

CHAPTER 843. JOB MATCHING SERVICES

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 JUNE 19, 2012, 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*: **July 6, 2012**

Estimated End of Comment Period: **August 6, 2012**

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A General Provisions, §843.1

- 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 Chapter 843 amendments is to conform the Subchapter A general provisions with the requirements of Senate Bill (SB) 563, enacted by the 82nd Texas Legislature, Regular Session (2011).

Previously, anyone could submit an open records request for WorkInTexas.com data and legally obtain personal and contact information for any job seeker who has registered with the system. This information could be used for purposes other than the Agency's job matching system, such as marketing outreach, and for potentially illegal activities.

SB 563 amends Texas Labor Code §301.085 by requiring the Commission to "adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§843.1. Employer and Job Seeker Services

New §843.1(d):

- (1) defines "job matching services information" as information in the records of the Agency that pertains to the job matching services system provided to employers, employing units, and job seekers through the Internet, Workforce Solutions Offices, or other means, and maintained by the Agency, Local Workforce Development Boards (Boards), and their workforce service providers;
- (2) states that job matching services information is not public information and shall be maintained as confidential to the same degree as unemployment compensation information as set forth in 40 TAC Chapter 815, Subchapter E;
- (3) does not limit or waive any right or obligation of the Agency to invoke limitations or confidentiality requirements based on separate laws or regulations; and
- (4) states that disclosure of job matching services information is permissible:
 - (A) for the purposes of administering job matching services;
 - (B) when disclosing information about a job seeker or employer to that job seeker or employer;
 - (C) when there is a written information release signed by the job seeker or employer;
 - (D) when the information is provided to a public official for use in the performance of his or her official duties; and
 - (E) in other situations that do not violate the confidentiality of the job seeker or employer and that have been approved by the Agency's Open Records Unit.

PART III. IMPACT STATEMENTS

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

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

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

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.
There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

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

Rich 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.

Reagan Miller, Director, 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 to:

- ensure compliance with federal and state requirements; and
- protect the personally identifiable information of the employers, employing units, and job seekers who use the Agency's job matching 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's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 10, 2012. The Commission also conducted a conference call with Board executive directors and Board staff on April 13, 2012, 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, Chapter 302, and Texas Government Code Chapter 657.

CHAPTER 843. JOB MATCHING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§843.1. Employer and Job Seeker Services.

- (a) Purpose. Job matching services provide the public with a clearinghouse for exchanging information on job postings and job seekers. This section sets forth for employers and job seekers the methods available for accessing the clearinghouse of employer and job seeker information.
- (b) Employer Postings of Job Openings. Employers may obtain access to the job matching services, including information to assist employers in posting job openings in the job matching system, by one or more of the following methods:
- (1) registering directly ~~over the Internet~~ using the Internet-based job matching system at www.workintexas.com ~~www.texasworkforce.org~~ or transmitting by electronic mail (e-mail) to hire.texas@twc.state.tx.us or its successor web site;
 - (2) calling or visiting any Workforce Solutions Office ~~Texas Workforce Center~~ in Texas; or
 - (3) through any other means approved by the Local Workforce Development Board (Board) in consultation with ~~employment services~~ Workforce Solutions Office staff located in the local workforce development area (workforce area) in which the open position exists, including sending or requesting information by mail or facsimile.
- (c) Job ~~Seeker~~ Seekers Access to Job Opening Information and Posting Résumé ~~Resume~~. Job seekers ~~can~~ may obtain access to the job matching services, including information to assist job seekers in posting a résumé ~~resume~~, obtaining information on job openings posted in the job matching system, labor market information, and employment and training opportunities by one or more of the following methods:
- (1) viewing online ~~on-line~~ information available on the Internet;
 - (2) registering directly ~~over the Internet~~ using the Internet-based job matching system at www.texasworkforce.org ~~www.workintexas.com~~ or transmitting by electronic mail (e-mail) to hire.texas@twc.state.tx.us or its successor web site;
 - (3) calling or visiting any Workforce Solutions Office ~~Texas Workforce Center~~ in Texas; or
 - (4) through any other means approved by the Board in consultation with ~~employment services~~ Workforce Solutions Office staff located in the workforce local workforce development area in which the open position exists, including

sending or requesting information by mail or facsimile.

(d) Confidentiality and Disclosure of Job Matching Services Information.

- (1) "Job matching services information" is information in the records of the Agency that pertains to the job matching services system provided to employers, employing units, and job seekers through the Internet, Workforce Solutions Offices, or other means, that is maintained by the Agency and Boards and their workforce service providers.
- (2) Job matching services information is not public information and shall be maintained as confidential to the same degree as unemployment compensation information as set forth in Chapter 815, Subchapter E, of this title.
- (3) This subsection does not limit or waive the Agency's rights or obligations to invoke limitations or confidentiality requirements based on separate laws or regulations.
- (4) Disclosure of job matching services information is permissible:
 - (A) for the purposes of administering job matching services;
 - (B) when disclosing information about a job seeker or employer to that job seeker or employer;
 - (C) when there is a written information release signed by the job seeker or employer;
 - (D) when the information is provided to a public official for use in the performance of his or her official duties; and
 - (E) in other situations that do not violate the confidentiality of the job seeker or employer and that have been approved by the Agency's Open Records Unit.