

Proposed Repeal and New Rules for Chapter 815. Unemployment Insurance, Subchapter C. Tax Provisions, Section 815. 111. Transfer of Compensation Experience

ON JULY 16, 2002, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: August 2, 2002.
Estimated End of Comment Period: September 3, 2002.

The Texas Workforce Commission (Commission) proposes the repeal of §815.111 and proposed new §815.111. Transfer of Compensation Experience related to Chapter 815, Unemployment Insurance, Subchapter C. Tax Provisions.

The purpose of this section is to clarify provisions related to Texas Labor Code Section 204.084, including the filing process and the definition of an identifiable and segregable part of an organization, trade, or business for transferring compensation experience.

The purpose for choosing one year as the time limit for filing the application to transfer compensation experience is to make clear a defined timeline for filing the application, while setting a distinct deadline to assist in administration. The Commission is of the opinion that one year is sufficient and not overly burdensome.

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

there are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or there may be increases in revenue to the state or to local governments as a result of enforcing or administering the rules, to the extent this rule generates additional revenue those funds by law must be deposited in the Unemployment Compensation Fund, Texas Labor Code §203.021;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are anticipated costs to persons who are required to comply with the rules as proposed, because of submitting and filling out the application, which costs will depend upon the number of employees transferred and the number of calendar quarters of wages involved.

Mr. Townsend, Chief Financial Officer, has determined that there is anticipated costs to small businesses as a result of enforcing or administering these rules, which would include the costs of filling out and filing the application, which is dependent on the

method used for filing and the number of employees included in the transfer. The cost is estimated at four hours of staff time at a rate of \$30 per hour for an employer transferring 15 employees and accounting for 16 calendar quarters of wages. The costs will increase for preparing and filing the application based on the number of employees and the number of calendar quarters of wage information required. The analysis of the costs to large businesses would be the same as the analysis of the costs to small businesses.

LaSha Lenzy, Director, Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rule will be in effect the public benefit anticipated as a result of the adoption of the proposed rule will be the clarification of the process for transferring compensation experience including partial transfers pursuant to Texas Labor Code Section 204.084.

James Barnes, Director, Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

For more information about the Commission and available services, see www.texasworkforce.org.

The rule is proposed under Texas Labor Code §301.061.

The proposed new rule affects Texas Labor Code, Title 4.

<new>§815.111. Transfer of Compensation Experience.

- (a) An application for transfer of compensation experience shall be filed with the Agency in one of the following formats:
 - (1) forms printed by the Agency;
 - (2) magnetic or electronic media in a format prescribed by this Agency; or
 - (3) any other manner approved and prescribed by the Agency in writing.
- (b) The application shall:
 - (1) contain all facts and information and documents, including waiver, necessary to make a determination under §204.084 of the Act and in accordance with the requirements of that section;

- (2) be signed and sworn to as true and correct before a notary public; and
 - (3) be complete. Incomplete applications will be returned without being processed.
- (c) An application under this section must be filed with the Agency within one year of the date the partial transfer is completed.
- (d) To satisfy the identifiable and segregable requirements of Section 204.084(c)(3), the applicants must show that the successor employer acquired a distinct and separable part of the organization, trade, or business, that is capable of operating independently and separately from the predecessor employer. The wages attributable to the acquired part of the organization, trade, or business must be separate and distinct from other wages of the predecessor employer and must be solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.