

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

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

7 The Texas Workforce Commission (Commission) adopts the following new section to Chapter  
8 815, relating to Unemployment Insurance, *without* changes, as published in the March 2, 2012,  
9 issue of the *Texas Register* (37 TexReg 1475):

10  
11 Subchapter C. Tax Provisions, §815.110

12  
13 The Commission adopts amendments to the following sections of Chapter 815, relating to  
14 Unemployment Insurance, *without* changes, as published in the March 2, 2012, issue of the  
15 *Texas Register* (37 TexReg 1475):

16  
17 Subchapter C. Tax Provisions, §815.108 and §815.111

18  
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**  
21 **RESPONSES**

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

24 The purpose of the Chapter 815 amendments is to:

- 25 --conform the Subchapter C tax provisions with the requirements of Senate Bill (SB) 638,
- 26 enacted by the 82nd Texas Legislature, Regular Session (2011);
- 27 --modify outdated administrative requirements regarding employer interaction with the
- 28 Commission; and
- 29 --enhance procedures to appropriately transfer compensation experience when required.

30  
31 In 2007 and 2008, favorable economic conditions and low unemployment led to a surplus in the  
32 state's unemployment insurance (UI) trust fund. Many employers qualified for surplus tax  
33 credits. Under previous law, the credits went to the entity that paid the wages upon which the  
34 credit was based. The problem was if the entity entitled to the credit was acquired by another  
35 company, the acquiring company was then considered ineligible for the credit because it did not  
36 earn it.

37  
38 SB 638 amends Subchapter E, Chapter 204 of the Texas Unemployment Compensation Act  
39 (Act), by allowing for the transfer of any surplus credit not received by the predecessor to the  
40 successor employing unit if there is an accompanying transfer of compensation experience under  
41 §204.083 of the Act.

42  
43 SB 638 also requires the Commission to adopt rules to implement and enforce these provisions,  
44 which, in part, stipulate that only a successor employing unit can apply or receive all or part of a  
45 surplus credit previously attributable to the predecessor (§204.0861(f) of the Act).

1  
2 Currently, Commission rule §815.108(a)(8)(B) requires:  
3 --any individual authorized to sign or file certain Agency forms to obtain such authorization in  
4 writing; and  
5 --the written authorization to be sworn to before a notary public or other authorized officer.  
6

7 The UI tax and benefits business environment includes a large percentage of employers that  
8 interact and conduct business with the Agency indirectly through a service provider or agent.  
9 The existing rule requires the employer to have the written authorization notarized, but the  
10 notary requirement for paper transactions is out of step with the accepted practice for other  
11 Agency tax department documents and presents a real burden to both employers and the Agency.  
12 Amendments to §815.108 are necessary to eliminate this burden.  
13

14 Regarding the appropriate transfer of compensation experience, §204.083 of the Act requires a  
15 mandatory transfer of compensation experience in the case of any acquisition of an organization,  
16 trade, or business (OTB) where substantially common management, control, or ownership exists  
17 between the successor and the predecessor entities. In the case of total acquisitions, the Agency  
18 applies the contribution-setting provisions of §204.0851; for partial acquisitions, §204.085  
19 controls. Where a mandatory transfer of compensation experience is not required, the successor  
20 and predecessor can apply to the Agency for a transfer under §204.084. Such applications will  
21 be approved if the criteria in §204.084 are met.  
22

23 For partial acquisitions where common management, control, and ownership exist, and a  
24 mandatory transfer is required, §204.085(a) provides that: (1) if the part of the OTB that was  
25 transferred is definitely identifiable and segregable; and (2) that compensation experience can be  
26 specifically attributed to that part of the OTB that was transferred, then the contribution rate is  
27 calculated under §204.085(b) or (c). Otherwise, the rate is calculated using §204.0851. The  
28 statute is silent as to how the Agency is to determine "definitely identifiable and segregable."  
29 However, the type of information gleaned from the application for a voluntary transfer described  
30 in §204.084 is sufficient to allow the Agency to determine whether the criteria has been met.  
31

32 In addition to the statutory requirements in the Act, Commission rule §815.111 provides some  
33 guidance for employers and Agency staff on transfers of compensation experience, but it does  
34 not speak directly to the processes associated with mandatory transfers in the case of partial  
35 acquisitions. Amendments to §815.111 will address these mandatory transfers.  
36

## 37 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 38 **RESPONSES**

### 39 **SUBCHAPTER C. TAX PROVISIONS**

#### 40 **The Commission adopts the following amendments to Subchapter C:**

##### 41 **§815.108. Signatures on Reports and Forms**

42  
43 Section 815.108 removes the requirement that employers notarize the designation of a third-party  
44 representative. This amendment eliminates an administrative burden for employers and the  
45 Agency.  
46

1  
2 Certain subparagraphs in this section have been relettered to accommodate deletions.  
3

4 **Comment:** One commenter, a nonprofit trade association whose member organizations  
5 provide payroll processing and related services to over 1.4 million employers, expressed  
6 agreement with the proposed change to remove the requirement for documents to be  
7 notarized. The commenter stated that the amendment will eliminate an administrative burden  
8 for employers and the Agency.  
9

10 **Response:** The Commission appreciates the support of the proposed amendment.  
11

### 12 13 **§815.110. Transfer of Surplus Credit to Successor Employing Unit** 14

15 New §815.110(a) stipulates that transfer of an available surplus credit from a predecessor  
16 employment unit to a successor will be accomplished through:

- 17 (1) an application to the Agency on an Agency-developed form; or  
18 (2) by any other manner approved by the Agency in writing.  
19

20 New §815.110(b) states that the Agency-developed form shall:

- 21 (1) contain sufficient information needed to appropriately transfer any unused surplus credit  
22 from the predecessor to the successor; and  
23 (2) be signed by both the predecessor and the successor.  
24

25 New §815.110(c) mandates that the form shall be submitted to the Agency prior to expiration of  
26 any unused surplus credit.  
27

### 28 **§815.111. Partial Transfer of Compensation Experience** 29

30 Section 815.111 replaces the title, "Transfer of Compensation Experience" with "Partial Transfer  
31 of Compensation Experience."  
32

33 Section 815.111(a), Voluntary Partial Transfer of Compensation Experience, describes the  
34 application process to be used by the Agency and by the successor and predecessor employing  
35 units in the case of voluntary partial transfers of compensation experience for the purposes of  
36 contribution rate-setting.  
37

38 Section 815.111(a)(1) adds the phrase "pursuant to §204.084" to specify the origin of the  
39 application for transfer of compensation experience.  
40

41 Section 815.111(a)(2)(B) removes the requirement for the application to be notarized; however  
42 the subparagraph clarifies that the application shall be accurate and complete, and signed by an  
43 authorized representative. The subparagraph also states that incomplete applications will be  
44 returned unprocessed.  
45

46 Section 815.111(a)(4)(A) - (B) is reorganized for better clarity; the contents remain unchanged.

1  
2 New §815.111(b), Mandatory Partial Transfer of Compensation Experience, describes for the  
3 purposes of contribution rate-setting the requirements to be followed by successor and  
4 predecessor employing units when mandatory transfers of compensation experience are  
5 compulsory under §204.083 of the Act.  
6

7 New §815.111(b)(1) specifies that when a partial acquisition occurs that requires the transfer of  
8 compensation experience pursuant to §204.083, the employing units involved shall file with the  
9 Agency, in one of the following formats, the information necessary to determine whether the  
10 conditions of §204.085(a) are met:

- 11 (A) Forms printed by the Agency;
  - 12 (B) Magnetic or electronic media in a format prescribed by the Agency; or
  - 13 (C) Any other manner approved and prescribed by the Agency in writing.
- 14

15 New §815.111(b)(2)(A) - (C) requires that the submission shall:

- 16 (A) contain all facts, information, and documents necessary to make a determination under, and
  - 17 in accordance with, the requirements of §204.085 of the Act;
  - 18 (B) be accurate, complete, and signed by an authorized representative; and
  - 19 (C) be filed with the Agency within one year of the date the partial transfer is completed.
- 20

21 New §815.111(b)(3)(A) - (B) mandates that to meet the conditions of §204.085(a) of the Act:

- 22 (A) the successor employer shall have acquired a distinct and separable part of the organization,
  - 23 trade, or business, which is capable of operating independently and separately from the
  - 24 predecessor employer; and
  - 25 (B) the wages attributable to the acquired part of the organization, trade, or business shall be
  - 26 separate and distinct from other wages of the predecessor employer and shall be solely
  - 27 attributable to services provided on behalf of the acquired part of the organization, trade, or
  - 28 business.
- 29

30 Certain subsections, paragraphs, and subparagraphs in this section have been relettered and  
31 renumbered to accommodate additions and deletions.

32  
33 **COMMENTS WERE RECEIVED FROM:**

34 --National Payroll Reporting Consortium  
35

36 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to  
37 be within the Agency's legal authority to adopt.  
38

39 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the  
40 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
41 deems necessary for the effective administration of Agency services and activities.  
42

43 The adopted rules affect Texas Labor Code, Title 4.  
44

1                                 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2  
3         **SUBCHAPTER C. TAX PROVISIONS**

4  
5             **§815.108. Signatures on Reports and Forms.**

6  
7             (a) A report or form required by the Agency shall, if signature is called for by the report  
8                 or form or instructions, be signed by:

- 9  
10            (1) the individual, if the person required to submit the report or form is an  
11               individual;
- 12  
13            (2) the president, vice-president, or other principal officer, if the employing unit  
14               required to submit the report or form is a corporation;
- 15  
16            (3) a partner, if the employing unit required to submit the report or form is a  
17               partnership;
- 18  
19            (4) a duly authorized member or officer having knowledge of its affairs, if the  
20               employing unit required to submit the report or form is an unincorporated  
21               organization;
- 22  
23            (5) the fiduciary, if the employing unit required to submit the report or form is a  
24               trust or estate;
- 25  
26            (6) the head of the department (or the department head's designee) having control  
27               of the services with respect to which contributions, reimbursements, or other  
28               payments are attributable, if the employing unit required to submit the report or  
29               form is the State of Texas or a branch, department, instrumentality, or political  
30               subdivision thereof;
- 31  
32            (7) the group representative, if the report or form is being submitted for a group  
33               account; or
- 34  
35            (8) any individual who is authorized in writing to sign for each individual or  
36               employing unit.

37  
38            (A) The written authority shall be: filed with the Agency; revocable by either  
39               party; and in terms which explicitly authorize the attorney or agent to  
40               transact business between the grantor of said power and the Agency.  
41               The written authority shall be filed in a manner prescribed by the  
42               Agency.  
43  
44  
45

1 (B) The written authority shall be in full force and effect until it is revoked in  
2 a manner prescribed by the Agency.

3  
4 (C) The Agency may reject any written authority that does not conform with  
5 this section.

6  
7 (b) Nothing contained in this section shall in any way affect the power and right of any  
8 representative of the Agency to prepare and sign any reports or forms required by the  
9 Agency upon the failure or refusal of any of the individuals listed in subsection (a) of  
10 this section to do so when requested.

11  
12 **§815.110. Transfer of Surplus Credit to Successor Employing Unit.**

13  
14 (a) An application to transfer a surplus credit described under §204.0861 of the Act shall  
15 be filed in one of the following formats:

16  
17 (1) An Agency-developed form; or

18  
19 (2) Any other manner approved or prescribed by the Agency in writing.

20  
21 (b) The form shall:

22  
23 (1) contain all facts and information necessary to transfer a surplus credit to a  
24 successor employing unit pursuant to §204.0861 of the Act; and

25  
26 (2) be signed by the predecessor and successor employing units.

27  
28 (c) The form shall be filed with the Agency before the expiration of the surplus credit.

29  
30 **§815.111. Partial Transfer of Compensation Experience.**

31  
32 (a) Voluntary Partial Transfer of Compensation Experience

33  
34 (1) An application for transfer of compensation experience pursuant to §204.084  
35 of the Act shall be filed with the Agency in one of the following formats:

36  
37 (A) forms printed by the Agency;

38  
39 (B) magnetic or electronic media in a format prescribed by this Agency; or

40  
41 (C) any other manner approved and prescribed by the Agency in writing.

42  
43 (2) The application shall:

1 (A) contain all facts and information and documents, including waiver,  
2 necessary to make a determination under §204.084 of the Act and in  
3 accordance with the requirements of that section; and  
4

5 (B) be accurate, complete, and signed by an authorized representative.  
6 Incomplete applications will be returned unprocessed.  
7

8 (3) An application under this section must be filed with the Agency within one  
9 year of the date the partial transfer is completed.  
10

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

12 (A) the applicants shall show that the successor employer acquired a distinct  
13 and separable part of the organization, trade, or business that is capable  
14 of operating independently and separately from the predecessor  
15 employer; and

16 (B) the wages attributable to the acquired part of the organization, trade, or  
17 business shall be separate and distinct from other wages of the  
18 predecessor employer and shall be solely attributable to services  
19 provided on behalf of the acquired part of the organization, trade, or  
20 business.  
21

22 (b) Mandatory Partial Transfer of Compensation Experience  
23

24 (1) When a partial acquisition occurs that requires transfer of compensation  
25 experience pursuant to §204.083, the employing units involved shall file with  
26 the Agency, in one of the following formats, the information necessary to  
27 determine if the conditions of §204.085(a) are met:  
28

29 (A) Forms printed by the Agency;

30 (B) Magnetic or electronic media in a format prescribed by the Agency; or  
31

32 (C) Any other manner approved and prescribed by the Agency in writing.  
33

34 (2) The required submission shall:  
35

36 (A) contain all facts, information, and documents necessary to make a  
37 determination under , and in accordance with, the requirements of  
38 §204.085;  
39

40 (B) be accurate, complete, and signed by an authorized representative; and  
41

42 (C) be filed with the Agency within one year of the date the partial transfer is  
43 completed.  
44  
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11

- (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 predecessor employer and shall be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.