

CHAPTER 815. UNEMPLOYMENT INSURANCE

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **JUNE 10, 2014**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **June 27, 2014**

The rules will take affect: **June 30, 2014**

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2055):

Subchapter A. General Provisions, §815.1

Subchapter B. Benefits, Claims, and Appeals, §815.10

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement the requirements of Senate Bill (SB) 1537, passed by the 83rd Texas Legislature, Regular Session (2013), by providing clear guidelines for employers, their agents, and the Commission concerning what constitutes adequate notification to requests for information.

Texas, like many states, relieves an employer's unemployment account of charges that the state has determined were made improperly. However, Public Law 112-40 §252(a) added new §3303(f) to the Federal Unemployment Tax Act (FUTA), which provides that for a state law to meet the requirements of FUTA §3303(a)(1) and receive FUTA additional credit, the state cannot relieve an employer of benefit charges when the employer or its agent does both of the following:

- Was at fault for failing to respond timely or adequately to the state's request for information relating to a claim that was subsequently overpaid; and
- Has established a pattern of failing to respond timely or adequately to requests from the state agency for information relating to claims for unemployment benefits.

This prohibition applies if the employer has a pattern of failing to respond timely, failing to respond adequately, or failing to respond both timely and adequately.

In enacting these FUTA amendments, Congress anticipated that the prospect of benefit charging as a result of an employer's or agent's failure to comply with a state's notification requirements would reduce future improper payments by prompting more accurate and timely reporting on future claims for unemployment benefits.

To conform state law with the new FUTA requirements, the legislature passed SB 1537 related to required notices under the Texas Unemployment Compensation Act (TUCA), including employer liability arising from failure to provide adequate or timely notice. SB 1537 authorizes the Commission to adopt rules necessary to implement these new TUCA provisions.

The Commission recognizes its obligation under federal law to obtain relevant facts promptly--prior to a determination of an individual's right to benefits--that are reasonably sufficient to ensure the payment of unemployment benefits when due. The information obtained, and the resulting investigation made by the Agency, must be complete enough to provide a basis upon which the Commission may act with reasonable assurance that its decision is consistent with the unemployment compensation laws of this state. The Commission is also aware of its responsibility to take the initiative in the discovery of information; this responsibility may not be passed on to the claimant or the employer.

The legitimate intent of the federal and state law is to hold employers and their agents accountable if they do not put forth a reasonable effort to apprise the Commission of facts and evidence needed to determine a claimant's right to unemployment benefits. In support of that end, however, these adopted rules also recognize that:

--an adequate notification does not mean a perfect notification. It must be sufficient to raise allegations regarding a claimant's benefit rights supported by facts;

--a response is not inadequate simply because an examiner weighs it one way, and an employer later successfully persuades an appeal tribunal or the Commission to rule against the claimant; and

--an employer, or the employer's agent, may establish good cause for failing to provide adequate notice due to compelling circumstances beyond the employer's or agent's control.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§815.1. Definitions

New §815.1(3) defines "adequate notification" as a notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

New §815.1(3)(A) specifies that notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

New §815.1(3)(B) specifies that the employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

New §815.1(3)(C) provides examples of adequate notification of adverse facts, which include, but are not limited to:

- (i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.
- (ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

New §815.1(3)(D) states that a notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

- (i) policies or procedures;
- (ii) warnings;
- (iii) performance reviews;
- (iv) attendance records;
- (v) complaints; and
- (vi) witness statements.

New §815.1(5) adds references to the Act, Chapters 208 and 212, to chargeback decisions or determinations that are appealable.

Certain paragraphs in this section have been renumbered to accommodate additions.

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Commission adopts the following amendments to Subchapter B:

§815.10. Appeals from Decisions on Chargebacks

Section 815.10 adds §208.004(c) and §212.005(b) to appeals from decisions on chargebacks under the Act, which shall be to the appeal tribunals and to the Commission.

No comments were received.

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

The rules are adopted under Texas Labor Code §301.0015, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Title 4, Texas Labor Code.

The adopted rules affect Texas Labor Code, Title 4, Subtitle A, the Texas Unemployment Compensation Act.

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

§815.1. Definitions.

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

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

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

- (i) policies or procedures;
- (ii) warnings;
- (iii) performance reviews;
- (iv) attendance records;
- (v) complaints; and
- (vi) witness statements.

- (4) Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.
- (5) Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.
- (6) Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.
- (7) Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.
- (8) Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an

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

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

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

§815.10. Appeals from Decisions on Chargebacks.

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