

1 **CHAPTER 821. TEXAS PAYDAY RULES**

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3 **PROPOSED 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 The Texas Workforce Commission ("TWC" or "Agency") proposes the repeal of the following
9 section in Chapter 821, relating to Texas Payday Rules:

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11 Subchapter C, Wage Claims, §821.45

12
13 TWC proposes the following new sections to Chapter 821, relating to Texas Payday Rules:

14
15 Subchapter C. Wage Claims, §821.48 and §821.49

16
17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

18 The purpose of the proposed Chapter 821 rule change is to modify the chapter to allow the
19 Agency’s Labor Law department to reissue determinations.

20
21 Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas
22 Legislature granted the Agency authority to adjudicate wage claims and issue preliminary wage
23 determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to appeal. If no
24 appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage Claim
25 Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision
26 becomes final 14 days after mailing unless a party appeals to TWC's three-member Commission
27 (Commission). A decision of the Commission becomes final 14 days after mailing unless a party
28 files a Motion for Rehearing or for judicial review of the Commission's decision.

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

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

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

1 "At any time during the 14-day period from the date a decision on an appeal is mailed,
2 unless a party of interest has already appealed to the Commission, the appeal tribunal or
3 the supervisor of appeals may assume continuing jurisdiction over the appeal for the
4 purpose of reconsidering the issues on appeal and issuing a corrected decision. During the
5 period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the
6 parties, may take any additional evidence or secure any additional information it deems
7 necessary to issue a decision."
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9 Clear written authority in rule would allow TWC to exercise plenary power over decisions which
10 have mailed but are not yet final. As proposed, TWC would not exercise this authority if an
11 appeal has been filed. A reissued PWDO would void and replace any prior incorrect PWDOs,
12 and the appeal period would start again allowing either party 21 days to file an appeal from the
13 mailing date of the reissued PWDO.
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15 Texas Payday Law appeals rules and procedures are governed by current rule 40 TAC §821.45,
16 which incorporates the rules and hearing procedures set out in TWC's Unemployment Insurance
17 rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or
18 contrary to provisions set out under the Texas Payday Rules or the Texas Payday Act.
19

20 Finally, Texas Government Code, §2001.039 requires that every four years each state agency
21 review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC
22 conducted a rule review of Chapter 821. Any changes are described in Part II of this preamble.
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24 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

25 **SUBCHAPTER C. WAGE CLAIMS**

26 TWC proposes the following amendments to Subchapter C:
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29 **§821.45. Appeals.**

30 Section 821.45 is repealed and the language is moved to new §821.49.
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32 **§821.48. Corrected Preliminary Wage Determination Order**

33 New §821.48 provides that if an examiner discovers an error or receives additional information
34 not previously available when the determination was made, the examiner may reconsider and
35 reissue the PWDO within the 21-day period provided for in Texas Labor Code, §61.054.
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37 New §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the
38 parties when an error is made or additional information becomes available before the decision
39 becomes final. New §821.48 provides payday examiners with similar authority to unemployment
40 examiners, albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar
41 to 40 TAC §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law
42 department would no longer have authority to reissue a corrected PWDO once that appeal is
43 filed. Labor Law staff determined this to be a best practice to avoid interference with any actions
44 the WCAT may have already taken with the filing of the appeal. The reissued PWDO would
45 supersede any previous incorrect PWDOs. Either party would then have 21 days from the
46 mailing date of the most recent reissued PWDO to file an appeal.

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2 New §821.48 includes a caveat for instances in which the examiner has mailed the PWDO to a
3 party's wrong address. This would only apply to errors made by the examiner, and not to
4 situations in which the party provided the Agency with the wrong address.
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6 **§821.49. Appeals.**

7 New §821.49 replaces repealed §821.45. The language in §821.45 is moved to new §821.49 to
8 logically follow the corrected PWDO process in the rules.
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10 **PART III. IMPACT STATEMENTS**

11 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
12 rules will be in effect, the following statements will apply:
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14 There are no additional estimated costs to the state and to local governments expected as a result
15 of enforcing or administering the rules.
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17 There are estimated cost reductions to the state and to local governments as a result of enforcing
18 or administering the rules because the number of appeals to PWDOs will be reduced with the
19 ability to issue corrected PWDOs for minor clerical issues. TWC does not have sufficient data to
20 precisely estimate those cost reductions.
21

22 There are no estimated losses or increases in revenue to the state or to local governments as a
23 result of enforcing or administering the rules.
24

25 There are no foreseeable implications relating to costs or revenue of the state or local
26 governments as a result of enforcing or administering the rules.
27

28 There are no anticipated economic costs to individuals required to comply with the rules.
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30 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
31 communities as a result of enforcing or administering the rules.
32

33 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
34 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
35 does not apply to this rulemaking.
36

37 **Takings Impact Assessment**

38 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
39 affects private real property, in whole or in part or temporarily or permanently, in a manner that
40 requires the governmental entity to compensate the private real property owner as provided by
41 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
42 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
43 would otherwise exist in the absence of the governmental action, and is the producing cause of a
44 reduction of at least 25 percent in the market value of the affected private real property,
45 determined by comparing the market value of the property as if the governmental action is not in
46 effect and the market value of the property determined as if the governmental action is in effect.

1 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
2 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
3 discussed elsewhere in this preamble, is to modify Chapter 821 to allow the Agency's Labor Law
4 department to reissue determinations.

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6 The proposed rulemaking action will not create any additional burden on private real property or
7 affect private real property in a manner that would require compensation to private real property
8 owners under the United States Constitution or the Texas Constitution. The proposal also will
9 not affect private real property in a manner that restricts or limits an owner's right to the property
10 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
11 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

12 13 Government Growth Impact Statement

14 TWC determined that during the first five years the rules will be in effect, they:

- 15 --will not create or eliminate a government program;
- 16 --will not require the creation or elimination of employee positions;
- 17 --will not require an increase or decrease in future legislative appropriations to TWC;
- 18 --will not require an increase or decrease in fees paid to TWC;
- 19 --will not create a new regulation;
- 20 --will not expand, limit, or eliminate an existing regulation;
- 21 --will not change the number of individuals subject to the rules; and
- 22 --will not positively or adversely affect the state's economy.

23 24 Economic Impact Statement and Regulatory Flexibility Analysis

25 TWC determined that the rules will not have an adverse economic impact on small businesses or
26 rural communities, as the proposed rules place no requirements on small businesses or rural
27 communities.

28
29 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
30 negative impact upon employment conditions in the state as a result of the rules.

31
32 Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, determined that for each
33 year of the first five years the rules are in effect, the public benefit anticipated as a result of
34 enforcing the proposed rules will be a more efficient system that will reduce unnecessary appeals
35 for minor clerical issues.

36
37 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
38 within TWC's legal authority to adopt.

39 40 **PART IV. PUBLIC COMMENTS**

41 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
42 and must be received no later than October 10, 2022.

43 44 **PART V. STATUTORY AUTHORITY**

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

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- 2 The proposed rules affect Texas Labor Code, Chapter 61.

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CHAPTER 821. TEXAS PAYDAY RULES

SUBCHAPTER C. WAGE CLAIMS

~~§821.45. Appeals.~~

- ~~(a) If either party files an appeal to a preliminary wage determination order, the Commission shall consider all issues, including the amount of wages in controversy.~~
- ~~(b) The Commission shall hear all timely requests for reopening and grant such requests if it appears the petitioner has shown good cause for the petitioner's failure to appear at the prior hearing.~~
- ~~(c) Hearings conducted under the Act are subject to the rules and hearing procedures set out in the Unemployment Insurance Rules at 40 T.A.C. Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Payday Rules or under the Act.~~

§821.48. Corrected Preliminary Wage Determination Order.

- (a) If an examiner discovers an error in connection with a preliminary wage determination order or discovers additional information not previously available, the examiner, within the period specified in §61.054 of the Act may reconsider and reissue the preliminary wage determination order, unless a party has already filed an appeal.
- (b) An examiner's reissued preliminary wage determination order voids and replaces the order requiring correction. A reissued preliminary wage determination order becomes final unless a party files an appeal from the reissued preliminary wage determination order within the period specified in §61.054 of the Act. The period to request an appeal shall begin on the date the examiner mails the reissued preliminary wage determination order.
- (c) Notwithstanding subsection (a) of this section, if an examiner mails a preliminary wage determination order to a party's incorrect address solely because of the examiner's own error, the examiner may reissue a preliminary wage determination order to the party's correct address at any time.

§821.49. Appeals.

- (a) If either party files an appeal to a preliminary wage determination order, the Commission shall consider all issues, including the amount of wages in controversy.
- (b) The Commission shall hear all timely requests for reopening and grant such requests if it appears the petitioner has shown good cause for the petitioner's failure to appear at the prior hearing.

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(c) Hearings conducted under the Act are subject to the rules and hearing procedures set out in Chapter 815 of this title (relating to Unemployment Insurance), except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter or under the Act.