

CHAPTER 817. CHILD LABOR

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 **JULY 22, 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*: **August 8, 2014**

The rules will take effect: **August 11, 2014**

The Texas Workforce Commission (Commission) adopts the following amendments to Chapter 817, relating to Child Labor, *without* changes, as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4209):

Subchapter A. General Provisions, §817.2

Subchapter B. Limitations on the Employment of Children, §817.21 and §817.23

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Texas Labor Code, Chapter 51, is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, and well-being. Texas Labor Code §51.023 provides that the Commission can adopt rules as necessary to promote the purpose of Chapter 51. The purpose of this rulemaking is to:

--define terms commonly used in this chapter or Texas Labor Code, Chapter 51; and
--add language to support future renumbering of federal regulations referenced in §817.21 and §817.23.

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:

§817.2. Definitions

To properly understand the requirements of safely employing children, it is necessary to define some of the terms used in Texas Labor Code, Chapter 51, and Chapter 817. Defining commonly used terms as they are currently used in the administration of child labor laws and rules:

--ensures that employers, parents, teachers, and the public understand the circumstances under which the law—and exemptions from the law—apply; and
--assists parents and employers in avoiding unintended violations of the child labor laws while still ensuring the safety, health, and well-being of children.

Section 817.2(2), the definition of "child," is removed.

New §817.2(2) defines "business or enterprise operated by a parent or custodian," as "a business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity, and to ensure that parents understand the law and when exemptions from the law apply.

Section 817.2(3), the definition of "child actor," is removed.

New §817.2(3) defines "business or enterprise owned by a parent or custodian" as "a business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(4), the definition of "Texas Workforce Commission," is removed; the definition of "Commission" is set forth in §800.2(7) of this title.

New §817.2(4) defines "casual employment" as "employment that is irregular or intermittent and not on a scheduled basis." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who provide consent to have their own children employed in a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(5), the definition of "executive director," is removed.

New §817.2(5) sets forth the definition of "child," previously located in §817.2(2).

New §817.2(6) sets forth the definition of "child actor," previously located in §817.2(3).

New §817.2(7) defines "child actor extra" as "a child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance." The definition clarifies the term to establish special authorization for child actors to be employed as extras without the need for child actor authorization, and removes concerns and barriers for the entertainment business when employing children as extras.

New §817.2(8) defines "direct supervision of the parent or custodian" as "a child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity, and to ensure parents understand the law and when exemptions from the law apply.

The terms "employee," "employer," and "employment" are used throughout this chapter and in Texas Labor Code, Chapter 51. The new definitions clarify that these terms are to be interpreted in the same manner as in Texas Labor Code, Chapter 61 (the Texas Payday Law) and the Fair Labor Standards Act, thus providing consistent definitions for all employers.

New §817.2(9) defines "employee" as "an individual who is employed by an employer for compensation."

New §817.2(10) defines "employer" as "an entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee."

New §817.2(11) defines "employment" as "any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied."

New §817.2(12) sets forth the definition of "executive director," previously located in §817.2(5).

New §817.2(13) defines "private school," as set forth in Texas Education Code, Chapter 5, as "a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity." The definition clarifies that homeschooled children are subject to the same restrictions on hours of work contained in Texas Labor Code, Chapter 51, as those children attending public schools or traditional private schools.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

The Commission adopts the following amendments to Subchapter B:

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children

Section 817.21 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary to continue to adopt these federal regulations as state rules governing the employment of 14- and 15-year-old children in Texas.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children

Section 817.23 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary in order to continue to adopt those federal regulations as state rules governing the employment of 16- and 17-year-old children in Texas.

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 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 adopted rules affect Texas Labor Code, Title 2.

Chapter 817. CHILD LABOR

SUBCHAPTER A. GENERAL PROVISIONS

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings.

- (1) Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.
- (2) Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.
- (3) Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.
- (4) Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.
- (5) Child--An individual under 18 years of age.
- (6) Child actor--A child under the age of 14 who is to be employed as an actor or other performer.
- (7) Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.
- (8) Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.
- (9) Employee--An individual who is employed by an employer for compensation.
- (10) Employer--An entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.
- (11) Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.

- (12) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.
- (13) Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children.

The Commission adopts by reference 29 Code of Federal Regulations (CFR) §§570.31–570.34 and §§570.70–570.72 in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 14- and 15-year-old children in Texas, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code (USC) §201 et seq. In the event of any inconsistency between federal regulations and FLSA, FLSA shall take precedence. These rules apply to such employment whether or not that employment is subject to FLSA. The application of this section is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children.

The Commission adopts by reference 29 CFR §§570.50–570.68 in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 16- and 17-year-old children in Texas, to the extent that they are consistent with FLSA, 29 USC §201 et seq. In the event of any inconsistency between federal regulations and FLSA, FLSA shall take precedence. These rules apply to such employment whether or not that employment is subject to FLSA. The application of this section is limited to the extent it is consistent with Texas Labor Code, Chapter 51.