cause is
45 found, the rehearing shall address the merits of the case.
46

1 (B) When a solely jurisdictional or procedural problem is not detected or
2 recognized until after the Commission decision has been issued, the
3 Commission may take appropriate action to correct the problem at the
4 motion for rehearing level.
5

6 (4) The Commission shall deny a request for rehearing unless it can be shown
7 there are substantial reasons for the Commission to grant the rehearing.
8

9 *The provisions of this §815.17 adopted to be effective November 6, 2000, 25 TexReg 11093*

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11
12
13 **§815.18. General Rules for Both Appeal Stages.**

14
15 This section shall be applicable to appeals both to the appeal tribunal and to the
16 Commission.
17

18 (1) Issuance of subpoenas.
19

20 (A) Subpoenas to compel the attendance of witnesses and the production of
21 records for any hearing of an appeal may be issued at the direction of the
22 Commission or its designee or an appeal tribunal. A subpoena may be
23 issued either at the request of a party or on the motion of the
24 Commission or its designee or the appeal tribunal. The party requesting
25 a subpoena shall state the nature of the information desired, including
26 names of any witnesses and the records that the requestor feels are
27 necessary for the proper presentation of the case. The request shall be
28 granted only to the extent the records or the testimony of the requested
29 witnesses appears to be relevant to the issues on appeal.
30

31 (B) A witness subpoenaed to appear before an appeal tribunal, the
32 Commission or its designee, or a court may be paid a fee and mileage for
33 the appearance. The fee shall be \$20 per day, and for miles necessarily
34 traveled to and returning from a hearing, the rate per mile shall be at the
35 rate provided for state employees in the State Appropriations Act, or as
36 otherwise required by law. The fee as provided in this section and the
37 mileage shall be paid from the unemployment compensation
38 administration fund upon proper certification of the appeal tribunal, the
39 Commission or its designee, or the court, and upon certification of the
40 witness that the fees and mileage are just, true, and unpaid.
41

42 (2) Provision of Agency records.
43

44 (A) Upon the request of a party to a proceeding, the Agency shall provide
45 copies of all records pertaining to that proceeding, except for records
46 subject to privileges under state or federal law or regulation. Other

- 1 Agency records shall be produced only if the party specifies the exact
2 information desired, and the necessity of the records to allow the party to
3 properly present its claim; the production of records shall be subject to
4 confidentiality limitations and privileges under state or federal law or
5 regulation.
6
- 7 (B) The Agency shall provide copies of the relevant separation and
8 timeliness information in the Agency's custody to both parties with the
9 Notice of Hearing, including:
10
- 11 (i) all information received from the parties in response to, or in protest
12 of, a claim for unemployment insurance;
13
- 14 (ii) all fact-finding statements relating to the work separation; and
15
- 16 (iii) the appeal from the determination of the work separation.
17
- 18 (3) Representation before appeal tribunal and the Commission.
19
- 20 (A) An individual who is a party to a proceeding may appear before an
21 appeal tribunal or the Commission or its designee.
22
- 23 (B) A partnership may be represented by any of its members or a duly
24 authorized representative. Any corporation or association may be
25 represented by an officer or a duly authorized representative.
26
- 27 (C) Any party may appear by an attorney at law or by any other individual
28 who is qualified to represent others.
29
- 30 (D) The Commission or its designee or an appeal tribunal may refuse to
31 allow any individual to represent others in any proceeding before it if the
32 individual acts or speaks in an unethical manner or if the individual
33 intentionally and repeatedly fails to observe the provisions of the Act or
34 the rules of the Agency.
35
- 36 (4) Removing a party from a proceeding. The Commission or its designee or an
37 appeal tribunal may, after an appropriate warning, expel from any proceeding
38 any individuals, whether or not a party, who fail to comport themselves in a
39 manner befitting the proceeding. The Commission or its designee or an appeal
40 tribunal may then continue with the proceeding, hear evidence, and render a
41 decision on the appeal.
42
- 43 (5) Appeal Information. An appeal tribunal decision sent to a party of interest, or
44 the Commission's decision sent to a party, will include or be accompanied by a
45 notice specifying the appeal rights of the parties, the procedure for filing
46 further appeal, and the time period within which an appeal shall be filed.

- 1
2 (6) Retention of Decisions. Copies of decisions of the Commission and of appeal
3 tribunals shall be kept in accordance with the approved records retention
4 schedule.
5

6 *The provisions of this §815.18 adopted to be effective November 6, 2000, 25 TexReg 11093;*
7 *amended to be effective July 28, 2008, 33 TexReg 5982*
8

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10
11 **§815.19. Hearings Involving Forfeiture or Cancellation of Rights to Benefits.**
12

13 Hearings with respect to forfeiture or cancellation of benefits and rights to benefits in
14 situations potentially involving willful nondisclosure or misrepresentation as provided in
15 the Act, §214.003, shall be conducted in a fair and impartial manner in accordance with
16 the provisions of §815.15 of this chapter (relating to Parties with Appeal Rights), §815.16
17 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of
18 this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this
19 chapter (relating to General Rules for Both Appeal Stages), except to the extent that the
20 sections are clearly inapplicable.
21

22 *The provisions of this §815.19 adopted to be effective November 6, 2000, 25 TexReg 11093*
23

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25
26 **§815.20. Claim for Benefits.**
27

28 An unemployed individual who has no current benefit year and who wishes to claim
29 benefits shall report to a representative of the Agency in a manner, including telephonic,
30 Internet, or other means, that the Agency may approve, and file a claim for benefits.
31 Before receiving benefits a claimant shall register for work with the public employment
32 office, including workforce centers, serving the individual's area of residence, as provided
33 in paragraphs (3) and (7) of this section, unless exempt from the requirement.
34

- 35 (1) In case of a mass layoff by an employer, if the last employing unit involved
36 makes an appropriate request, the Agency may accept, in lieu of an initial
37 claim from each individual, a list furnished by the last employer of the
38 individuals to be laid off and who wish to file initial claims for benefits. The
39 list shall reflect, with respect to each individual, all information normally
40 required on the initial claim by the Agency, except the reason for separation.
41 If the Agency approves the request, the listing then may be used by the Agency
42 as an initial claim for each individual on the list.
43
44 (2) After an individual files a valid initial claim, which establishes the claimant's
45 benefit year, the claimant may, during the benefit year, file subsequent
46 continued claims, weekly or biweekly, by telephonic means, facsimile (fax)

1 transmission, mail, common carrier, Internet, or other means as the Agency
2 may approve in writing, but at intervals of no less than seven consecutive days.
3 A claimant shall file all claims by telephonic means, in writing, or orally,
4 during the hours, days, and weeks directed by Agency representatives. Internet
5 filing is available 24 hours each day. If at any time during the benefit year,
6 more than 30 days have elapsed since the filing of the claimant's last claim, the
7 claimant shall file an additional or reopened claim for benefits as defined in
8 §815.1 (relating to Definitions) and shall comply with all eligibility
9 requirements for the claims. A claimant who exhausts regular benefits may
10 file continued claims for extended benefits as referenced in §815.26 (relating
11 to Extended Benefit Period Announcement) in the same manner in which the
12 claimant filed claims for regular benefits, but the claimant's claims for
13 extended benefits may be for benefit periods subsequent to the end of the
14 claimant's benefit year.
15

16 (3) An individual who files a claim for benefits shall comply with all requirements
17 of the public employment office in which the claimant files an application for
18 work that are necessary to establish a valid registration for work in that public
19 employment office. The claimant shall comply with an Agency
20 representative's requests, whether oral or written, that are reasonably designed
21 to inform the claimant of the claimant's rights and responsibilities in filing a
22 claim for benefits. The claimant also shall:
23

- 24 (A) provide evidence, upon request, to establish the claimant's correct Social
25 Security account number;
- 26
- 27 (B) file all claims in the manner directed by the Agency, whether on Agency-
28 provided forms or by telephonic, Internet, or other means approved by
29 the Agency for claims purposes;
- 30
- 31 (C) supply all information within the claimant's knowledge, which is
32 necessary to determine the claimant's rights to benefits under the Act;
33
- 34 (D) sign all provided claims forms personally for the claims that are filed in
35 person or by mail or common carrier; and
36
- 37 (E) submit all claims filed by mail, common carrier, hand delivery, or by
38 other means, including telephonic or Internet, as instructed by the
39 Agency, in accordance with the terms of this section.
40

41 (4) An individual may file a claim by mail, common carrier, hand delivery, or by
42 other means as the Agency may approve, in writing in any of the following
43 circumstances:
44

- 45 (A) Conditions exist that make it impracticable for the Agency representative
46 to take claims by telephonic, Internet, or other approved means; or

- 1
2 (B) The Agency finds that the claimant has good cause for failing to file a
3 claim by telephonic, Internet, or other approved means.
4
- 5 (5) If a claimant's answer to a question on a claim filed with the Agency creates
6 uncertainty about the claimant's credibility, or a lack of understanding, or the
7 claimant's record shows that the claimant previously filed a fraudulent claim;
8 then the claimant may be required to file written claims on an Agency-
9 approved form in a manner prescribed by the Agency in writing. A claimant
10 required to file a claim under this section shall continue to file the claim in the
11 prescribed manner, until the Agency determines that the reason no longer
12 exists and directs otherwise in writing.
13
- 14 (6) The following provisions shall apply to the disqualification provisions of the
15 Act, Chapter 207, Subchapter C, concerning disqualification for benefits.
16
- 17 (A) The term "employment" in the Act, Chapter 207, Subchapter C, shall be
18 interpreted and applied to mean employment as defined in the Act.
19
- 20 (B) The disqualification to be imposed against an individual who has left
21 work to move with a spouse, as provided in the Act, §207.045(c), shall
22 be construed to mean both a benefits (money payments) and a benefit
23 period (time period) disqualification; and such disqualification shall be
24 restricted in its application to apply only to the range from six weeks to
25 25 weeks.
26
- 27 (C) Agency employees are authorized to administer oaths to claimants in an
28 effort to verify that the requalifying requirements of the Act, Chapter
29 207, Subchapter C, concerning employment or earnings, have been
30 satisfied.
31
- 32 (D) An employer identified as the employer by whom the claimant was
33 employed, for purposes of satisfying the requalifying requirements of the
34 Act, Chapter 207, Subchapter C, shall be afforded 14 days within which
35 to respond to notice by the Agency of the filing of an additional claim by
36 the claimant.
37
- 38 (E) In order to satisfy the requirement of the Act, Chapter 207, Subchapter C,
39 concerning returning to employment and working for six weeks, a "work
40 week" shall be defined as seven consecutive days during which the
41 claimant has worked at least 30 hours.
42
- 43 (F) Disqualifying separations, new benefit year, and extended benefit period.
44
- 45 (i) A claimant filing an initial claim, continued claim, or additional
46 claim shall be disqualified from receiving benefits if the separation

1 from the claimant's last work is a disqualifying separation as defined
2 in the Act, Chapter 207.

3
4 (ii) If a work separation in a previous benefit year is the last separation
5 prior to a claimant's filing an initial claim that creates a new benefit
6 year, then that work separation may result in a disqualification in the
7 new benefit year in accordance with the provisions of the Act,
8 Chapter 207.

9
10 (iii) A disqualification resulting from a work separation in a benefit year
11 shall continue during the extended benefit period until:

12
13 (I) the extended benefit period is terminated;

14
15 (II) the claimant qualifies to file a new initial claim; or

16
17 (III) the claimant requalifies in accordance with the provisions of
18 the Act, Chapter 207, under which the disqualification was
19 imposed.

20
21 (7) A claimant shall be eligible to receive benefits with respect to any week only if
22 the individual demonstrates the availability for work required by the Act,
23 §207.021(a)(4), and, if required by §207.021(a)(8), by participating in
24 reemployment services, including, but not limited to, job search assistance, if
25 the claimant has been determined to be likely to exhaust regular benefits and
26 needs reemployment services pursuant to a profiling system established by the
27 Agency.

28
29 (8) The following categories of claimants are exempt from the requirement to
30 register for work:

31
32 (A) individuals on temporary layoff with a definite date to return to work;

33
34 (B) members in good standing in unions that maintain a hiring hall; and

35
36 (C) individuals participating in a Shared Work plan as defined in the Act,
37 Chapter 215.

38
39 (9) Withholding from Benefits for Federal Income Tax.

40
41 (A) An individual filing a new claim for unemployment compensation shall,
42 at the time of filing the claim, be advised that:

43
44 (i) unemployment compensation is subject to federal, state, and local
45 income tax;

46

- 1 (ii) requirements exist pertaining to estimated tax payments;
2
3 (iii) the individual may elect to have federal income tax deducted and
4 withheld from the individual's payment of unemployment
5 compensation at the amount specified in the federal Internal
6 Revenue Code; and
7
8 (iv) the individual shall be permitted to change a previously elected
9 withholding status.
10
11 (B) Amounts deducted and withheld from unemployment compensation shall
12 remain in the unemployment fund until transferred to the federal taxing
13 authority as a payment of income tax.
14
15 (C) The Agency shall follow all procedures specified by the United States
16 Department of Labor and the federal Internal Revenue Service pertaining
17 to deducting and withholding of income tax.
18
19 (D) Amounts shall be deducted and withheld under this section only after
20 amounts are deducted and withheld under any other provisions of the
21 Act.
22
23 (10) An employer's protest to an initial, additional, or continued claim made in
24 accordance with the Act, §208.004, may be delivered by telephonic means,
25 which includes a verification procedure approved by the Agency in writing,
26 mail, common carrier, facsimile (fax), Internet, or other means approved by the
27 Agency in writing and as prescribed in the Agency's notice of claim form.
28

29 *The provisions of this §815.20 adopted to be effective November 6, 2000, 25 TexReg 11093;*
30 *amended to be effective February 19, 2007, 32 TexReg 628*

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33

34 **§815.21. Interstate Claims.**
35

36 This section shall govern the Agency in its administrative cooperation with other states
37 adopting a similar rule or regulation for the payment of benefits to interstate claimants,
38 any provision of any other rule to the contrary notwithstanding.
39

- 40 (1) Definitions. As used in this section, the following words and terms shall have
41 the following meanings, unless the context clearly indicates otherwise.
42
43 (A) Agent state--Any state from which or through which an individual files a
44 claim for benefits from another state.
45

- 1 (B) Benefits--The compensation payable to an individual with respect to the
2 individual's unemployment, under the unemployment insurance law of
3 any state.
4
5 (C) Interstate benefit payment plan--The plan approved by the Interstate
6 Conference of Employment Security Agencies under which benefits
7 shall be payable to unemployed individuals absent from the state (or
8 states) in which benefit credits have been accumulated.
9
10 (D) Interstate claimant--An individual who claims benefits under the
11 unemployment insurance law of one or more liable states through the
12 facilities of an agent state, or directly with the liable state. The term
13 "interstate claimant" shall not include any individual who customarily
14 commutes from a residence in an agent state to work in a liable state
15 unless the Agency finds that this exclusion would create undue hardship
16 on the claimants in specified areas.
17
18 (E) Liable state--Any state against which an individual files, through another
19 state, a claim for benefits.
20
21 (F) State--Includes the District of Columbia, Puerto Rico, and the Virgin
22 Islands.
23
24 (G) Week of unemployment--Includes any week of unemployment as
25 defined in the law of the liable state from which benefits with respect to
26 the week are claimed.
27

28 (2) Registration for work.
29

- 30 (A) The agent state shall register for work each claimant who files through
31 the agent state, or upon notification of a claim filed directly with the
32 liable state, as required by the law, regulations, and procedures of the
33 agent state. The registration shall be accepted as meeting the registration
34 requirements of the liable state.
35
36 (B) Each agent state shall duly report, to the liable state in question, each
37 interstate claimant who fails to meet the registration/re-employment
38 assistance reporting requirements of the agent state.
39

40 (3) Benefit rights of interstate claimants.
41

- 42 (A) If a claimant files a claim against any state, and it is determined by the
43 state that the claimant has available benefit credits in the state, then
44 claims shall be filed only against the state as long as benefit credits are
45 available in that state. Thereafter, the claimant may file claims against
46 any other state in which there are available benefit credits.

1
2 (B) For the purposes of this section, benefit credits shall be deemed to be
3 unavailable whenever benefits have been exhausted, terminated, or
4 postponed for an indefinite period or for the entire period in which
5 benefits would otherwise be payable, or whenever benefits are affected
6 by the applications of a seasonal restriction.
7

8 (4) Claims for benefits.
9

10 (A) Claims for benefits or waiting-period credit filed by an interstate
11 claimant directly with the liable state shall be filed in accordance with
12 the liable state's procedures. Claims shall be filed in accordance with the
13 type of week in use in the agent state. Any adjustments required to fit
14 the type of week used by the liable state shall be made by the liable state
15 on the basis of consecutive claims filed.
16

17 (B) Claims shall be filed in accordance with the agent state's regulations for
18 intrastate claims in the local employment offices, affiliated sites, one-
19 stop centers, or at an itinerant service point or by mail, common carrier
20 or by other means, including telephonic or electronic means, as the
21 Agency may approve.
22

23 (i) With respect to claims for weeks of unemployment in which an
24 individual was not working for the individual's regular employer,
25 the liable state shall, under circumstances which it considers good
26 cause, accept a continued claim filed up to one week or one
27 reporting period late. If a claimant files more than one reporting
28 period late, an initial interstate claim shall be used to begin a claim
29 series, and no continued claim for a past period shall be accepted.
30

31 (ii) With respect to weeks of unemployment during which an individual
32 is attached to the individual's regular employer, the liable state shall
33 accept any claim which is filed within the time limit applicable to
34 the claims under the law of the agent state.
35

36 (5) Determination of claims.
37

38 (A) The agent state shall, in connection with each claim filed by an interstate
39 claimant, ascertain and report to the liable state in question the facts
40 relating to the claimant's availability for work and eligibility for benefits
41 as are readily determinable in and by the agent state.
42

43 (B) The agent state's responsibility and authority in connection with the
44 determination of interstate claims shall be limited to investigation and
45 reporting of relevant facts and the reporting of relevant facts pertaining
46 to each claimant's failure to register for work or report for re-

1 employment assistance as required by the agent state. The agent state
2 shall not refuse to take an interstate claim.

3
4 (6) Appellate procedure.

5
6 (A) The agent state shall afford all reasonable cooperation in the taking of
7 evidence and the holding of hearings in connection with appealed
8 interstate benefit claims.

9
10 (B) With respect to the time limits imposed by the law of a liable state other
11 than Texas, upon the filing of an appeal in connection with a disputed
12 claim, whether or not the appeal is timely shall be determined by the
13 liable state by reference to that state's law, regulations, or policies and
14 practices. In interstate appeals in which Texas is the liable state, whether
15 or not the appeal is timely shall be determined by reference to relevant
16 provisions of the Texas Unemployment Compensation Act and current
17 Agency policies and precedent decisions applicable to intrastate appeals.

18
19 (C) The liable state shall conduct hearings in connection with appealed
20 interstate benefit claims. The liable state may contact the agent state for
21 assistance in special circumstances.

22
23 (7) Canadian claims. This section shall apply in all its provisions to claims taken
24 in and for Canada.

25
26 (8) Notification of interstate claim. The liable state shall notify the agent state of
27 each initial claim, reopened file, claim transferred to interstate status, and each
28 week claim filed from the agent state using uniform procedures and record
29 format pursuant to the Interstate Benefit Payment Plan.

30
31 *The provisions of this §815.21 adopted to be effective November 6, 2000, 25 TexReg 11093*

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34
35 **§815.22. Special Claim Situations.**

36
37 (a) For adequate cause shown, the Agency may permit retroactive or backdated work
38 registrations and may permit the filing of retroactive or backdated work registrations
39 and may permit the filing of retroactive or backdated claims in order to prevent
40 hardship or injustice. The work registrations and claims shall have the same effect as
41 though prepared and filed on the earlier date. In the event a request for backdating a
42 claim is approved prior to the filing of the claim, a claimant must file the backdated
43 claim within 60 days of the date the backdating was authorized in order for the claim
44 to be valid.

- 1 (b) On a finding by the executive director, or the executive director's designee, that a
2 foreign conflict creates an emergency situation which prevents the filing of claims in
3 accordance with all of the provisions of §815.20 of this chapter (relating to Claim for
4 Benefits) and that the emergency is likely to continue for an extended period, the
5 executive director may permit the filing and payment of claims not meeting all of the
6 requirements of §815.20 of this chapter (relating to Claim for Benefits). However,
7 those requirements may be relaxed only to the extent that the executive director finds
8 necessary to prevent hardship or injustice that would otherwise be caused by the
9 emergency.

10
11 *The provisions of this §815.22 adopted to be effective November 6, 2000, 25 TexReg 11093*

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14
15 **§815.23. Record of Work and Wages Required of Claimants.**

16
17 An individual who has registered, in accordance with §815.20 of this chapter (relating to
18 Claim for Benefits), for work and filed a claim shall keep an accurate record of any work
19 which the claimant has performed during any day within a benefit period regardless of
20 whether the work constitutes "employment" as defined in the Act. The record shall
21 include the names and addresses of the individuals or persons for whom the claimant
22 worked, the total remuneration earned, and the number of hours worked during the
23 benefit period. All claimants shall provide the information at the time a continued or
24 additional claim is filed, in the manner which the Agency may direct.

25
26 *The provisions of this §815.23 adopted to be effective November 6, 2000, 25 TexReg 11093*

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29
30 **§815.24. Notice of Appeal Rights.**

31
32 Each notice of determination which the Agency is required to furnish to the parties shall,
33 in addition to stating the decision and its reasons, include a notice specifying the party's
34 appeal rights. The notice of appeal rights shall state clearly the place and manner for
35 taking an appeal from the determination and the period within which an appeal may be
36 taken. This section does not grant appeal rights to a party that is not a party of interest.

37
38 *The provisions of this §815.24 adopted to be effective November 6, 2000, 25 TexReg 11093*

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41
42 **§815.25. Approval of Training.**

- 43
44 (a) The Agency shall approve training, if:
45

- 1 (1) there is no longer substantial and recurring demand for the individual's skills,
2 and the lack of employment opportunities in occupations requiring those skills
3 is expected to continue for an extended period of time, and the individual has
4 no other skill for which there is an expectation of reemployment in a
5 reasonable period; and
6
7 (2) the training will enhance the individual's ability to secure stable employment
8 and earning potential in an occupation for which there is substantial and
9 recurring demand.
- 10
11 (b) An individual shall be in approved training if the Agency approves the training for
12 the individual and the individual is attending the training as shown by the following:
13
14 (1) The individual and/or the training facility agrees to furnish evidence
15 upon request of the Agency that the individual is regularly attending the
16 training course and is satisfactorily performing assignments as a trainee;
17 and
18
19 (2) The individual affirms at the time of the claim certification that the
20 individual has attended the training course during the given training
21 week or had good cause for the individual's failure to do so.
22
- 23 (c) The funding source of the training shall not affect the approval of the training except
24 that training under the auspices of the Workforce Investment Act; the Texas
25 Department of Assistive and Rehabilitative Services; the Texas Department of Aging
26 and Disability Services; federal or state veterans' services, or any other program
27 specifically designated by the Agency shall be considered approved for the purposes
28 of the Act §207.022.
29
- 30 (d) The Agency shall not deny approval of training solely because the individual resides
31 outside of the state. Agency staff may rely upon the recommendation of the agent
32 state regarding whether the training is approved.
33
- 34 (e) The Commission shall develop procedural guidelines for use by Agency staff and the
35 Boards that are consistent with the requirements of this section. Procedures may
36 include, but are not limited to:
37
38 (1) using a statewide or Board-level demand or targeted occupations list to
39 determine whether there is substantial and recurring demand for an occupation
40 or industry; and
41
42 (2) using the Agency's job-matching system to assess the individual's existing
43 skills when determining the individual's likelihood to return to an occupation
44 or industry requiring those skills.
45

46 *The provisions of this §815.25 adopted to be effective September 20, 2010, 35 TexReg 8504*

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3

4 **§815.26. Extended Benefit Period Announcement.**
5

6 When the Agency receives official notice or determines that an extended benefit period
7 will become effective in this state, or that an extended benefit period in effect in this state
8 will be terminated, the Agency shall make an announcement of this fact through the
9 available news media. The announcement shall contain:

- 10
- 11 (1) the beginning or ending date of the extended benefit period, whichever is
12 appropriate;
 - 13
 - 14 (2) in the case of an extended benefit period that is about to begin, a statement of
15 who may be potential beneficiaries of extended benefits during the extended
16 benefit period; and
 - 17
 - 18 (3) a statement to the effect that any individual who wishes to file a claim for
19 extended benefits shall file the claim in the same manner in which the claimant
20 would file a claim for regular benefits, except that the claimant may file
21 retroactive claims for extended benefits during the first 21 days after the
22 beginning date of the extended benefit period or during the first 21 days after
23 the date of the announcement of the extended benefit period, whichever is
24 later.

25
26 *The provisions of this §815.26 adopted to be effective November 6, 2000, 25 TexReg 11093*
27

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29

30 **§815.27. Provisions Applicable to Extended Benefits.**
31

- 32 (a) Except where the result would be inconsistent with the purpose of the provisions for
33 extended benefits in the Act, the terms and conditions of the Act and the rules in this
34 chapter, which apply to claims for, and payment of, regular benefits shall apply to
35 claims for, and payment of extended benefits, including, but not limited to:
- 36
 - 37 (1) claim filing, claimant reporting, and registration for work;
 - 38
 - 39 (2) information to claimants;
 - 40
 - 41 (3) notices to claimants and to employers, as appropriate, including notice to
42 claimants as to the amount and duration of extended benefits for which they
43 qualify;
 - 44
 - 45 (4) determinations, redeterminations, appeals, and reviews;
- 46

- 1 (5) the week for which benefits are paid;
- 2
- 3 (6) ability to work, availability for work, and search for work; and
- 4
- 5 (7) disqualifications, except for the provisions of the Act, Chapter 209, Subchapter
- 6 C, concerning failure to accept any offer of suitable work or failure to apply for
- 7 any suitable work when so directed by the Agency.
- 8

9 (b) Provisions of the Act which are not applicable to payment of extended benefits are
10 those relating to:

- 11 (1) the waiting period;
- 12
- 13 (2) monetary qualifying requirements; and
- 14
- 15 (3) computation of weekly and total regular benefits.
- 16

17
18 *The provisions of this §815.27 adopted to be effective November 6, 2000, 25 TexReg 11093*

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21
22 **§815.28. Work Search Requirements.**

- 23
- 24 (a) Purpose. The purpose of this rule is to describe the work search requirements and
- 25 process that must be met for claimants to continue to receive unemployment
- 26 compensation benefits. A claimant is required to register for work, to actively seek
- 27 work and be available for work, as well as accept suitable work. The rule also
- 28 describes the process to be utilized by Local Workforce Development Boards
- 29 (Boards) when formulating the numerical weekly work search contact requirements.
- 30
- 31 (1) A claimant shall be considered available for work during the time the claimant
- 32 is making a reasonable search for suitable work as defined by this section.
- 33
- 34 (A) Work registration alone does not establish that the claimant is making a
- 35 reasonable search for suitable work.
- 36
- 37 (B) The claimant shall make a personal and diligent search for work.
- 38
- 39 (C) Unreasonable limitations by a claimant as to salary, hours, or conditions
- 40 of work indicate that a claimant is not making a reasonable search for
- 41 suitable work.
- 42
- 43 (D) The Agency expects each claimant to act in the same manner as a
- 44 prudent person who is out of work and seeking work.
- 45
- 46 (E) This section shall not apply to:

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- (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;
 - (iii) individuals on temporary layoff with a definite date to return to work that is within eight weeks or less from the date of layoff;
 - (iv) individuals on temporary layoff with a definite return to work date that is within eight to 12 weeks from the date of layoff, provided the exemption from work search requirements is explicitly requested in writing by the separating employer;
 - (v) individuals on temporary layoff with a definite return to work date that is more than 12 weeks from the date of layoff provided that a waiver from work search requirements is requested by the separating employer and granted by the Agency Executive Director. The Executive Director's decision is subject to review in any benefits appeal where ineligibility results from the decision. The requesting employer is a party of interest to any such appeal, as described in §815.15(c)(6) of this subchapter;
 - (vi) individuals who are members in good standing of a union that maintains a nondiscriminatory hiring hall, as that term is defined by the Landrum-Griffin Act, and who maintain contact with and use the placement services of the hiring hall;
 - (vii) individuals who perform jury service for a period of three days or longer, during the weeks in which the individual is actively performing jury service; or
 - (viii) individuals who are otherwise exempted by law.
- (F) This section shall apply to all claimants unless specifically exempted, including:
- (i) recipients of state extended unemployment benefits, who are required to actively seek work under Texas Labor Code §209.043;
 - (ii) recipients of federal extended unemployment benefits, except that if the legislation establishing such benefits or administrative directives for administering such benefits include work search requirements, which are in conflict with those established herein, the federal requirements or administrative directives shall apply; or

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- (iii) individuals who are engaged in efforts to establish themselves in a self-employment venture.
- (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;

- 1
2 (C) interviewing with potential employers, in-person or by telephone;
3
4 (D) registering for work with a private employment agency, placement
5 facility of a school, or college or university if one is available to the
6 claimant in his or her occupation or profession; and
7
8 (E) other work search activities as may be provided in Agency guidelines.
9
10 (5) Failure to comply with work search requirements, without good cause, could
11 result in an ineligibility determination that may result in a loss of benefits.
12
13 (c) Number of Work Search Requirements. The minimum number of weekly contacts
14 assigned shall be three work search contacts for all claimants, unless otherwise
15 provided by this section.
16
17 (d) A Board, based on specific local labor market information and conditions, may
18 advise the Agency that a claimant residing in the workforce area is required to make
19 more than three work search contacts per week.
20
21 (e) Rural Counties. In counties designated as "rural" by the Agency the Board may
22 reduce the minimum number of weekly work search contacts in response to specific
23 local labor market information and conditions. "Rural" counties are defined as those
24 counties having a population estimated by the Texas State Data Center at Texas
25 A&M University to be not more than 10,000 as of July 1 of the most recent year for
26 which county population estimates have been published.
27
28 (f) Local Boards shall have the flexibility within the guidelines provided in this section
29 to formulate the appropriate minimum number of weekly work search contacts for
30 their respective workforce area, using appropriate guidelines to be developed in
31 consultation with Agency staff, and shall maintain written documentation. Boards
32 shall review the minimum number of weekly work search contacts for each
33 workforce area at least once per year on a date to be determined by the Agency.
34
35 (g) Local Policies. A Local Board shall develop, adopt, and modify its policies to
36 promulgate the appropriate methodology for formulating the appropriate number of
37 work search contacts for the workforce area in a public process consistent with the
38 procedures required for compliance with the Texas Open Meetings Act, Texas
39 Government Code, Chapter 551 *et seq.* A Board shall maintain written copies of the
40 policies that are required by federal and state law or as requested by the Agency and
41 make such policies available to the Agency and the public upon request. A Board
42 shall also submit any modifications, amendments, or new policies to the Agency no
43 later than two weeks after adoption of the policy by the Board.
44

45 *The provisions of this §815.28 adopted to be effective December 8, 2003, 28 TexReg 10968;*
46 *amended to be effective August 15, 2004, 29 TexReg 7738*

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4 **§815.29. Coordination of Emergency Unemployment Compensation with Regular**
5 **Compensation.**
6

- 7 (a) The Commission shall establish a new benefit year, but defer the payment of regular
8 compensation with respect to that new benefit year until exhaustion of all emergency
9 unemployment compensation payable with respect to the prior benefit year if the
10 individual's weekly benefit amount of regular compensation in the new benefit year
11 is at least \$100 or 25 percent less than the individual's weekly benefit amount in the
12 immediately preceding benefit year.
13
- 14 (b) This section continues in effect as long as the provisions of P.L. 111-205 §3, or any
15 amendments thereto, remain in effect. At such time that these federal provisions are
16 no longer in effect, this section is repealed.
17

18 *The provisions of this §815.29 adopted to be effective November 28, 2010, 35 TexReg 10512*
19

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21

22 **§815.32. Timeliness.**
23

- 24 (a) Unless otherwise specified in this chapter, appeals time frames are generally
25 determined within these guidelines:
26
- 27 (1) as established in the Texas Unemployment Compensation Act; and
28
- 29 (2) are extended one working day following a deadline which falls on a weekend,
30 an official state holiday, a state holiday for which minimal staffing is required,
31 or a federal holiday.
32
- 33 (b) Presumption of receipt. A document mailed to a party is presumed to be received if
34 the document was mailed to the complete, correct address of record unless:
35
- 36 (1) there is tangible evidence of nondelivery, such as the document being returned
37 to the Agency by the United States Postal Service; or
38
- 39 (2) credible and persuasive evidence is submitted to the Agency to establish
40 nondelivery, delayed delivery, or misdelivery of the document.
41
- 42 (c) Address for proper mailing.
43
- 44 (1) For a claimant, the proper address is the address given by the claimant to the
45 Agency subject to later changes given by the claimant to the Agency.
46

- 1 (2) For an employer, the proper address is determined under §815.3 of this chapter
2 (relating to Addresses) unless the employer has specifically requested a
3 mailing address change in a protest, appeal, or other correspondence, or at a
4 hearing.
5
6 (3) For governmental employers, the group account address shall be used, if
7 applicable.
8
9 (4) Mailing of notice to a party representative, whether or not an attorney, is
10 required to bind parties to timeliness rules.
11
12 (5) If a party provides the Agency with the party's own incorrect mailing address,
13 an Agency mailing to that address shall be a proper mailing, even if there is
14 proof that the document was never received by the party.
15
16 (6) The Agency is not responsible for effectuating an address change when it is
17 listed in correspondence or merely listed by a party on an appeal filed in
18 person, unless the Agency is specifically directed by the party to mail
19 subsequent notices to the address.
20
21 (7) If the Agency improperly addresses a document, the time frame for filing an
22 appeal shall begin to run as of the actual date of receipt by the party, even if
23 received by the party within the statutory appeal time frame. However, this
24 subsection does not apply if the party provided an incorrect address under
25 subsection (c)(5) of this section.
26
27 (8) Addresses shall be positively verified by hearing officers, who shall also
28 explain to parties the importance of the address being correct and the fact that
29 subsequent appeal deadlines run from the date of mailing, not the date of
30 receipt by the party.

31
32 (d) Receipt Date.

- 33
34 (1) Receipt date is date of receipt at the earliest of an Agency, or agent state office,
35 or a workforce center or a Board office.
36
37 (2) If an appeal is received at an agent state office or a workforce center or a
38 Board office(s), but the appeal is not dated by the receiving entity, and is
39 forwarded to the appeals (or interstate) processing unit and is dated by that
40 unit, then the appeal date shall be set at three business days earlier than receipt
41 in appeals (or interstate).
42

43 (e) Appeal Date.

- 44
45 (1) The appeal date for a document received via United States Postal Service shall
46 be the postmark date or the postal meter date (where there is only one or the

1 other); but where there is both a postmark date and a postal meter date and they
2 conflict, the postmark date controls.

3
4 (2) The date a document is delivered to a common carrier (such as Federal
5 Express, Purolator, or other common carrier) controls as the date the appeal is
6 perfected. (Delivery to carrier is equivalent to delivery to United States Postal
7 Service; date of delivery to carrier is equivalent to postmark date.)

8
9 (3) An appeal received in an envelope bearing no legible postmark or postal meter
10 date shall be considered to be perfected three business days before receipt by
11 the Agency, or on the date of the document, if the document date is less than
12 three days earlier than date of receipt.

13
14 (4) If the mailing envelope is lost after delivery to the Agency, appeal document
15 date shall control. If the document is undated, appeal date shall be three
16 business days before receipt by the Agency, subject to sworn testimony
17 establishing an even earlier date.

18
19 (5) If a determination, decision or other written material provides for an appeal by
20 fax, or in an electronic form approved by the Agency in writing, then the
21 appeal date shall be the date and time the appeal is received by the Agency.

22
23 (f) Sworn testimony can establish a date for an appeal being perfected, which is earlier
24 than the dates established under subsections (d) and (e) of this section. Only in the
25 face of extremely credible evidence shall a party be allowed to establish an appeal
26 date earlier than a postal meter date, or the date of the document itself. When a party
27 alleges filing an appeal which the Agency has never received, the party must present
28 credible and persuasive testimony of timely filing corroborated by testimony of a
29 disinterested party and/or physical evidence specifically linked to the appeal in
30 question.

31
32 (g) Credible and persuasive testimony subject to cross-examination establishing
33 timeliness allows the Agency or the appeal tribunal to rule on the merits.

34
35 (h) If a party submits an address change to the Agency during the appeal period (but
36 after the Agency document was mailed to the old address), address change date shall
37 control and shall be considered as the date the appeal was perfected.

38
39 (i) Exceptions. The substantive nature of certain cases causes, or creates, exceptions to
40 the general timeliness rules, even where notice is proper or response is clearly late.

41
42 (1) Cases fitting into the wage credits/validity of claim category present a one-
43 time exception to the timeliness rules. A late appeal to the appeal tribunal on
44 the issues, if within the same benefit year, shall be deemed timely. However,
45 once a decision has been issued by the appeal tribunal, the appeal time limits in
46 the Act, Chapter 212, shall apply.

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- (2) In cases dealing with the imposition of fraud and forfeiture provisions of the Act, §214.003, there is a one-time exception at the appeal tribunal stage, if:
 - (A) the claimant is out of claim status; and
 - (B) if the claimant has moved.
- (3) In cases where there is a continuing ineligibility or condition and there is a late appeal, the appeal tribunal or the Commission can assume jurisdiction 14 days before the late appeal, and rule on the merits if the facts so warrant.
- (4) If a chargeback ruling is required, but is omitted, the determination or decision does not become final for the employer; it does become final for the claimant.
- (5) In a case where it is ultimately determined that there has been no separation from employment, all rulings are void and all rulings can be set aside at any time.
- (6) When there has been a ruling protecting an employer's account on a separation in one benefit year, the employer is not required to timely protest or appeal a ruling on the same separation in a subsequent year.
- (7) Timeliness sanctions shall not apply when an Agency representative or a representative of a Board or an agent state representative has given misleading information on appeal rights to a party, if the party:
 - (A) specifically establishes how the party was misled; or
 - (B) specifically establishes what the party was told that was misleading and, if possible, by whom the party was misled.

1 (8) There is no good cause exception to the timeliness rules.

2
3 *The provisions of this §815.32 adopted to be effective November 6, 2000, 25 TexReg 11093*

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6
7 **SUBCHAPTER C. TAX PROVISIONS**

8
9 **§815.101. Scope.**

10
11 The purpose of this subchapter is to set forth the provisions governing employers'
12 interaction with the Tax Department as provided by the Act. The rules contained in this
13 subchapter may be applicable to an Unemployment Insurance function, except that to the
14 extent of any conflict, the program-specific rule will govern.

15
16 *The provisions of this §815.101 adopted to be effective November 6, 2000, 25 TexReg 11093*

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19
20 **§815.102. Mailing Dates and Use of Forms.**

21
22 (a) Whenever an individual or an employing unit reports or applies to the Agency in
23 writing upon an Agency form, for purposes of determining the date the writing is
24 submitted, the following dates shall control, in the order listed:

25
26 (1) the United States Postal Service postmark date, if legible;

27
28 (2) the postal meter date, if legible;

29
30 (3) a writing received in an envelope without a legible postmark or postal meter
31 date shall be considered to have been sent three business days before receipt by
32 the Agency, or on the date of the writing, if the date of the writing is less than
33 three days earlier than date of receipt; or

34
35 (4) if the mailing envelope is lost after delivery to the Agency, the date on the
36 writing shall control. If the writing is undated, the date the writing was sent
37 shall be three business days before receipt by the Agency, subject to sworn
38 testimony establishing the mailing date.

39
40 (b) The date the payment of contributions or reimbursements are received shall be
41 determined in accordance with the provisions of this section.

42
43 (c) If the writing was filed in an electronic form approved by the Agency in writing, the
44 date and time stamp the transmission was received by the Agency shall establish the
45 mailing date.

1 (d) If delivered by a common carrier (i.e., Federal Express, Purolator, or other common
2 carrier) the receipt date shall be the date the writing is delivered to the Common
3 Carrier.

4
5 (e) If delivered in person, the date the writing is delivered to the Agency's Central Tax
6 Office in Austin or any Agency Tax Office located throughout the state.

7
8 *The provisions of this §815.102 adopted to be effective November 6, 2000, 25 TexReg 11093*

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11
12 **§815.103. Digital Signatures.**

13
14 (a) Within this subchapter a digital signature may be used to authenticate a written
15 electronic communication sent to the Agency if it complies with the following
16 factors:

17
18 (1) it is unique to the person or individual using it;

19
20 (2) it is capable of independent verification;

21
22 (3) it is under the sole control of the person or individual using it; and

23
24 (4) it is transmitted in a manner that shall make it infeasible to change the data in
25 the communication without invalidating the digital signature.

26
27 (b) In this section, digital signature means an electronic identifier intended by the person
28 or individual using it to have the same force and effect as the use of a manual
29 signature.

30
31 *The provisions of this §815.103 adopted to be effective November 6, 2000, 25 TexReg 11093*

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34
35 **§815.104. Remuneration Other than Cash.**

36
37 (a) If any part of an individual's wages is received in any medium other than cash, the
38 reasonable cash value of the remuneration other than cash shall be deemed for all
39 purposes of the Act to be either:

40
41 (1) the amount which is agreed upon between the employing unit and the
42 individual if:

43
44 (A) the terms of the agreement are reported to the Agency; and

45
46 (B) the Agency determines that the agreed value or amount is reasonable; or

1
2 (2) the cash value is established to the satisfaction of the Agency.
3

4 (b) If the Agency determines that the amount agreed upon is unreasonable, or if the
5 employing unit and the individual fail to agree upon an amount; or if the employing
6 unit fails to report the terms of an agreement to the Agency, and the employing unit
7 fails to show the cash value of the noncash remuneration prior to the due date of
8 contributions with respect to the wages, the Agency shall fix an amount or value
9 after considering all available information and evidence; and the amount fixed by the
10 Agency shall be deemed for all purposes of the Act to be the cash value of the wages
11 received in any medium other than cash.
12

13 *The provisions of this §815.104 adopted to be effective November 6, 2000, 25 TexReg 11093*
14

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16

17 **§815.105. Expense Reimbursements.**
18

19 Allowances, advances of reimbursements paid to an individual in employment for
20 traveling, and other bona fide expenses incurred or reasonably expected to be incurred in
21 the business of the individual's employer shall not be treated as wages, provided a
22 separate payment is made for the expenses, or specific accounting records are kept
23 indicating the separate amounts where a single payment covers both wages and expenses
24 combined, and provided further that the amount of payments for expenses excluded from
25 wages shall not exceed the amount allowable as deductible expenses by income tax
26 regulations under the United States Internal Revenue Code, 26 U.S.C.A. §62(2) and
27 §162(a)(2).
28

29 *The provisions of this §815.105 adopted to be effective November 6, 2000, 25 TexReg 11093*
30

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33 **§815.106. Records of Employing Units.**
34

35 (a) Each employing unit shall keep true and accurate employment and payroll records,
36 that shall include, the name and correct address of the employing unit, and the name
37 and address of each branch or division or establishment operated, owned, or
38 maintained by the employing unit at different locations in Texas, and the following
39 information for each and every individual performing services for it:
40

41 (1) the individual's name, address, and social security number;
42

43 (2) the dates on which the individual performed services for the employing unit
44 and the state or states in which the services were performed;
45

- 1 (3) the amount of wages paid to the individual for each separate payroll period,
2 date of payment of the wages, and amounts or remuneration paid to the
3 individual for each separate payroll period other than "wages," as defined in
4 the Act; and
5
- 6 (4) whether, during any payroll period the individual worked less than full time,
7 and if so, the hours and dates worked.
8
- 9 (b) Each employing unit shall keep, in addition to the records required by subsection (a)
10 of this section, the records that shall establish and reflect the ownership and any
11 changes of ownership of the employing unit, the correct address where the
12 headquarters of the employing unit is located, and the correct mailing address of the
13 employing unit. The records shall also show clearly the address at which the records
14 are available for inspection or audit by representatives of the Agency. The records
15 shall show the addresses of owners of the employing unit; or in the event the
16 employing unit is a corporation or an unincorporated organization, the records shall
17 show the addresses of directors, officers, and any individuals on whom subpoenas,
18 legal processes, or citations may be served in Texas. In the event the employing unit
19 is a member of a group account, the records shall show the address of the group
20 representative.
21
- 22 (c) Wages paid for services excluded from the definition of "employment" under the Act
23 shall be separately reflected in the employing unit's records so as to show the time of
24 the service and remuneration for the service that is separate from taxable wages.
25 With respect to pay periods in which an individual performs services excluded from
26 the term "employment" as well as service which is "employment," the employing
27 unit's record shall reflect the hours spent in the excluded service and the hours spent
28 in "employment." If any remuneration other than monetary wages is paid to or is
29 received by an individual with respect to services performed by the individual for the
30 employer, the record shall show the total amount of cash wages and the cash value of
31 any other remuneration.
32
- 33 (d) Each reimbursing employer (including the individual component members
34 comprising a group account) shall maintain the records prescribed in this section.
35
- 36 (e) Each governmental employer (including the independent component employers
37 comprising the group account) shall maintain the records prescribed in this section.
38
- 39 (f) Component members of a group account shall furnish payroll and other information
40 necessary to the group representative for the representative to prepare consolidated
41 reports for the group.
42
- 43 (g) All records shall be kept and maintained as to establish clearly the correctness of all
44 reports which the employing unit is required to file with the Agency and shall be
45 readily accessible to authorized representatives of the Agency within the
46 geographical boundaries of the State of Texas; and in the event the records are not

1 maintained or are not available within Texas, the employing unit shall pay to the
2 Agency the expenses and costs incurred when a representative of the Agency is
3 required to go outside the State of Texas to inspect or audit the employing unit's
4 records.

5
6 (h) Each employing unit, upon request by the Agency, shall furnish a job description of
7 duties performed by any individual or group of individuals who are performing or
8 have performed services for the employing unit.

9
10 (i) The records prescribed by this subchapter and the Act shall be preserved for four
11 years.

12
13 *The provisions of this §815.106 adopted to be effective November 6, 2000, 25 TexReg 11093*

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16
17 **§815.107. Reports Required and Their Due Dates.**

18
19 (a) All reports and forms required by the Agency or the Act shall be filed with the
20 Agency in one of the following formats unless a different format is approved in
21 writing by the Agency, a hardship exemption is requested from and granted by the
22 Agency, or as specified in this chapter.

23
24 (1) General Format of Reports and Forms and Methods of Submission. The
25 reports and forms referenced in this section shall be filed using:

26
27 (A) forms printed by the Agency;

28
29 (B) electronic media in a format prescribed by the Agency; or

30
31 (C) any other manner approved and prescribed by the Agency in writing.

32
33 (2) Content. The reports and forms shall contain all facts and information
34 necessary to a determination of the amounts due by the employing unit. The
35 Agency may require the furnishing of additional information as it deems
36 necessary for the proper administration of the Act.

37
38 (3) Electronic Media Reporting.

39
40 (A) Required Electronic Media. All employers and their agents shall file
41 employers' reports, including both summary and detail wage information,
42 as described in §207.004 of the Act, on electronic media using a format
43 prescribed by the Agency.

44
45 (B) An electronic media transmission of an employer's report may contain
46 information from more than one employer.

1
2 (C) An employer's report filed in an approved medium shall contain both a
3 wage credit report and a summary report.
4

5 (b) General Deadlines for Filing Reports and Forms.
6

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

10
11 (A) mailed to the individual or employing unit at the address on record with
12 the Agency; or

13
14 (B) personally delivered to the individual or employing unit by an Agency
15 representative.
16

17 (2) Failure to receive notice regarding the reports shall not relieve the individual or
18 employing unit of the responsibility of filing the reports by the date the reports
19 are due.
20

21 (3) Good Cause for Extending Deadlines. When good cause is shown, the Agency
22 may extend the due date for filing of a report required under this section;
23 however, the extension shall be effective only if authorized in writing by an
24 Agency representative.
25

26 (c) Status Reports.
27

28 (1) Status Reports in General. Each employing unit shall file with the Agency a
29 status report within 10 days from the date upon which the employing unit
30 becomes subject to the Act.
31

32 (2) Status Reports for New Acquisitions. Any employing unit in the state of Texas
33 that acquires another business or substantially all of the assets of another
34 business shall file a new status report with the Agency within 10 days of the
35 date on which the employing unit made the acquisition.
36

37 (3) Status Reports for Additional Information. Each employing unit shall file
38 additional status reports at any time upon the request of the Agency.
39

40 (4) Evidence in Support of Status Reports. Employing units filing status reports
41 with the Agency shall:

42
43 (A) file with the Agency all facts necessary to a determination of the taxable
44 status of the employing unit; and
45

1 (B) if requested, file with the Agency evidence to establish the correctness of
2 information contained in the employing unit's status reports.
3

4 (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a
5 domestic employer who has elected to report and pay annually under §201.027(b) of
6 the Act, shall file with the Agency, within the month during which contributions for
7 any period become due, and not later than the date on which contributions are
8 required to be paid to the Agency, an employer's quarterly report showing for the
9 preceding calendar quarter:

- 10
- 11 (1) the total amount of remuneration paid for employment (or showing that no
12 remuneration was paid during the quarter);
 - 13
 - 14 (2) the total amount of wages paid for employment (as defined in the Act,
15 §201.081 and §201.082);
 - 16
 - 17 (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004)
18 paid to each individual employee;
 - 19
 - 20 (4) the name and Social Security number of each individual to whom the wages
21 were paid; and
 - 22
 - 23 (5) any other information requested on the employer's quarterly report, including
24 all facts and information necessary to make a determination of the amount of
25 contributions due.
 - 26

27 (e) Quarterly Reports from Reimbursing Employers and Group Representatives of a
28 Group Account. Each reimbursing employer and the group representative of a group
29 account shall file an employer's quarterly report, by the end of the month following
30 each calendar quarter, that furnishes the following information for the preceding
31 calendar quarter, information specified in paragraphs (1) - (4) of subsection (d) of
32 this section, and any other information necessary to make a determination of the
33 amount of reimbursements due.
34

35 (f) Benefits Financed by the Federal Government. Each employer that has employees
36 whose benefits are to be financed by the federal government shall file a separate
37 quarterly report furnishing the names of the employees, their Social Security
38 numbers, and the wages paid to each. The report shall be filed by the end of the
39 month following each calendar quarter.
40

41 (g) Annual Reports from Domestic Employers.

- 42
- 43 (1) Making the Election. An election to report wages paid and pay contributions
44 on an annual basis must be made in a format or on a form authorized by the
45 Agency by the deadline specified in §201.027 of the Act.
46

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

7
8 (A) The information specified in paragraphs (1) - (4) of subsection (d) of this
9 section subtotaled for each quarter; and

10
11 (B) Other information called for on the domestic employer's annual report
12 including all facts and information necessary to make a determination of
13 the amount of contributions due.

14
15 (3) Penalties and interest incurred under this section shall be the same as
16 applicable to other employer reporting requirements as provided in Chapter
17 213 of the Act and this subchapter.

18
19 *The provisions of this §815.107 adopted to be effective January 28, 2002, 27 TexReg 615;*
20 *amended to be effective February 19, 2007, 32 TexReg 628; amended to be effective January*
21 *6, 2014, 39 TexReg 114*

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24
25 **§815.108. Signatures on Reports and Forms.**

26
27 (a) A report or form required by the Agency shall, if signature is called for by the report
28 or form or instructions, be signed by:

29
30 (1) the individual, if the person required to submit the report or form is an
31 individual;

32
33 (2) the president, vice-president, or other principal officer, if the employing unit
34 required to submit the report or form is a corporation;

35
36 (3) a partner, if the employing unit required to submit the report or form is a
37 partnership;

38
39 (4) a duly authorized member or officer having knowledge of its affairs, if the
40 employing unit required to submit the report or form is an unincorporated
41 organization;

42
43 (5) the fiduciary, if the employing unit required to submit the report or form is a
44 trust or estate;

- 1 (6) the head of the department (or the department head's designee) having control
2 of the services with respect to which contributions, reimbursements, or other
3 payments are attributable, if the employing unit required to submit the report or
4 form is the State of Texas or a branch, department, instrumentality, or political
5 subdivision thereof;
6
7 (7) the group representative, if the report or form is being submitted for a group
8 account; or
9
10 (8) any individual who is authorized in writing to sign for each individual or
11 employing unit.
12
13 (A) The written authority shall be: filed with the Agency; revocable by either
14 party; and in terms which explicitly authorize the attorney or agent to
15 transact business between the grantor of said power and the Agency. The
16 written authority shall be filed in a manner prescribed by the Agency.
17
18 (B) The written authority shall be in full force and effect until it is revoked in
19 a manner prescribed by the Agency.
20
21 (C) The Agency may reject any written authority that does not conform with
22 this section.
23
24 (b) Nothing contained in this section shall in any way affect the power and right of any
25 representative of the Agency to prepare and sign any reports or forms required by the
26 Agency upon the failure or refusal of any of the individuals listed in subsection (a) of
27 this section to do so when requested.
28

29 *The provisions of this §815.108 adopted to be effective November 6, 2000, 25 TexReg 11093;*
30 *amended to be effective June 18, 2012, 37 TexReg 4431*
31

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33

34 **§815.109. Payment of Contributions and Reimbursements.**
35

- 36 (a) When, in any calendar year, an individual or employing unit becomes an employer
37 (other than a reimbursing employer) subject to this Act, the employer shall, on or
38 before the last day of the month following the month during which the employer
39 became a subject employer, file a report as specified in §815.107 and pay
40 contributions with respect to all completed calendar quarters in the calendar year.
41 Contributions for the quarter during which the employer becomes a subject employer
42 shall be due on the first day of the month immediately following the quarter and shall
43 be paid on or before the last day of the month. Contributions shall accrue quarterly
44 and shall become due on the first day of the month immediately following the
45 calendar quarter. They shall be paid to the Agency on or before the last day of the

1 month. The provisions in this subsection shall apply unless otherwise provided in
2 §201.027 of the Act.

- 3
- 4 (b) Reimbursements shall become due on the last day of the month following the end of
5 each quarter and shall be paid to the Agency on or before the last day of the next
6 month.
- 7
- 8 (c) When the last day for payment of contributions or reimbursements falls on a
9 Saturday, Sunday, or a legal holiday on which the Agency office is closed, the
10 payment may be made on the next regular business day.
- 11
- 12 (d) An employer or other entity, including agents paying on behalf of multiple
13 employers, is required to transfer payment amounts of contributions by Commission-
14 approved electronic means on or before the date the contributions are due, unless the
15 Agency in writing has approved another method or form of payment. The transfers
16 shall be subject to the provisions of Texas Government Code §404.095, and to rules
17 adopted by the state comptroller pursuant to that section.
- 18
- 19 (e) Additional tax resulting from a chargeback adjustment is due on the first day of the
20 second month following the month in which the Agency mailed the statement or
21 letter notifying the employer of the change in tax rate and additional tax due.
22 Amounts due from such chargeback adjustments shall be paid and must be received
23 by the Agency on or before the last day of this second month.
- 24
- 25 (f) When good cause is shown, the Agency may extend the due date for the payment of
26 contributions or reimbursements. The extension shall not be effective unless it is
27 authorized in writing by the Agency. In the event the Agency for good cause shown
28 extends the due date for payment of contributions or reimbursements, the payments
29 shall be made to the Agency on or before the thirtieth day following the extended
30 due date.
- 31
- 32 (g) An agent or other entity making a payment on behalf of employers shall furnish an
33 allocation list on electronic media using a format prescribed by this Agency, unless
34 the Agency has approved another format and method in writing. This list shall be
35 furnished with the remittance, and the remittance shall be allocated to the credit of
36 the employers according to the order in which the employers appear on the list.

37
38 *The provisions of this §815.109 adopted to be effective November 6, 2000, 25 TexReg 11093;*
39 *amended to be effective January 28, 2002, 27 TexReg 615; amended to be effective August*
40 *15, 2004, 29 TexReg 7738; amended to be effective February 19, 2007, 32 TexReg 628;*
41 *amended to be effective January 6, 2014, 39 TexReg 114*

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1 **§815.110. Transfer of Surplus Credit to Successor Employing Unit.**
2

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

5
6 (1) An Agency-developed form; or

7
8 (2) Any other manner approved or prescribed by the Agency in writing.
9

10 (b) The form shall:

11
12 (1) contain all facts and information necessary to transfer a surplus credit to a
13 successor employing unit pursuant to §204.0861 of the Act; and

14
15 (2) be signed by the predecessor and successor employing units.
16

17 (c) The form shall be filed with the Agency before the expiration of the surplus credit.
18

19 *The provisions of this §815.110 adopted to be effective June 18, 2012, 37 TexReg 4431*
20

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22

23 **§815.111. Partial Transfer of Compensation Experience.**
24

25 (a) Voluntary Partial Transfer of Compensation Experience

26
27 (1) An application for transfer of compensation experience pursuant to §204.084
28 of the Act shall be filed with the Agency in one of the following formats:

29
30 (A) forms printed by the Agency;

31
32 (B) magnetic or electronic media in a format prescribed by this Agency; or

33
34 (C) any other manner approved and prescribed by the Agency in writing.
35

36 (2) The application shall:

37
38 (A) contain all facts and information and documents, including waiver,
39 necessary to make a determination under §204.084 of the Act and in
40 accordance with the requirements of that section; and

41
42 (B) be accurate, complete, and signed by an authorized representative.
43 Incomplete applications will be returned unprocessed.
44

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

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(4) To satisfy the identifiable and segregable requirements of §204.084(c)(3):

(A) the applicants 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) 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.

(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

1 predecessor employer and shall be solely attributable to services
2 provided on behalf of the acquired part of the organization, trade, or
3 business.
4

5 *The provisions of this §815.111 adopted to be effective October 7, 2002, 27 TexReg 9395;*
6 *amended to be effective June 18, 2012, 37 TexReg 4431; amended to be effective April 26,*
7 *2016, 41 TexReg 2972*
8

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10
11 **§815.112. Refunds to Employing Units.**
12

13 A claim for refund or adjustment shall be made on a form supplied by the Agency or by
14 magnetic or electronic media using a format prescribed by the Agency. All grounds and
15 details and all facts alleged in support of the claim shall be clearly set forth. The claim
16 shall be filed by the employing unit which paid the contributions, interest, or penalty or
17 by a duly authorized representative thereof. In addition, the Agency may require the
18 claim to be filed under oath.
19

20 *The provisions of this §815.112 adopted to be effective November 6, 2000, 25 TexReg 11093*
21

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23
24 **§815.113. Commission Hearings Involving Coverage and Contributions or**
25 **Reimbursements.**
26

- 27 (a) In all situations not specifically provided for in the Act or in the rules of the Agency,
28 a hearing may, at the discretion of the Commission, be afforded an employing unit
29 upon its written request, in any case involving tax liability or any question relating to
30 contributions or reimbursements. Hearings under this section shall continue to be
31 termed Rule 13 Hearings. The written request for hearing may be filed by hand
32 delivery, mail, common carrier, facsimile (fax) transmission, or other method
33 approved by the Agency in writing, at a local tax office or the Texas Workforce
34 Commission, 101 East 15th Street, Austin, Texas 78778-0001.
35
- 36 (b) The Commission may on its own motion set a hearing to secure the facts to establish
37 the status of any individual or employing unit under any section of the Act.
38
- 39 (c) The Commission may designate a representative to preside over the hearing.
40 Hearings shall be conducted by telephone conference call unless the supervisor of
41 the hearing officers or the supervisor's designee determines that an in-person hearing
42 is necessary. The hearings will be scheduled and, if an in-person hearing, held at a
43 place designated by the supervisor of the hearings officers or the supervisor's
44 designee in accordance with paragraphs (1) - (3) of this subsection and the applicable
45 provisions in this chapter.
46

1 (1) Written notice of the date and time of the hearings shall be given to the parties,
2 and the location if it is an in-person hearing, at least 10 days before the date of
3 the hearing; but if a setting at an earlier date is requested by an individual or
4 employing unit, the supervisor of the hearings officers or the supervisor's
5 designee may at the supervisor's discretion grant that request, if the granting of
6 the request will not prejudice the rights of any other party to the proceedings,
7 including the Agency itself. The notice shall be mailed to the parties at their
8 last-known addresses.
9

10 (2) In these proceedings before a hearings officer, all parties shall be given an
11 opportunity for full, fair, and impartial hearing. The hearings shall be
12 conducted in the manner deemed most suitable to ascertain the facts and to
13 determine the rights of the parties. All testimony taken shall be under oath and
14 subject to the right of cross-examination by any adverse party, and it shall be
15 recorded. When necessary, the hearing officer may order the taking of
16 depositions. The submission of written briefs, affidavits, and other written
17 memoranda may be required.
18

19 (3) A witness, whose attendance at a hearing is required, may be allowed a fee and
20 mileage on the same basis and to the same extent as is provided for witnesses
21 under §815.18 of this chapter (relating to General Rules for Both Appeal
22 Stages).
23

24 (d) The Commission, following each hearing, shall issue a decision, which shall resolve
25 the questions involving tax liability or any question relating to contributions or
26 reimbursements which arose at the hearing. Copies of written decisions of the
27 Commission shall be furnished the parties to the hearings.
28

29 (e) A decision of the Commission shall become final 30 days after the date of mailing
30 unless, within the 30-day period, the proceeding is either reopened by a Commission
31 order or by a party to the proceeding filing a written motion for reconsideration in
32 accordance with the provisions of §815.17(f) of this chapter (relating to General
33 Rules for Both Appeal Stages). The motion for reconsideration is sent to the address
34 listed in the decision. A decision is not binding on a person who was not a party to a
35 proceeding conducted under this section.
36

37 *The provisions of this §815.113 adopted to be effective November 6, 2000, 25 TexReg 11093;*
38 *amended to be effective January 6, 2014, 39 TexReg 114*
39

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42 **§815.114. Employer Elections to Cover Multistate Workers.**
43

44 (a) Scope. This section shall govern the Texas Workforce Commission in its
45 administrative cooperation with other states subscribing to the Interstate Reciprocal
46 Coverage Arrangement (arrangement).

- 1
2 (b) Definitions. As used in this section, the following words and terms shall have the
3 following meanings, unless the context clearly indicates otherwise.
4
5 (1) Agency--Any officer, board, the Texas Workforce Commission, or other
6 authority charged with the administration of the unemployment compensation
7 law of a participating jurisdiction.
8
9 (2) Interested jurisdiction--Any participating jurisdiction to which an election
10 submitted under this section is sent for its approval; and "interested agency"
11 means the agency of that jurisdiction.
12
13 (3) Jurisdiction--Any state of the United States, the District of Columbia, Puerto
14 Rico, the Virgin Islands, or, with respect to the federal government the
15 coverage of any federal unemployment compensation law.
16
17 (4) Participating jurisdiction--A jurisdiction whose administrative agency has
18 subscribed to the arrangement and whose adherence thereto has not terminated.
19
20 (5) Services "customarily performed" by an individual in more than one
21 jurisdiction--Services performed in more than one jurisdiction during a
22 reasonable period, if: the nature of the services gives reasonable assurance that
23 the services will continue to be performed in more than one jurisdiction; or the
24 services are required or expected to be performed in more than one jurisdiction
25 under the election.
26
27 (c) Submission and approval of coverage elections under the Interstate Reciprocal
28 Coverage Arrangement.
29
30 (1) Any employing unit may file an election, on a form provided by the Texas
31 Workforce Commission, to cover under the law of a single participating
32 jurisdiction all of the services performed for the employing unit by any
33 individual who customarily works for the employing unit in more than one
34 participating jurisdiction.
35
36 (2) The employing unit's election may be filed, with respect to an individual, with
37 any participating jurisdiction in which:
38
39 (A) any part of the individual's services are performed;
40
41 (B) the individual has a residence; or
42
43 (C) the employing unit maintains a place of business to which the
44 individual's services bear a reasonable relation.
45

- 1 (3) The agency of the elected jurisdiction (thus selected and determined) shall
2 initially approve or disapprove the election.
3
- 4 (4) If the agency approves the election, it shall forward a copy thereof to the
5 agency of each other participating jurisdiction named by the election under
6 whose unemployment compensation law the individual or individuals in
7 question might, in the absence of the election, be covered. Each interested
8 agency shall promptly approve or disapprove the election, and shall notify the
9 agency of the elected jurisdiction.
10
- 11 (5) In case its law so requires, an interested agency may, before taking an action,
12 require from the electing employing unit satisfactory evidence that the affected
13 employees have been notified of, and have acquiesced in, the election.
14
- 15 (6) If the agency of the elected jurisdiction, or the agency of any interested
16 jurisdiction, disapproves the election, the disapproving agency shall notify the
17 elected jurisdiction and the electing employing unit of its action and of its
18 reason therefor.
19
- 20 (7) An election shall take effect as to the elected jurisdiction only if approved by
21 its agency and by one or more interested agencies.
22
- 23 (8) An election that is approved shall take effect, as to any interested agency, only
24 if it is approved by the interested agency.
25
- 26 (9) In case an election approved only in part, or disapproved by some of the
27 interested agencies, the electing employing unit may withdraw its election
28 within 10 days after being notified of the action.
29

30 (d) Effective period of elections.

31 (1) Commencement.

32 (A) An election duly approved under this section shall become effective at
33 the beginning of the calendar quarter in which the election was
34 submitted, unless the election, as approved, specifies the beginning of a
35 different calendar quarter.
36

37 (B) If the electing unit requests an earlier effective date than the beginning of
38 the calendar quarter in which the election is submitted, the earlier date
39 may be approved solely as to those interested jurisdictions in which the
40 employer had no liability to pay contributions for the earlier period in
41 question.
42

43 (2) Termination.
44
45
46

- 1 (A) The application of an election to any individual under this section shall
2 terminate, if the agency of the elected jurisdiction finds that the nature of
3 the services customarily performed by the individual for the electing unit
4 has changed, so that they are no longer customarily performed in more
5 than one participating jurisdiction. The termination shall be effective as
6 of the close of the calendar quarter in which notice of the finding is
7 mailed to all parties affected.
8
- 9 (B) Except as provided in subparagraph (A) of this paragraph, each election
10 approved shall remain in effect through the close of the calendar year in
11 which it is submitted, and until the close of the calendar quarter in which
12 the electing unit gives written notice of its termination to all affected
13 agencies.
14
- 15 (C) Whenever an election hereunder ceases to apply to any individual, under
16 subparagraphs (A) or (B) of this paragraph, the electing unit shall notify
17 the affected individual accordingly.
18

19 (e) Reports and notices by the electing unit.
20

- 21 (1) The electing unit shall promptly notify each individual affected by its approved
22 election on a form approved by the elected jurisdiction and shall furnish the
23 elected agency a copy of the notice.
24
- 25 (2) Whenever an individual covered by an election hereunder is separated from
26 employment, the electing unit shall again notify the individual, forthwith, as to
27 the jurisdiction under whose unemployment compensation law the individual's
28 services have been covered. If at the time of termination the individual is not
29 located in the elected jurisdiction, the electing unit shall notify the individual
30 as to the procedure for filing interstate benefit claims.
31
- 32 (3) The electing unit shall immediately report to the elected jurisdiction any
33 change which occurs in the conditions of employment pertinent to its election,
34 such as cases where an individual's services for the employer cease to be
35 customarily performed in more than one participating jurisdiction or where a
36 change in the work assigned to an individual requires the individual to perform
37 services in a new participating jurisdiction.
38
- 39 (f) Approval of reciprocal coverage elections. The executive director, or the executive
40 director's designee, has the authority to approve or disapprove reciprocal coverage
41 elections in accordance with this section.
42

43 *The provisions of this §815.114 adopted to be effective November 6, 2000, 25 TexReg 11093*
44

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2
3 **§815.115. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid**
4 **under Shipping Articles.**

5
6 This section shall govern contribution and wage reports covering seamen and seamen's
7 wages paid under shipping articles.

- 8
9 (1) Pay period. For the purpose of this section, the term "pay period" established
10 by "shipping articles" means the period of the voyage or engagement of the
11 crew under "articles of agreement" pursuant to 46 U.S.C.A. §564.
12
13 (2) Current reports.
14
15 (A) Contribution reports and wage reports with respect to wages, including
16 advances, allotments, and payment in kind, such as board and lodging,
17 earned in any pay period established by "shipping articles" shall be
18 submitted as of the calendar quarter in which any of the wages in cash
19 were actually paid or any of the wages in kind were furnished.
20
21 (B) Reports on wages falling within the purview of this section need not be
22 filed prior to the time reports regarding wages paid at the termination of
23 the period shall be filed. However, separate reports shall in that event be
24 filed for each calendar quarter involved during which wages in cash were
25 paid and wages in kind were furnished.
26
27 (3) Special reports. The employer shall, upon request of the Agency, promptly
28 furnish a statement of the wages of a seaman, whenever the statement is
29 necessary in order to determine a seaman's eligibility for and rate of benefits.
30 The statement shall be prepared and submitted in the manner the Agency may
31 prescribe in each case.
32

33 *The provisions of this §815.115 adopted to be effective November 6, 2000, 25 TexReg 11093*

34
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36
37 **§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses.**

- 38
39 (a) An electronic method of tracking the reporting of employees and wages will be
40 employed by the Agency to assist in ascertaining instances of improper reporting by
41 employers.
42
43 (b) To aid the Agency in this determination, upon request and as determined necessary
44 by the Agency, employers shall provide information sufficient to enable the Agency
45 to determine:
46

- 1 (1) the status of the employing unit under investigation and whether the employer
2 is liable under the Act;
- 3
- 4 (2) the proper employer of the employees reported and whether the wages are
5 reported by the proper entity;
- 6
- 7 (3) the relationship between the predecessor or successor entity and whether a
8 mandatory transfer of compensation experience is required under §204.083 of
9 the Act; and
- 10
- 11 (4) the correct calculation of the tax rate assigned to the employer.
- 12

13 *The provisions of this §815.116 adopted to be effective February 19, 2007, 32 TexReg 628*

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15
16
17 **§815.119. Payment of Voluntary Contributions.**

18
19 Texas Labor Code, §204.048(a), provides that an employer that is eligible for an annual
20 Experience Rate calculation under §204.041, Labor Code, may elect to make a voluntary
21 payment of contributions to the agency.

- 22
- 23 (1) The agency will notify employers eligible for an annual rate calculation under
24 §204.041, Labor Code, of the experience tax rate for the following year and the
25 amount of charges that were used in calculating that rate.
- 26
- 27 (2) Voluntary contribution shall be due not later than the 60th day after the date on
28 which the commission mails the employer's annual tax rate notice. When the
29 last day for payment of voluntary contributions falls on a Saturday, Sunday, or
30 a legal holiday on which the agency office is closed, the payment may be made
31 on the next regular business day.
- 32
- 33 (3) The agency may extend the due date for the payment of voluntary
34 contributions; however, the extension may not exceed 75 days from the date on
35 which the commission mails the employer's annual rate notice. In no situation
36 may the extension exceed the date imposed by the deadline in §204.048(e),
37 Labor Code.
- 38
- 39 (4) If the voluntary contribution payment is insufficient to cause a decrease in the
40 tax rate, the agency will notify the employer and grant an extension, not to
41 exceed 75 days from the date on which the commission mails the employer's
42 annual tax rate notice to remit additional voluntary contributions, subject to the
43 limitations imposed by §204.048(e), Labor Code.

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5
6 **§815.128. Group Accounts.**

- 7
- 8 (a) Two or more eligible reimbursing employers may file a joint application with the
9 Agency for establishment of a group account on forms furnished by the Agency,
10 upon application being filed. The application shall be filed upon a form furnished by
11 the Agency and shall not be valid until approved by an authorized representative of
12 the Agency in writing.
- 13
- 14 (b) The application shall identify and authorize an individual to act as the group's
15 representative. The individual shall be authorized by all members of the group to
16 maintain records, to prepare and sign reports, to secure and furnish a surety bond for
17 the group when directed by the Agency, to furnish information to the Agency
18 pertaining to the group and its members, to collect and to pay all reimbursements and
19 other amounts due to the Agency, to specify those members that have failed to
20 submit payments due, and to assist the Agency in securing unpaid amounts due to the
21 Agency from a member or members of the group.
- 22
- 23 (c) When the group account's application has been approved by the Agency in writing,
24 the group account shall be established and remain active for not less than two years
25 or until terminated. Application to terminate the group account after two years shall
26 be made by the group representative no later than December 1 to be effective at the
27 beginning of the next calendar year.
- 28
- 29 (d) At the discretion of the Agency, the group account may be terminated at the end of a
30 calendar year for failure to: file reports accurately and timely; furnish information
31 pertaining to the group or its members; furnish a surety bond when requested; or pay
32 reimbursements, penalties, and other amounts due from the group.
- 33
- 34 (e) Each member shall be liable for reimbursement of benefits paid and other amounts
35 which accrue after the group account has been terminated in accordance with total
36 wages paid by each member and by the group during the last quarter that the group
37 account was active and in which wages were paid.
- 38
- 39 (f) Addition of a new member or members to the group shall not be valid unless a joint
40 application, approved by all members of the group, to add the member or members is
41 filed with the Agency. The application shall be filed upon a form furnished by the
42 Agency, upon application being made therefor, and shall be valid if approved in
43 writing by an authorized representative of the Agency. The application shall be
44 effective as of the beginning of the calendar quarter in which the Agency receives
45 the application and each new member or new members of the group shall be liable

1 for reimbursements during that and succeeding calendar quarters to the same extent
2 as those members previously a part of the group.
3

4 (g) Withdrawal of an active member or members shall be valid as of the end of a
5 calendar quarter provided that a joint application for withdrawal of the member or
6 members is filed with and approved by the Agency during the quarter. The
7 remaining member or members of the group account shall be liable for
8 reimbursements during succeeding calendar quarters for all benefits paid which are
9 attributable to service in the employ of withdrawn members. The application shall
10 be filed upon a form furnished by the Agency, upon application being made therefor,
11 and shall not be valid until approved by an authorized representative of the Agency
12 in writing. At the discretion of the Agency, the application may be denied if the
13 group account has failed to pay all reimbursements and other amounts due to the
14 Agency on the date that the withdrawal application is filed.
15

16 (h) "Total wages paid" with respect to determining liability for amounts due by members
17 of a group means total payment of "wages" as defined in the Act, except that the
18 \$9,000 limitation in the Act, §201.082 shall not be applicable.
19

20 *The provisions of this §815.128 adopted to be effective November 6, 2000, 25 TexReg 11093*

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23
24 **§815.129. Surety Bond.**

25
26 (a) A governmental employer, a nonprofit organization, or the group representative of a
27 group account that elects to become liable for reimbursements shall furnish a surety
28 bond on a form furnished or approved by the Agency within 30 days after a request
29 by the Agency for the bond is mailed to the governmental employer, nonprofit
30 organization, or group representative.
31

32 (b) The amount of the surety bond shall be a percentage of the projected amount of
33 wages which would be subject to tax if the employer was an employer liable for
34 contributions under the Act. The percentage used in determining the amount of the
35 bond shall be equal to the maximum tax rate that any employer who is liable for
36 contributions during the year would have to pay under the Act. The amount of
37 taxable wages which the employer is expected to pay during the next 12 months shall
38 be determined by the Agency after considering all available information.

- 1
2 (c) The surety bond shall be executed by a licensed surety company authorized to do
3 business in the State of Texas, and the surety bond must be approved by the Agency.
4

5 *The provisions of this §815.129 adopted to be effective November 6, 2000, 25 TexReg 11093*
6

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8

9 **§815.130. Landmen Contracts.**
10

11 For purposes of the Act, §201.077, a contract covering services by a landman shall
12 contain provisions which would support a finding that the landman is to be treated as an
13 independent contractor. A statement that the landman is to be treated as an independent
14 contractor will not be sufficient. When the Agency determines that a written contract
15 does not accurately reflect the relationship between the parties because the landman is
16 being treated as an employee, then this exemption will not apply.
17

18 *The provisions of this §815.130 adopted to be effective November 6, 2000, 25 TexReg 11093*
19

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21

22 **§815.131. Computation of Contribution Rates.**
23

- 24 (a) Computations of contribution rates under the Act, Chapter 204, will be made in
25 accordance with work sheets that may be obtained from the Texas Workforce
26 Commission, 101 East 15th Street, Austin, Texas 78778-0001.
27
- 28 (b) In calculating the replenishment ratio and replenishment rate for a calendar year, the
29 Agency shall determine the amount of benefits that are paid during the 12 month
30 period ending September 30 of the preceding year that are charged to employers'
31 accounts after the employers have reached maximum liability because of the
32 maximum tax rate. An employer who, at the computation date at the beginning of
33 the 12-month period, was eligible for an experience tax rate, and who had a general
34 tax rate of 6.0% as of January 1 of the 12-month period, will be included in the
35 calculation of benefits charged to the employers after the employers have reached
36 maximum liability, and will be included for the entire 12-month period. Any other
37 employer with a general tax rate of 6.0% for one or more calendar quarters within
38 the 12-month period will be included in the calculation, but only for the quarters for
39 which the employer has a general tax rate of 6.0%. For any employer included in
40 this calculation, the amount charged to the employer's account after the employer has
41 reached maximum liability because of the maximum tax rate will be the amount by
42 which the benefits charged to the employer's account exceed 6.0% of the employer's
43 wages (as defined in the Act, §§201.081 - 201.082), with both the benefits charged
44 and the wages being for the period for which the employer is included in the
45 calculation as previously defined.
46

1
2
3 *The provisions of this §815.131 adopted to be effective November 6, 2000, 25 TexReg 11093*
4

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6

7 **§815.132. Computation of Unemployment Obligation Assessment.**
8

- 9 (a) Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an
10 unemployment obligation assessment, also referred to as an assessment, from each
11 employer eligible for an experience tax rate if, after January 1 of a year, an interest
12 payment on an advance from the federal trust fund will be due and the estimated
13 amount necessary to make the interest payment is not available in the obligation trust
14 fund or available otherwise; or bond obligations are due and the amount necessary to
15 pay in full those obligations, including bond administrative expenses, is not available
16 in the obligation trust fund or available otherwise.
17
- 18 (b) When the Commission determines that an assessment as referred to in the paragraph
19 above will be due after January 1 of a year, the Commission shall compute the
20 assessment rate using the formulas set out below in this section, before November
21 20th of the year prior to the year of the assessment. This rate shall be published in
22 the *Texas Register*.
23
- 24 (c) The calculation for the unemployment obligation assessment rate is the sum of
25 subsection (d) and (e) of this section.
26
- 27 (d) The rate for the portion of the assessment that is to be used to pay an interest
28 payment on federal loans shall not exceed two tenths of one percent. The rate shall
29 be calculated by dividing two hundred percent (200%) of the additional amount
30 estimated to be needed to pay interest due, as determined by the Agency, by the
31 estimated total taxable wages for the 1st and 2nd quarters of the year in which the
32 interest is due, and rounded up to the next hundredth.
33
- 34 (e) The rate for the portion of the assessment that is to be used to pay a bond obligation
35 is a percentage of the product of the unemployment obligation assessment ratio and
36 the sum of the employer's prior year general tax rate, the replenishment tax rate and
37 the deficit tax rate. The percentage, to be determined by Commission resolution,
38 shall not exceed 200%.
39
- 40 (1) The Unemployment Obligation Assessment Ratio is computed by:
41
- 42 (A) dividing the numerator computed under paragraph (2) of this subsection
43 by the denominator described in paragraph (3) of this subsection; and
44
- 45 (B) rounding that result up to the next hundredth.
46

- 1 (2) The numerator is computed by adding the total principal, interest and
2 administrative expenses on all outstanding bonds determined to be due during
3 the next year. However, if the Commission determines that there will be
4 excess funds available in the obligation trust fund that are not anticipated to be
5 expended for the purposes set out in Texas Labor Code, §203.258 (2) - (4), the
6 numerator may be reduced by the amount of that excess.
7
- 8 (3) The denominator is the amount of contributions due under the general tax rate
9 and the replenishment tax rate for the four calendar quarters ending the
10 preceding June 30 from employers entitled to an experience rate on the tax rate
11 computation date.
12

13 *The provisions of this §815.132 adopted to be effective September 15, 2003, 28 TexReg 8002*

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15 **§815.133. Professional Employer Organizations and Temporary Help Firms.**

- 16
- 17 (a) A professional employer organization licensed by the Texas Department of
18 Licensing and Regulation under Texas Labor Code Chapter 91 shall be the employer
19 of the workers it provides to a client. If the professional employer organization is
20 not licensed by the Texas Department of Licensing and Regulation, then the Agency
21 shall determine that the client is the employer.
22
- 23 (b) A temporary help firm is the employer of an individual employed by the firm as a
24 temporary employee. As defined in the Act, §201.011(21), a temporary help firm is
25 a person who employs individuals for the purpose of assigning those individuals to
26 work for the clients of the temporary help firm to support or supplement a client's
27 workforce during employee absences, temporary skill shortages, seasonal workloads,
28 special assignments and projects, and other similar work situations.
29
30
31

32 *The provisions of this §815.133 adopted to be effective November 6, 2000, 25 TexReg 11093;*
33 *amended to be effective January 6, 2014, 39 TexReg 114*

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35 **§815.134. Employment Status: Employee or Independent Contractor.**

- 36
- 37 (a) Subject to specific inclusions and exceptions to employment enumerated in Chapter
38 201 of the Act, the Agency and the Commission shall use the guidelines referenced
39 in §821.5 of this title as the official guidelines for use in determining employment
40 status.
41
- 42 (b) Notwithstanding subsection (a) of this section, in Title 4, Subtitle A of the Texas
43 Labor Code, "employment" does not include a marketplace contractor that satisfies
44 the requirements of paragraph (2) of this subsection.
45
46

- 1
2 (1) For purposes of this subsection:
3
4 (A) The term "digital network" means an online-enabled application or
5 website offered by a marketplace platform for the public (including
6 third-party individuals and entities) to use to find and contact a
7 marketplace contractor to perform one or more needed services.
8
9 (B) The term "marketplace platform" means a corporation, partnership, sole
10 proprietorship, or other entity operating in this state that:
11
12 (i) uses a digital network to connect marketplace contractors to the
13 public (including third-party individuals and entities) seeking the
14 type of service or services offered by the marketplace contractors;
15
16 (ii) accepts service requests from the public (including third-party
17 individuals and entities) only through its digital network, and does
18 not accept service requests by telephone, by facsimile, or in person
19 at physical retail locations; and
20
21 (iii) does not perform the services offered by the marketplace contractor
22 at or from a physical business location that is operated by the
23 platform in the state.
24
25 (C) The term "marketplace contractor" or "contractor" means any individual,
26 corporation, partnership, sole proprietorship, or other entity that enters
27 into an agreement with a marketplace platform to use the platform's
28 digital network to provide services to the public (including third-party
29 individuals or entities) seeking the type of service or services offered by
30 the marketplace contractor.
31
32 (2) A marketplace contractor shall not be treated as being in employment of the
33 marketplace platform for the purposes of Title 4, Subtitle A of the Texas Labor
34 Code, if in contract and in fact all of the following conditions are met:
35
36 (A) That all or substantially all of the payment paid to the contractor shall be
37 on a per-job or transaction basis;
38
39 (B) The marketplace platform does not unilaterally prescribe specific hours
40 during which the marketplace contractor must be available to accept
41 service requests from the public (including third-party individuals or
42 entities) submitted through the marketplace platform's digital network;
43
44 (C) The marketplace platform does not prohibit the marketplace contractor
45 from using a digital network offered by any other marketplace platform;
46

- 1 (D) The marketplace platform does not restrict the contractor from engaging
 2 in any other occupation or business;
 3
- 4 (E) The marketplace contractor is free from control by the marketplace
 5 platform as to where and when the marketplace contractor works and
 6 when the marketplace contractor accesses the marketplace platform's
 7 digital network;
 8
- 9 (F) The marketplace contractor bears all or substantially all of the
 10 contractor's own expenses that are incurred by the contractor in
 11 performing the service or services;
 12
- 13 (G) The marketplace contractor is responsible for providing the necessary
 14 tools, materials, and equipment to perform the service or services;
 15
- 16 (H) The marketplace platform does not control the details or methods for the
 17 services performed by a marketplace contractor by requiring the
 18 marketplace contractor to follow specified instructions governing how to
 19 perform the services; and
 20
- 21 (I) The marketplace platform does not require the contractor to attend
 22 mandatory meetings or mandatory training.
 23
- 24 (3) This section shall not apply to any of the following:
 25
- 26 (A) Services performed in the employ of a state, or any political subdivision
 27 of the state, or in the employ of an Indian tribe, or any instrumentality of
 28 a state, any political subdivision of a state, or any Indian tribe that is
 29 wholly owned by one or more states or political subdivisions or Indian
 30 tribes, but only if the services are excluded from employment as defined
 31 in the Federal Unemployment Tax Act, 26 U.S.C. §3301 - 3311, solely
 32 by reason of §3306(c)(7) of that Act.
 33
- 34 (B) Services performed by an individual in the employ of a religious,
 35 charitable, educational, or other organization, but only if the services are
 36 excluded from employment as defined in the Federal Unemployment
 37 Tax Act, 26 U.S.C. §§3301 - 3311, solely by reason of §3306(c)(8) of
 38 that Act.
 39
- 40 (C) Services performed by marketplace platforms regulated as Professional
 41 Employer Organizations and professional employer services under
 42 §§91.001(14) and (15) of the Texas Labor Code.
 43
- 44 (D) Services performed by temporary employees and temporary help firms as
 45 defined in §§201.011(20) and (21) of the Texas Labor Code.
 46

1 (E) Services explicitly exempted under any other state law.

2
3 *The provisions of this §815.134 adopted to be effective February 19, 2007, 32 TexReg 628;*
4 *amended to be effective April 29, 2019, 44 TexReg 2160*

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7
8 **§815.135. Voluntary Election by Employers.**

- 9
10 (a) Each employer electing coverage under Chapter 206 of the Act shall make this
11 election in writing on an Agency-specified form or electronic equivalent.
12
13 (b) Each employer electing to pay reimbursements for benefits, rather than
14 contributions, shall make this election:
15
16 (1) in writing on the Agency-specified form or electronic equivalent; and
17
18 (2) in compliance with the requirements of Chapter 205, Subchapter A, of the Act.
19

20 *The provisions of this §815.135 adopted to be effective February 19, 2007, 32 TexReg 628*

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23
24 **§815.136. Earned Income Tax Credit.**

25
26 This section provides information to employers on the acceptable information to be
27 provided to employees on the federal Earned Income Tax Credit (EITC) as required by
28 Texas Labor Code, Chapter 104. The information regarding general eligibility
29 requirements for the federal EITC in Texas Labor Code §104.002 means IRS Notice 797
30 or a written statement that provides the same wording as IRS Notice 797.
31

32 *The provisions of this §815.136 adopted to be effective September 20, 2010, 35 TexReg 8504*

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35
36 **SUBCHAPTER D. FARM AND RANCH LABOR**

37
38 **§815.150. Definition of Terms.**

39
40 The following words and terms shall apply to the Act, §§201.028, 201.047, and 204.009,
41 concerning farm and ranch labor, and shall have the following meanings unless the
42 statute or context clearly indicates otherwise.
43

- 44 (1) Agricultural association--Any nonprofit or cooperative association of farmers,
45 growers, or ranchers incorporated or qualified under state law, which recruits,

1 solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural
2 workers.

- 3
- 4 (2) Agricultural employer--Any individual who owns or operates a farm, ranch,
5 processing establishment, cannery, gin, packing shed, or nursery or who
6 produces or conditions seed, and who either recruits, solicits, hires, employs,
7 furnishes, or transports any migrant or seasonal agricultural workers.
8
- 9 (3) Farm labor contracting activity--The recruiting, soliciting, hiring, employing,
10 furnishing, or transporting of migrant or seasonal agricultural workers.
11
- 12 (4) Farm labor contractor--Any individual, other than an agricultural employer, an
13 agricultural association, or an employee of an agricultural employer or
14 agricultural association, who, for any money or other valuable consideration
15 paid or promised to be paid, performs any farm labor contracting activity.
16
- 17 (5) Farm and ranch labor--Includes all services performed:
18
- 19 (A) On a farm or ranch in the employ of an individual in connection with
20 cultivating the soil; raising or harvesting an agricultural or horticultural
21 commodity, including the raising, shearing, feeding, caring for, training,
22 and management of livestock, bees, poultry, and fur bearing wildlife; or
23
- 24 (B) In the employ of the owner, tenant, or other operator of a farm or ranch,
25 in connection with the operation, management, conservation,
26 improvement, or maintenance of such farm or ranch and its tools and
27 equipment, if the major part of such service is performed on a farm or
28 ranch.
29
- 30 (6) Labor agent--An individual in Texas, who for a fee offers, attempts to procure,
31 or procures employment for employees; or without a fee offers, attempts to
32 procure, or procures employment for common or agricultural workers; or any
33 individual, who for a fee attempts to procure or procures employees for an
34 employer; or without a fee offers or attempts to procure common or
35 agricultural workers for employers; or any individual, regardless of whether a
36 fee is received or due, who offers, attempts to supply, or supplies the services
37 of common or agricultural workers to any individual.
38
- 39 (7) Migrant worker--An individual who is employed in farm or ranch labor of a
40 seasonal or temporary nature and who is required to be absent overnight from
41 his or her permanent place of residence, provided the individual is not a
42 temporary nonimmigrant alien who is authorized to work in agricultural
43 employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and
44 §1184(c).
45

- 1 (8) Orchard--A farm devoted primarily to the planting, cultivating, growing, or
2 harvesting of fruits or nuts.
3
4 (9) Other farm or ranch laborer--An individual employed in farm or ranch labor or
5 who is neither a seasonal worker nor a migrant worker.
6
7 (10) Seasonal worker--An individual who is employed in farm or ranch labor of a
8 seasonal or temporary nature and is not required to be absent overnight from
9 his or her permanent place of residence, provided the individual is not a
10 temporary nonimmigrant alien who is authorized to work in agricultural
11 employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and
12 §1184(c).
13
14 (11) Truck farm--A farm on which fruits, garden vegetables for human
15 consumption, potatoes, sugar beets, or vegetable seeds are produced for
16 market.
17
18 (12) Vineyard--A farm devoted primarily to the planting, cultivating, growing, or
19 harvesting of grapes.
20

21 *The provisions of this §815.150 adopted to be effective February 19, 2007, 32 TexReg 628*
22

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24
25 **SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE**
26 **UNEMPLOYMENT COMPENSATION INFORMATION**
27

28 **§815.161. Scope and Purpose.**
29

- 30 (a) The purpose of this subchapter is to implement the federal regulations, 20 C.F.R.
31 Part 603, and state law, Texas Labor Code, Chapter 301, Subchapter F, regarding the
32 confidentiality, custody, use, preservation, and disclosure of unemployment
33 compensation information.
34
35 (b) This subchapter is limited to the confidentiality requirements in federal and state laws
36 and regulations specifically regarding unemployment information. Other laws and
37 regulations may impose additional limitations on the release, custody, use,
38 preservation, and disclosure of information maintained in unemployment insurance
39 records.
40
41 (c) This subchapter does not:
42
43 (1) limit or waive any right or obligation of the Agency, party to a claim,
44 employer, or third party to invoke limitations or confidentiality requirements
45 based on such separate laws or regulations; or
46

- 1 (2) address any right or obligation a party to an unemployment compensation
2 claim may have to redisclose unemployment insurance information regarding
3 his or her own claim or unemployment insurance tax records obtained lawfully
4 from the Agency.
5

6 *The provisions of this §815.161 adopted to be effective July 28, 2008, 33 TexReg 5982*
7

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9

10 **§815.162. Definitions.**

11
12 The following words and terms, when used in this subchapter, shall have the following
13 meanings, unless the context clearly indicates otherwise.
14

- 15 (1) Confidential unemployment compensation information--Unemployment
16 compensation information in Agency records, including identifying
17 information regarding any individual or past or present employer or employing
18 unit, or any information that foreseeably could be combined with other
19 publicly available information to reveal identifying information regarding the
20 individual, employer, or employing unit.
21
- 22 (2) Informed consent release--A written grant of authorization that meets the
23 requirements of §815.166 of this subchapter made by an individual or
24 employer to a third party to allow access to confidential unemployment
25 compensation information. When a written release is impossible or
26 impracticable to obtain, the third party may present such other form of consent
27 as is permitted by the Agency.
28
- 29 (3) Party--The employer or claimant to whom the confidential unemployment
30 compensation information relates. A party includes a base period employer
31 that has appealed a notice of chargeback regarding a specific claim. A party
32 does not include any past or present employer or claimant who is not the
33 subject of the particular claim, except an employer that appealed a notice of
34 chargeback relating to an employee in the chargeback period.
35
- 36 (4) Public official--
37
38 (A) An official, agency, or public entity within the executive branch of
39 federal, state, or local government with responsibility for administering
40 or enforcing a law; or
41
42 (B) An elected official in the federal, state, or local government.
43
- 44 (5) Unemployment compensation information--Information in the Agency's
45 records that pertains to the administration of the Texas Unemployment
46 Compensation Act, including any information collected, received, developed,

1 or maintained in the administration of unemployment compensation benefits,
2 the unemployment compensation tax system, or the unemployment
3 compensation benefit and tax appeal system.
4

5 *The provisions of this §815.162 adopted to be effective July 28, 2008, 33 TexReg 5982*
6

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9 **§815.163. Disclosure of Confidential Unemployment Compensation Information.**
10

- 11 (a) The Agency shall not disclose confidential unemployment compensation information
12 except in compliance with federal law, state law, and this subchapter.
13
14 (b) Notwithstanding any other provision of this chapter, confidential unemployment
15 compensation information shall not be disclosed if such disclosure interferes with the
16 efficient administration of the state unemployment compensation law. In evaluating
17 interference with efficient administration, the Agency may consider factors
18 including, but not limited to, the burdensomeness of the request and whether the
19 request places an employer's or individual's privacy at unacceptable risk.
20

21 *The provisions of this §815.163 adopted to be effective July 28, 2008, 33 TexReg 5982*
22

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25 **§815.164. Mandatory and Permissive Disclosures.**
26

- 27 (a) The Agency shall disclose confidential unemployment compensation information if
28 disclosure is necessary for the proper administration of the unemployment
29 compensation program.
30
31 (b) Disclosure necessary for the proper administration of the unemployment
32 compensation program includes, but is not limited to, disclosure required under 20
33 C.F.R. §603.6 and disclosure to claimants, employers, and third parties, as necessary,
34 for purposes of unemployment administration and adjudication processes under this
35 chapter.
36

37 *The provisions of this §815.164 adopted to be effective July 28, 2008, 33 TexReg 5982*
38

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40

41 **§815.165. Exceptions to Confidentiality Requirements.**
42

- 43 (a) The Agency may disclose public domain information. For purposes of this section,
44 public domain information includes directory information about the organization of
45 the state, the Commission, and appellate authorities, as well as the names and
46 positions of officials and employees; information about the state unemployment

1 compensation law (and applicable federal law), provisions, rules, regulations, and
2 interpretations, including statements of general policy and interpretations of general
3 applicability; and any agreement relating to the administration of the state
4 unemployment compensation law. Commission-designated precedent case digests
5 from which all individually identifiable information has been removed constitute
6 public domain information. Public domain information does not include information
7 historically excepted from disclosure under the Public Information Act, Chapter 552,
8 Texas Government Code, including, but not limited to, attorney/client privileged
9 information; interagency memoranda containing advice, opinion, or recommendation
10 to policy makers or decision makers; or other items historically excepted from
11 disclosure under the Public Information Act.
12

- 13 (b) The Agency may disclose confidential unemployment compensation information
14 about an individual or employer to that individual or employer, respectively , but in
15 no event does this restrict the Agency from withholding information historically
16 excepted from disclosure, including, but not limited to, confidential informant or
17 attorney-client privileged information, or tax audit techniques.
18
- 19 (c) The Agency may disclose confidential unemployment compensation information if
20 the requestor provides a written release signed by the individual or the employer
21 whose records are requested, and if the written release demonstrates informed
22 consent.
23
- 24 (d) The Agency may disclose confidential unemployment compensation information,
25 based on informed consent, to the following:
26
- 27 (1) An agent acting for or in the place of an individual or an employer by the
28 authority of that individual or employer if the agent presents a written release
29 signed by the party to be represented. If a written release is impossible or
30 impracticable to obtain, the Agency may accept other documentation sufficient
31 to establish informed consent.
32
- 33 (2) An elected official performing constituent services provided the official
34 presents reasonable evidence of authorization to obtain the information, such
35 as a letter from the individual or employer requesting the elected official's
36 assistance or a written record of a telephone request from the individual or
37 employer that the individual or employer has authorized such disclosure.
38
- 39 (3) A licensed attorney retained for purposes unrelated to the state's
40 unemployment compensation law; if the attorney provides a written statement
41 declaring that he or she has been retained to represent the individual or
42 employer, the requirements of a written release will have been met. An
43 attorney retained for purposes related to the state's unemployment
44 compensation law may assert that he or she is representing the individual or
45 employer, and such assertion need not be in writing.
46

- 1 (4) A third party that is not acting as an agent, only if that entity provides the
2 Commission with a copy of an informed consent release consistent with the
3 requirements of §815.166 of this subchapter.
4
- 5 (5) A third party seeking confidential information on an ongoing basis, only if that
6 entity submits an informed consent release consistent with the requirements of
7 §815.166 of this subchapter. This requirement applies even if the third party is
8 an agent seeking information on an ongoing basis.
9
- 10 (e) The Agency may disclose confidential unemployment compensation information to a
11 public official for use in the performance of his or her official duties, including the
12 administration or enforcement of law or execution of the official responsibilities of a
13 federal, state, or local elected official. Administration of law includes research
14 related to the law administered by the public official. Execution of official
15 responsibilities does not include solicitation of contributions or expenditures to or on
16 behalf of a candidate for public or political office or a political party.
17
- 18 (f) The Agency may disclose confidential unemployment compensation information to a
19 public official's agent or contractor if such disclosure is permissible under 20 C.F.R.
20 §603.5(e) and only after evaluating the following factors:
21
- 22 (1) The potential threat to the employer's or individual's privacy posed by an
23 entity's collection, storage, maintenance, use, and possible misuse of
24 confidential unemployment compensation information;
25
- 26 (2) The costs associated with such disclosure;
27
- 28 (3) The agent or contractor's ability to comply with the requirements in 20 C.F.R.
29 §603.9 regarding safeguards and security of confidential unemployment
30 compensation information;
31
- 32 (4) The costs of enforcement, including investigation and assessment of penalties
33 for misuse of data;
34
- 35 (5) The costs to develop, monitor, and maintain systems sufficient to allow audit
36 of the information;
37
- 38 (6) The personnel, travel, and equipment expenses associated with periodic
39 monitoring and on-site audits required by 20 C.F.R. §603.10; and
40
- 41 (7) Whether the disclosure is for purposes of solicitation of contributions or
42 expenditures to or on behalf of a candidate for public or political office or a
43 political party.
44

- 1 (g) The Agency may disclose confidential unemployment compensation information to
2 parties for purposes of claims adjudications, hearings, and appeals, consistent with
3 this chapter.
4
- 5 (h) The Agency may disclose confidential unemployment compensation information
6 to a federal official for purposes of UC program oversight and audits, including
7 disclosures under 20 C.F.R. Parts 29 and 601, as well as under C.F.R. Parts 96 and
8 97.
9
- 10 (i) The confidentiality requirements of this chapter do not apply to information collected
11 exclusively for statistical purposes under a cooperative agreement with the Bureau of
12 Labor Statistics (BLS). Further, this chapter's requirements do not restrict or impose
13 any condition on the transfer of any other information to BLS under an agreement, or
14 the disclosure or use of such information by BLS.
15

16 *The provisions of this §815.165 adopted to be effective July 28, 2008, 33 TexReg 5982*
17

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19

20 **§815.166. Informed Consent Release.**
21

22 The Agency may disclose confidential unemployment compensation information upon
23 submission of an informed consent release as set forth in this section. An informed
24 consent release is a written release that must be signed by the individual or employer, and
25 must specify the following:
26

- 27 (1) The information to be disclosed;
28
- 29 (2) That the information will be obtained through access of state government files;
30
- 31 (3) The purpose or purposes for which the information is sought;
32
- 33 (4) That the information obtained under the release will be used only for that
34 purpose;
35
- 36 (5) The individuals or entities that may receive the information; and
37
- 38 (6) A purpose limited to assisting the individual with obtaining a service or
39 benefit, or meeting a federal or state law requirement for the administration or
40 evaluation of a public program to which the release pertains.
41

42 *The provisions of this §815.166 adopted to be effective July 28, 2008, 33 TexReg 5982*
43

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2
3 **§815.167. Subpoenas and Court Orders.**

4
5 The Agency may disclose confidential unemployment compensation information in
6 compliance with:

- 7
8 (1) a court order specifically requiring such disclosure; or
9
10 (2) a subpoena issued by a local, state, or federal official, other than a court clerk,
11 provided the official possesses legal authority to obtain such information by
12 subpoena under state or federal law.
13

14 *The provisions of this §815.167 adopted to be effective July 28, 2008, 33 TexReg 5982*

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17
18 **§815.168. Charges for Disclosure of Unemployment Compensation Information.**

- 19
20 (a) The Agency shall recoup the cost of providing unemployment compensation
21 information consistent with 20 C.F.R. §603.8. The Agency may charge actual
22 charges and may set standardized charges for items routinely requested.
23
24 (b) The Agency may only release unemployment compensation information for non-
25 unemployment compensation purposes to the following individuals if the
26 unemployment compensation program is reimbursed and there is a written,
27 enforceable confidentiality agreement:
28
29 (1) Third-party requestors;
30
31 (2) Public officials; and
32
33 (3) Contractors of a public official provided the public official remains liable for
34 the actions of the contractor.
35

36 *The provisions of this §815.168 adopted to be effective July 28, 2008, 33 TexReg 5982*

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39
40 **SUBCHAPTER F. EXTENDED BENEFITS**

41
42 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**

- 43
44 (a) In addition to the state "on" indicator provisions for extended benefits in the Act, and
45 with respect to weeks of unemployment beginning on or after February 17, 2009, a
46 week is a state "on" indicator week if:

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- (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) With respect to compensation for weeks of unemployment beginning after the date of enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in federal law permitting this provision, 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 any or all of the corresponding three-month periods ending in the three preceding calendar years.
- (c) 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) or (b) of this section result in an "on" indicator.
- (d) 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.

The provisions of this §815.170 adopted to be effective November 2, 2009, 34 TexReg 7655; amended to be effective May 2, 2011, 36 TexReg 2735

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1 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**

2
3 (a) If the conditions under §815.170(a) or (b) of this subchapter are met except that the
4 average rate of total unemployment equals or exceeds 8 percent, a high
5 unemployment period shall exist.

6
7 (b) Effective with respect to weeks beginning in a high unemployment period, the total
8 extended benefit amount payable to an eligible individual for the individual's
9 eligibility period is 80 percent of the total amount of regular benefits that were
10 payable to the individual under the Act in the individual's benefit year.

11
12 (c) This section applies as long as §815.170 of this subchapter is in effect.

13
14 *The provisions of this §815.171 adopted to be effective November 2, 2009, 34 TexReg 7655;*
15 *amended to be effective May 2, 2011, 36 TexReg 2735*

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18
19 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

20
21 The Agency may pay unemployment compensation benefits under other emergency
22 unemployment compensation programs that may be in effect prior to paying extended
23 benefits under this subchapter.

24
25 *The provisions of this §815.172 adopted to be effective November 2, 2009, 34 TexReg 7655*

26
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28
29 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared
30 Benefits.**

31
32 (a) Notwithstanding other eligibility provisions for extended benefits in the Act, an
33 individual's eligibility period shall include any eligibility period provided for in P.L.
34 111-5, Division B, Title II, §2005(b).

35 (b) This section applies as long as §815.170 of this subchapter is in effect.

36
37 *The provisions of this §815.173 adopted to be effective November 2, 2009, 34 TexReg 7655*

38
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40
41 **§815.174. Financing of Extended Benefits.**

42
43 (a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5,
44 Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act
45 relating to taxed employers shall not apply.

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(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.

The provisions of this §815.174 adopted to be effective November 2, 2009, 34 TexReg 7655

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