

CHAPTER 815. UNEMPLOYMENT INSURANCE

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

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

Estimated Publication Date of the Proposal in the *Texas Register*: **October 11, 2013**

Estimated End of Comment Period: **November 11, 2013**

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

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

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

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 815 amendments is to:

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

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

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

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 C. TAX PROVISIONS

The Commission proposes the following amendments to Subchapter C:

§815.107. Reports Required and Their Due Dates

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

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

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

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

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

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

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

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

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

§815.109. Payment of Contributions and Reimbursements

Section 815.109(d):

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

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

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

§815.113. Commission Hearings Involving Coverage and Contributions or Reimbursements

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

§815.133. Employee Staff Leasing and Temporary Help Firms

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

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

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

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

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

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

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

PART IV. COORDINATION ACTIVITIES

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

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

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

The proposed rules affect Texas Labor Code, Title 4.

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

§815.107. Reports Required and Their Due Dates.

- (a) All reports and forms required by the Agency or the Act shall be filed with the Agency in one of the following formats unless a different format is approved in writing by the Agency, a hardship exemption is requested from and granted by the Agency, or as specified in this chapter.
 - (1) General Format of Reports and Forms and Methods of Submission. The reports and forms referenced in this section shall be filed using:
 - (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) Content. The reports and forms shall contain all facts and information necessary to a determination of the amounts due by the employing unit. The Agency may require the furnishing of additional information as it deems necessary for the proper administration of the Act.
 - (3) ~~Magnetic and~~ Electronic Media Reporting.
 - (A) Required ~~Magnetic or~~ Electronic Media. All employers and their agents shall file employers' reports, including both summary and detail wage information, as described in ~~Regarding filing of quarterly benefit wage credit reports as required by~~ §207.004 of the Act, ~~the following shall file benefit wage credit reports on magnetic or~~ electronic media using a format prescribed by the Agency.:
 - ~~(i) Employers who have to file a report on 10 or more employees in any one calendar quarter; and~~
 - ~~(ii) Other entities, including agents reporting on behalf of multiple employers, who have to file reports on a cumulative total of 10 or more employees in any one calendar quarter.~~
 - (B) ~~Voluntary Use of Magnetic or Electronic Media. Employers, including agents reporting on behalf of multiple employers, who file a benefit wage credit report on a cumulative total of less than 10 employees in any~~

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

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

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

(b) General Deadlines for Filing Reports and Forms.

- (1) Unless otherwise provided in this subchapter, any report or form shall be completed and filed with the Agency within 10 days after the requested report or form is:
 - (A) mailed to the individual or employing unit at the address on record with the Agency; or
 - (B) personally delivered to the individual or employing unit by an Agency representative.
- (2) Failure to receive notice regarding the reports shall not relieve the individual or employing unit of the responsibility of filing the reports by the date the reports are due.
- (3) Good Cause for Extending Deadlines. When good cause is shown, the Agency may extend the due date for filing of a report required under this section; however, the extension shall be effective only if authorized in writing by an Agency representative.

(c) Status Reports.

- (1) Status Reports in General. Each employing unit shall file with the Agency a status report within 10 days from the date upon which the employing unit becomes subject to the Act.
- (2) Status Reports for New Acquisitions. Any employing unit in the state of Texas that acquires another business or substantially all of the assets of another business shall file a new status report with the Agency within 10 days of the date on which the employing unit made the acquisition.
- (3) Status Reports for Additional Information. Each employing unit shall file additional status reports at any time upon the request of the Agency.

- (4) Evidence in Support of Status Reports. Employing units filing status reports with the Agency shall:
 - (A) file with the Agency all facts necessary to a determination of the taxable status of the employing unit; and
 - (B) if requested, file with the Agency evidence to establish the correctness of information contained in the employing unit's status reports.

- (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a domestic employer who has elected to report and pay annually under §201.027(b) of the Act, shall file with the Agency, within the month during which contributions for any period become due, and not later than the date on which contributions are required to be paid to the Agency, an employer's quarterly report showing for the preceding calendar quarter:
 - (1) the total amount of remuneration paid for employment (or showing that no remuneration was paid during the quarter);
 - (2) the total amount of wages paid for employment (as defined in the Act, §201.081 and §201.082);
 - (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004) paid to each individual employee;
 - (4) the name and Social Security number of each individual to whom the wages were paid; and
 - (5) any other information requested on the employer's quarterly report, including all facts and information necessary to make a determination of the amount of contributions due.

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

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

(g) Annual Reports from Domestic Employers.

- (1) Making the Election. An election to report wages paid and pay contributions on an annual basis must be made in a format or on a form authorized by the Agency by the deadline specified in §201.027 of the Act.
- (2) Each domestic employer that qualifies under the Act and who has made an election as referenced in paragraph (1) of this subsection, shall file with the Agency, by January 31 of the year after the wages were paid, in a format consistent with subsection (a) of this section, a domestic employer's annual report showing the following for the preceding calendar year in which wages were paid.
 - (A) The information specified in paragraphs (1) - (4) of subsection (d) of this section subtotaled for each quarter; and
 - (B) Other information called for on the domestic employer's annual report including all facts and information necessary to make a determination of the amount of contributions due.
- (3) Penalties and interest incurred under this section shall be the same as applicable to other employer reporting requirements as provided in Chapter 213 of the Act and this subchapter.

§815.109. Payment of Contributions and Reimbursements.

- (a) When, in any calendar year, an individual or employing unit becomes an employer (other than a reimbursing employer) subject to this Act, the employer shall, on or before the last day of the month following the month during which the employer became a subject employer, file a report as specified in §815.107 and pay contributions with respect to all completed calendar quarters in the calendar year. Contributions for the quarter during which the employer becomes a subject employer shall be due on the first day of the month immediately following the quarter and shall be paid on or before the last day of the month. Contributions shall accrue quarterly and shall become due on the first day of the month immediately following the calendar quarter. They shall be paid to the Agency on or before the last day of the month. The provisions in [this](#) subsection ~~(a) of this section~~ shall apply unless otherwise provided in §201.027 of the Act.
- (b) Reimbursements shall become due on the last day of the month following the end of each quarter and shall be paid to the Agency on or before the last day of the next month.
- (c) When the last day for payment of contributions or reimbursements falls on a Saturday, Sunday, or a legal holiday on which the Agency office is closed, the payment may be made on the next regular business day.

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

§815.113. Commission Hearings Involving Coverage and Contributions or Reimbursements.

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

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

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

§815.133. Professional Employer Organizations~~Employee Staff Leasing~~ and Temporary Help Firms.

- (a) A professional employer organization~~staff leasing services company~~ licensed by the Texas Department of Licensing and Regulation under Texas Labor Code Chapter 91 shall be the employer of the workers it provides to a client~~company~~. If the professional employer organization~~staff leasing services company~~ is not licensed by the Texas Department of Licensing and Regulation, then the Agency shall determine that the client is the employer.

- (b) A temporary help firm is the employer of an individual employed by the firm as a temporary employee. As defined in the Act, §201.011(21)~~subsection 201.011(21)~~, a temporary help firm is a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's workforce during employee absences, temporary skill shortages, seasonal workloads, special assignments and projects, and other similar work situations.