

Discussion Paper
On
Adjudication Opportunities for Non-LEU Base Period Employers

Background

During the March 22, 2022, Commission meeting Chairman Daniel requested staff to bring back for Commission consideration a course of action to ensure that the non-Last Employing Unit (LEU) base period employers who are seeing some increases to their tax rates from the pandemic have a chance to have their chargeback cases heard by TWC. This discussion paper is offered as a response to that request.

During the early stages of the COVID-19 event, statements were released by TWC indicating employer accounts would not be charged for benefits that were paid due to COVID-19. Any employer whose account was charged was sent a chargeback notice that notified them of the potential charge prior to its imposition. It is arguable that despite the chargeback notices, the public may have instead perceived the released statements to have meant that no employer would be charged for benefits paid during the COVID-19 event so that they did not timely protest their chargeback notice.

While most employers had their accounts protected for employees who separated from work post-COVID, the same is not true for non-LEU base period employers who had employees separate from work during the two-years leading up to the COVID-19 event. These employers had their accounts charged or protected using the traditional process, without the additional protections that were associated with the COVID-19 event.

Issue

The best course of action to ensure that these non-LEU base period employers have their chargeback cases heard by TWC?

Decision Point

40 Texas Administrative Code (TAC) §815.32(i)(7) authorizes an exception to the agency's timeliness sanctions in the event an appellant received misinformation from the agency on appeal rights. If approved, the agency would publicize the opportunity for this class of employers to file their protest and explain the reason for their late filing. A determination would be issued based on the protest. Where applicable, the employer would be given an opportunity for a hearing where timeliness of protest and any chargeback to their account would be addressed.