

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 **ON DECEMBER 20, 2022**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE
9 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

10
11 Publication Date of the Adoption in the *Texas Register*: **January 6, 2023**

12 The Rules are Effective: **January 9, 2023**

13
14 The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 815,
15 relating to Unemployment Insurance:

16
17 Subchapter H. Collection Action, §§815.190 - 815.192

18
19 The new sections are adopted *without changes* to the proposed text as published in the August
20 12, 2022, issue of the *Texas Register* (47 TexReg 4843), and, therefore, the adopted rule text will
21 not be published.

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

24 The purpose of new Chapter 815, Subchapter H is to establish administrative rules to implement
25 and interpret Senate Bill (SB) 695, which was passed in 2021 by the 87th Texas Legislature,
26 Regular Session.

27
28 When an employer does not timely pay its required unemployment taxes after being notified of
29 the debt, the Texas Unemployment Compensation Act (TUCA) provides regulations for
30 collecting the past due contributions. TUCA, Chapter 213, Subchapter C provides methods for
31 collections of unpaid unemployment contributions, penalties, and interest by civil suit or Notice
32 of Assessment (NOA). TWC is required to take this action. An NOA is only attempted after
33 TWC has exhausted other avenues of tax collections including the tax statement, default notices,
34 pre-assessment notifications, tax liens, and tax levies.

35
36 An NOA is a written decision of a tax authority where the amount of taxable income is
37 determined and the amount of tax due is calculated. In 1989, House Bill 1941, 71st Texas
38 Legislature, Regular Session, provided for collection of delinquent unemployment benefit taxes,
39 penalties, or interest by serving an NOA on an employer that owes unemployment taxes. The
40 Legislature granted TWC this authority after an audit by the Office of the State Auditor
41 contained findings regarding the significant amount of time taken before a judgment can be
42 obtained by civil suit.

43
44 The NOA correspondence totals the amount of taxes, penalties, or interest owed by the
45 employer. Once the NOA is served upon the employer, TWC loses jurisdiction over the NOA
46 and may not change it. After being served, the employer's sole avenue of redress of an

1 grievance is through judicial review. If the employer does not seek judicial review, or if the
2 assessment is upheld after judicial review, the assessment is final and is recorded as a judgment
3 against the employer. The final NOA has the same effect as a final judgment of a district court.
4

5 SB 695, a TWC initiative that amended Texas Labor Code, §213.032(a), was signed by the
6 Governor on June 4, 2021, and became effective on September 1, 2021.
7

8 Prior to the passage of SB 695, Texas Labor Code, §213.032(a) required TWC to serve an NOA
9 in the same manner as provided in Texas Rules of Civil Procedure Rule 106.
10

11 Texas Rules of Civil Procedure Rule 106 allows for service by personal service or by certified
12 mail by any person authorized by Texas Rules of Civil Procedure Rule 103. However, per Texas
13 Rules of Civil Procedure Rule 103, an interested party, such as TWC, may not serve any process.
14 This meant that TWC was required to use a process server to mail its NOAs to liable employers.
15 With the passage of SB 695, this limitation is no longer in place.
16

17 Additionally, SB 695 addressed substituted service. In certain situations, an employer that owes
18 unpaid contributions, interest, or penalties may try to escape liability by avoiding service of the
19 NOA by personal service or mail. An example would be an employer residing in a gated
20 community that will not allow access to a process server and the employer will not accept the
21 mail. In these situations, Texas Rules of Civil Procedure Rule 106 states that a court may grant a
22 substituted method of service. This created substantial difficulties as TWC could not seek
23 substituted service because it did not have a cause number to petition for substituted service as
24 no suit has been filed. Filing suit would defeat the Legislature's intended purpose of granting
25 TWC the authority to issue NOAs as it is not uncommon for service to be unsuccessful in person
26 or by mail.
27

28 Effective December 31, 2021, the Texas Supreme Court updated Texas Rules of Civil Procedure
29 Rule 106 to allow substituted service "in any other manner, including electronically by social
30 media, email, or other technology, that the statement or other evidence shows will be reasonably
31 effective to give the defendant notice of the suit."
32

33 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

34 **SUBCHAPTER H. COLLECTION ACTION**

35 TWC adopts new Subchapter H, as follows:
36

37 **§815.190. Service of a Notice of Assessment in General**

38 New §815.190 provides general information about service of an NOA.
39

40
41 New §815.190 clarifies that the language in Texas Labor Code, §213.032(a)(3), which states, "in
42 another manner that is reasonably calculated to give the employer notice of the assessment," be
43 referred to as substituted service and that contesting service must be done in Travis County
44 district court as required by Texas Labor Code, §213.032(c). New §815.190 also clarifies that
45 Texas Labor Code, §213.032(a) provides TWC with the flexibility to serve parties itself or by
46 designated third party.

1
2 New §815.190 informs parties of the addresses TWC may use for service by personal delivery or
3 substituted service.

4
5 Texas Labor Code, §212.006(b) and §214.002(a)(3) allow for NOAs to be served upon claimants
6 as well as employers. New §815.190 interprets certain language in Texas Labor Code, Chapter
7 213 to more clearly apply to claimant assessments in those situations. To that end, new §815.190
8 states the language in Texas Labor Code, §213.033(a) prescribing a three-year limitation on
9 employer assessments for employer contributions, penalties, and interest be limited to the third
10 anniversary after the benefit overpayment becomes final when it relates to claimant assessments.
11 This interpretation is prudent as overpayment amounts may change during the dispute resolution
12 process.

13
14 **§815.191. Service of a Notice of Assessment by Personal Delivery or Mail**

15 New §815.191 provides information and clarification regarding service of an NOA by personal
16 delivery or mail.

17
18 New §815.191 clarifies what constitutes "address as shown by commission records" for Texas
19 Labor Code, §213.032(a)(2) and that TWC or its designee may make multiple service attempts
20 under Texas Labor Code, §213.032(a)(1) and (2) prior to attempting substituted service.

21
22 New §815.191 clarifies what address(es) shall be used when serving an NOA upon a claimant by
23 personal delivery or mail.

24
25 **§815.192. Service of a Notice of Assessment by Substituted Service**

26 New §815.192 provides information and clarification regarding service of an NOA by
27 substituted service.

28
29 New §815.192 clarifies that TWC or its designee may make multiple attempts at substituted
30 service. It also provides methods by which TWC may effectuate substituted service. The
31 enumerated methods are intended to put parties on notice of methods TWC intends to use and
32 considers to be proper to effectuate substituted service, although the list is not exhaustive or
33 dispositive in all circumstances.

34
35 Such methods may include those methods specifically mentioned by Texas Rules of Civil
36 Procedure Rule 106(b) including by social media, email, or other technology, TWC-established
37 contact methods, including the Unemployment Tax Services and the Unemployment Benefits
38 Services portals, or other mailing addresses that are not maintained in TWC records as required
39 by Texas Labor Code, §213.032(a)(2). Other mailing addresses may include those obtained from
40 third-party background and reporting agencies, online searches, and other government records.

41
42 Additionally, certain corporations may need to be served as prescribed by Texas Business
43 Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17. This would
44 be applicable when attempting personal or substituted service upon the corporation's registered
45 agent or the Secretary of State if no valid agent exists. Only Texas Labor Code, §213.032(a)(2)

1 contains a requirement that the NOA be mailed to an address in TWC records, so personal or
2 substituted service can be attempted upon registered agents.
3

4 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be
5 within TWC's legal authority to adopt.
6

7 **PART III. PUBLIC COMMENTS**

8 The public comment period closed on September 12, 2022. TWC received comments from Texas
9 RioGrande Legal Aid, Inc. (TRLA).
10

11 **COMMENT:** TRLA stated its opposition to the proposed rules as they relate to the service of
12 NOAs on claimants. TRLA is not commenting on the proposed rules as they relate to service
13 upon employers. TRLA expressed concerns with due process for claimants and stated that
14 claimants will not have a means to effectively challenge service.
15

16 **RESPONSE:** TWC appreciates TRLA's comments.
17

18 TWC is confident that the statutory framework of TUCA, SB 695, and new Chapter 815,
19 Subchapter H provide due process to employers and claimants who may be served an NOA.
20 TWC has had statutory authority to issue NOAs for claimant overpayments since 1989.
21 Claimants are afforded multiple opportunities for review and redress before an assessment can be
22 issued. If either party to an adverse determination disagrees with TWC's decision, they may file
23 an appeal within 14 days of the mailing of the determination for a hearing with the Appeal
24 Tribunal. If a party is dissatisfied with the Appeal Tribunal's decision, they may file an appeal
25 with the Commission. If a party does not agree with the Commission's decision, they may file a
26 Motion for Rehearing or file for judicial review of the Commission's final decision in a court of
27 competent jurisdiction.
28

29 It is only after a determination creating an overpayment becomes final and the overpayment
30 remains unpaid, despite opportunities for repayment, that TWC would consider an NOA as a
31 collection action. Once TWC successfully serves the NOA, if the party wishes to contest the
32 NOA or its service, they may do so upon judicial review as provided in Texas Labor Code,
33 §213.032(c).
34

35 For these reasons, no changes have been made to the rules in response to the comments in
36 opposition.
37

38 **COMMENT:** TRLA stated that the intent and language of SB 695 are meant to only apply to
39 employers.
40

41 **RESPONSE:** TWC disagrees. Texas Labor Code, §212.006(b) and §214.002(a)(3) both
42 expressly provide for using NOAs to collect claimant overpayments. TWC must presume that
43 Texas Labor Code, §212.006(b) and §214.002(a)(3) are intended to be effective and that the
44 reference to Texas Labor Code, §213.032 in Texas Labor Code, §212.006(b) and §214.002(a)(3)
45 include the amendments from SB 695.
46

47 No changes were made to the rules in response to this comment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMENT: TRLA objected to the methods of substituted service in the proposed rules.

RESPONSE: The statutory language is clear that TWC may effectuate substituted service itself, however, TWC must attempt personal service or registered or certified mail service first. Only after such service is not effective may TWC undertake substituted service, which must be reasonably calculated to provide notice of the assessment. TWC believes the rules as written do provide avenues reasonably calculated to give notice to claimants, which TWC will evaluate depending on the factual circumstances of each case. TWC declines to hypothesize various fact scenarios.

No changes were made to the rules in response to this comment.

COMMENT: TRLA expressed concerns with conformity to federal law.

RESPONSE: TWC requested an opinion from the United States Department of Labor (DOL) as to whether the proposed rules create a conformity issue with federal law. DOL's informal opinion is that the proposed rules do not pose an issue of conformity with federal unemployment compensation law as written.

No changes were made to the rules in response to this comment.

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015(a)(6), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4.

- 1
2 (d) The Agency or its designee may make multiple service attempts by personal delivery
3 and registered or certified mail before attempting substituted service.
4

5 **§815.192. Service of a Notice of Assessment by Substituted Service.**
6

- 7 (a) This section applies to substituted service of a notice of assessment under
8 §213.032(a)(3) of the Act.
9
- 10 (b) The Agency may use the following methods to effectuate substituted service:
11
- 12 (1) Those methods specifically mentioned by the Texas Rules of Civil Procedure
13 Rule 106(b);
14
 - 15 (2) By Agency-established contact methods including the Unemployment Tax
16 Services and the Unemployment Benefits Services portals or their equivalents;
17
 - 18 (3) Mail to another known address;
19
 - 20 (4) As set out in Texas Business Organizations Code, Chapter 5, and Civil Practice
21 and Remedies Code, Chapter 17; and
22
 - 23 (5) Other means of service expressly permitted or prescribed by state law.
- 24 (c) The Agency or its designee may make multiple substituted service attempts if there
25 exist multiple manners reasonably calculated to give the employer notice of the
26 assessment.
27