

1 **CHAPTER 821. TEXAS PAYDAY RULES**

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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.**

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

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11 Publication Date of the Adoption in the *Texas Register*: **November 25, 2022**

12 The Rules are Effective: **November 28, 2022**

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14 The Texas Workforce Commission ("TWC" or "Agency") adopts the repeal of the following  
15 section in Chapter 821, relating to Texas Payday Rules:

16  
17 Subchapter C, Wage Claims, §821.45

18  
19 TWC adopts the following new sections to Chapter 821, relating to Texas Payday Rules:

20  
21 Subchapter C. Wage Claims, §821.48 and §821.49

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23 The repeal and new sections are adopted *without changes* to the proposal, as published in the  
24 September 9, 2022, issue of the *Texas Register* (47 TexReg 5468), and, therefore, the adopted  
25 rule text will not be published.

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27 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

28 The purpose of the adopted Chapter 821 rule change is to modify the chapter to allow the  
29 Agency's Labor Law department to reissue determinations.

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31 Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas  
32 Legislature granted the Agency authority to adjudicate wage claims and issue preliminary wage  
33 determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to appeal. If no  
34 appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage Claim  
35 Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision  
36 becomes final 14 days after mailing unless a party appeals to TWC's three-member Commission  
37 (Commission). A decision of the Commission becomes final 14 days after mailing unless a party  
38 files a Motion for Rehearing or for judicial review of the Commission's decision.

39  
40 The Texas Payday Law and TWC rules do not state whether the Agency may reissue a corrected  
41 PWDO. Currently, when an error is made on the PWDO or additional information becomes  
42 available between issuance of the PWDO and when the decision is final, there is no clear  
43 authority for the Agency to issue a corrected PWDO. This can result in costly appeal hearings to  
44 resolve minor clerical errors.

1 In statute and rule related to unemployment claims, the Agency has similar authority to that  
2 adopted in this rulemaking. Texas Labor Code, §212.054 allows for an examiner to issue a  
3 redetermination of an unemployment determination if there is an error or upon the discovery of  
4 new information. The examiner has 14 days from the mailing date of the original determination  
5 to issue the redetermination. The 14 days includes the period prior to the original determination  
6 becoming final. An unemployment examiner may issue a redetermination to correct a clerical or  
7 machine error at any time during a claimant's benefit year.

8  
9 Title 40 Texas Administrative Code (TAC) §815.16(6)(B) allows the Appeal Tribunal for  
10 unemployment hearings to issue a corrected decision as follows:

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12 "At any time during the 14-day period from the date a decision on an appeal is mailed,  
13 unless a party of interest has already appealed to the Commission, the appeal tribunal or  
14 the supervisor of appeals may assume continuing jurisdiction over the appeal for the  
15 purpose of reconsidering the issues on appeal and issuing a corrected decision. During the  
16 period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the  
17 parties, may take any additional evidence or secure any additional information it deems  
18 necessary to issue a decision."  
19

20 Clear written authority in rule would allow TWC to exercise plenary power over decisions which  
21 have mailed but are not yet final. As adopted, TWC would not exercise this authority if an appeal  
22 has been filed. A reissued PWDO would void and replace any prior incorrect PWDOs, and the  
23 appeal period would start again allowing either party 21 days to file an appeal from the mailing  
24 date of the reissued PWDO.

25  
26 Texas Payday Law appeals rules and procedures are governed by current rule 40 TAC §821.45,  
27 which incorporates the rules and hearing procedures set out in TWC's Unemployment Insurance  
28 rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or  
29 contrary to provisions set out under the Texas Payday Rules or the Texas Payday Act.

30  
31 Finally, Texas Government Code, §2001.039 requires that every four years each state agency  
32 review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC  
33 reviewed the rules in Chapter 821 and determined that the rules are needed, reflect current legal  
34 and policy considerations, and reflect current TWC procedures. The reasons for initially adopting  
35 the rules continue to exist and any changes to the rules are described in Part II of this preamble.

## 36 37 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### 38 39 **SUBCHAPTER C. WAGE CLAIMS**

40 TWC adopts the following amendments to Subchapter C:

#### 41 42 **§821.45. Appeals.**

43 Section 821.45 is repealed and the language is moved to new §821.49.

#### 44 45 **§821.48. Corrected Preliminary Wage Determination Order**

1 New §821.48 provides that if an examiner discovers an error or receives additional information  
2 not previously available when the determination was made, the examiner may reconsider and  
3 reissue the PWDO within the 21-day period provided for in Texas Labor Code, §61.054.

4  
5 New §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the  
6 parties when an error is made or additional information becomes available before the decision  
7 becomes final. New §821.48 provides payday examiners with similar authority to unemployment  
8 examiners, albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar  
9 to 40 TAC §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law  
10 department would no longer have authority to reissue a corrected PWDO once that appeal is  
11 filed. Labor Law staff determined this to be a best practice to avoid interference with any actions  
12 the WCAT may have already taken with the filing of the appeal. The reissued PWDO would  
13 supersede any previous incorrect PWDOs. Either party would then have 21 days from the  
14 mailing date of the most recent reissued PWDO to file an appeal.

15  
16 New §821.48 includes a caveat for instances in which the examiner has mailed the PWDO to a  
17 party's wrong address. This would only apply to errors made by the examiner, and not to  
18 situations in which the party provided the Agency with the wrong address.

19  
20 **§821.49. Appeals.**

21 New §821.49 replaces repealed §821.45. The language in §821.45 is moved to new §821.49 to  
22 logically follow the corrected PWDO process in the rules.

23  
24 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
25 within TWC's legal authority to adopt.

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27 **PART III. PUBLIC COMMENTS**

28 The public comment period closed on October 10, 2022. No comments were received.

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30 **PART IV. STATUTORY AUTHORITY**

31 The rules are adopted under Texas Labor Code, §61.002(a)(2), which allows TWC to adopt rules  
32 as necessary to implement Texas Labor Code, Chapter 61.

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34 The adopted rules affect Texas Labor Code, Chapter 61.

