

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

10  
11 Subchapter H. Collection Action, §§815.190 - 815.192

12  
13 The new sections are adopted *without changes* to the proposed text as published in the August  
14 12, 2022, issue of the *Texas Register* (47 TexReg 4843), and, therefore, the adopted rule text will  
15 not be published.

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

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

21  
22 When an employer does not timely pay its required unemployment taxes after being notified of  
23 the debt, the Texas Unemployment Compensation Act (TUCA) provides regulations for  
24 collecting the past due contributions. TUCA, Chapter 213, Subchapter C provides methods for  
25 collections of unpaid unemployment contributions, penalties, and interest by civil suit or Notice  
26 of Assessment (NOA). TWC is required to take this action. An NOA is only attempted after  
27 TWC has exhausted other avenues of tax collections including the tax statement, default notices,  
28 pre-assessment notifications, tax liens, and tax levies.

29  
30 An NOA is a written decision of a tax authority where the amount of taxable income is  
31 determined and the amount of tax due is calculated. In 1989, House Bill 1941, 71st Texas  
32 Legislature, Regular Session, provided for collection of delinquent unemployment benefit taxes,  
33 penalties, or interest by serving an NOA on an employer that owes unemployment taxes. The  
34 Legislature granted TWC this authority after an audit by the Office of the State Auditor  
35 contained findings regarding the significant amount of time taken before a judgment can be  
36 obtained by civil suit.

37  
38 The NOA correspondence totals the amount of taxes, penalties, or interest owed by the  
39 employer. Once the NOA is served upon the employer, TWC loses jurisdiction over the NOA  
40 and may not change it. After being served, the employer's sole avenue of redress of an  
41 grievance is through judicial review. If the employer does not seek judicial review, or if the  
42 assessment is upheld after judicial review, the assessment is final and is recorded as a judgment  
43 against the employer. The final NOA has the same effect as a final judgment of a district court.

44  
45 SB 695, a TWC initiative that amended Texas Labor Code, §213.032(a), was signed by the  
46 Governor on June 4, 2021, and became effective on September 1, 2021.

1  
2 Prior to the passage of SB 695, Texas Labor Code, §213.032(a) required TWC to serve an NOA  
3 in the same manner as provided in Texas Rules of Civil Procedure Rule 106.

4  
5 Texas Rules of Civil Procedure Rule 106 allows for service by personal service or by certified  
6 mail by any person authorized by Texas Rules of Civil Procedure Rule 103. However, per Texas  
7 Rules of Civil Procedure Rule 103, an interested party, such as TWC, may not serve any process.  
8 This meant that TWC was required to use a process server to mail its NOAs to liable employers.  
9 With the passage of SB 695, this limitation is no longer in place.

10  
11 Additionally, SB 695 addressed substituted service. In certain situations, an employer that owes  
12 unpaid contributions, interest, or penalties may try to escape liability by avoiding service of the  
13 NOA by personal service or mail. An example would be an employer residing in a gated  
14 community that will not allow access to a process server and the employer will not accept the  
15 mail. In these situations, Texas Rules of Civil Procedure Rule 106 states that a court may grant a  
16 substituted method of service. This created substantial difficulties as TWC could not seek  
17 substituted service because it did not have a cause number to petition for substituted service as  
18 no suit has been filed. Filing suit would defeat the Legislature's intended purpose of granting  
19 TWC the authority to issue NOAs as it is not uncommon for service to be unsuccessful in person  
20 or by mail.

21  
22 Effective December 31, 2021, the Texas Supreme Court updated Texas Rules of Civil Procedure  
23 Rule 106 to allow substituted service "in any other manner, including electronically by social  
24 media, email, or other technology, that the statement or other evidence shows will be reasonably  
25 effective to give the defendant notice of the suit."

## 26 27 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### 28 29 **SUBCHAPTER H. COLLECTION ACTION**

30 TWC adopts new Subchapter H, as follows:

#### 31 32 **§815.190. Service of a Notice of Assessment in General**

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

34  
35 New §815.190 clarifies that the language in Texas Labor Code, §213.032(a)(3), which states, "in  
36 another manner that is reasonably calculated to give the employer notice of the assessment," be  
37 referred to as substituted service and that contesting service must be done in Travis County  
38 district court as required by Texas Labor Code, §213.032(c). New §815.190 also clarifies that  
39 Texas Labor Code, §213.032(a) provides TWC with the flexibility to serve parties itself or by  
40 designated third party.

41  
42 New §815.190 informs parties of the addresses TWC may use for service by personal delivery or  
43 substituted service.

44  
45 Texas Labor Code, §212.006(b) and §214.002(a)(3) allow for NOAs to be served upon claimants  
46 as well as employers. New §815.190 interprets certain language in Texas Labor Code, Chapter

1 213 to more clearly apply to claimant assessments in those situations. To that end, new §815.190  
2 states the language in Texas Labor Code, §213.033(a) prescribing a three-year limitation on  
3 employer assessments for employer contributions, penalties, and interest be limited to the third  
4 anniversary after the benefit overpayment becomes final when it relates to claimant assessments.  
5 This interpretation is prudent as overpayment amounts may change during the dispute resolution  
6 process.

7  
8 **§815.191. Service of a Notice of Assessment by Personal Delivery or Mail**

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

11  
12 New §815.191 clarifies what constitutes "address as shown by commission records" for Texas  
13 Labor Code, §213.032(a)(2) and that TWC or its designee may make multiple service attempts  
14 under Texas Labor Code, §213.032(a)(1) and (2) prior to attempting substituted service.

15  
16 New §815.191 clarifies what address(es) shall be used when serving an NOA upon a claimant by  
17 personal delivery or mail.

18  
19 **§815.192. Service of a Notice of Assessment by Substituted Service**

20 New §815.192 provides information and clarification regarding service of an NOA by  
21 substituted service.

22  
23 New §815.192 clarifies that TWC or its designee may make multiple attempts at substituted  
24 service. It also provides methods by which TWC may effectuate substituted service. The  
25 enumerated methods are intended to put parties on notice of methods TWC intends to use and  
26 considers to be proper to effectuate substituted service, although the list is not exhaustive or  
27 dispositive in all circumstances.

28  
29 Such methods may include those methods specifically mentioned by Texas Rules of Civil  
30 Procedure Rule 106(b) including by social media, email, or other technology, TWC-established  
31 contact methods, including the Unemployment Tax Services and the Unemployment Benefits  
32 Services portals, or other mailing addresses that are not maintained in TWC records as required  
33 by Texas Labor Code, §213.032(a)(2). Other mailing addresses may include those obtained from  
34 third-party background and reporting agencies, online searches, and other government records.

35  
36 Additionally, certain corporations may need to be served as prescribed by Texas Business  
37 Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17. This would  
38 be applicable when attempting personal or substituted service upon the corporation's registered  
39 agent or the Secretary of State if no valid agent exists. Only Texas Labor Code, §213.032(a)(2)  
40 contains a requirement that the NOA be mailed to an address in TWC records, so personal or  
41 substituted service can be attempted upon registered agents.

42  
43 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
44 within TWC's legal authority to adopt.

1 **PART III. PUBLIC COMMENTS**

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

4  
5 **COMMENT:** TRLA stated its opposition to the proposed rules as they relate to the service of  
6 NOAs on claimants. TRLA is not commenting on the proposed rules as they relate to service  
7 upon employers. TRLA expressed concerns with due process for claimants and stated that  
8 claimants will not have a means to effectively challenge service.

9  
10 **RESPONSE:** TWC appreciates TRLA's comments.

11  
12 TWC is confident that the statutory framework of TUCA, SB 695, and new Chapter 815,  
13 Subchapter H provide due process to employers and claimants who may be served an NOA.  
14 TWC has had statutory authority to issue NOAs for claimant overpayments since 1989.  
15 Claimants are afforded multiple opportunities for review and redress before an assessment can be  
16 issued. If either party to an adverse determination disagrees with TWC's decision, they may file  
17 an appeal within 14 days of the mailing of the determination for a hearing with the Appeal  
18 Tribunal. If a party is dissatisfied with the Appeal Tribunal's decision, they may file an appeal  
19 with the Commission. If a party does not agree with the Commission's decision, they may file a  
20 Motion for Rehearing or file for judicial review of the Commission's final decision in a court of  
21 competent jurisdiction.

22  
23 It is only after a determination creating an overpayment becomes final and the overpayment  
24 remains unpaid, despite opportunities for repayment, that TWC would consider an NOA as a  
25 collection action. Once TWC successfully serves the NOA, if the party wishes to contest the  
26 NOA or its service, they may do so upon judicial review as provided in Texas Labor Code,  
27 §213.032(c).

28  
29 For these reasons, no changes have been made to the rules in response to the comments in  
30 opposition.

31  
32 **COMMENT:** TRLA stated that the intent and language of SB 695 are meant to only apply to  
33 employers.

34  
35 **RESPONSE:** TWC disagrees. Texas Labor Code, §212.006(b) and §214.002(a)(3) both  
36 expressly provide for using NOAs to collect claimant overpayments. TWC must presume that  
37 Texas Labor Code, §212.006(b) and §214.002(a)(3) are intended to be effective and that the  
38 reference to Texas Labor Code, §213.032 in Texas Labor Code, §212.006(b) and §214.002(a)(3)  
39 include the amendments from SB 695.

40  
41 No changes were made to the rules in response to this comment.

42  
43 **COMMENT:** TRLA objected to the methods of substituted service in the proposed rules.

44  
45 **RESPONSE:** The statutory language is clear that TWC may effectuate substituted service itself,  
46 however, TWC must attempt personal service or registered or certified mail service first. Only

1 after such service is not effective may TWC undertake substituted service, which must be  
2 reasonably calculated to provide notice of the assessment. TWC believes the rules as written do  
3 provide avenues reasonably calculated to give notice to claimants, which TWC will evaluate  
4 depending on the factual circumstances of each case. TWC declines to hypothesize various fact  
5 scenarios.

6  
7 No changes were made to the rules in response to this comment.

8  
9 **COMMENT:** TRLA expressed concerns with conformity to federal law.

10  
11 **RESPONSE:** TWC requested an opinion from the United States Department of Labor (DOL) as  
12 to whether the proposed rules create a conformity issue with federal law. DOL's informal opinion  
13 is that the proposed rules do not pose an issue of conformity with federal unemployment  
14 compensation law as written.

15  
16 No changes were made to the rules in response to this comment.

17  
18 **PART IV. STATUTORY AUTHORITY**

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

22  
23 The adopted rules affect Texas Labor Code, Title 4.

1                                   **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2  
3                   **SUBCHAPTER H. COLLECTION ACTION**

4  
5                   **§815.190. Service of a Notice of Assessment in General.**

- 6  
7                   (a) This section applies to a service of a notice of assessment under §213.032(a) of the  
8                   Act.
- 9  
10                  (b) As used in this subchapter, service "in another manner that is reasonably calculated  
11                  to give the employer notice of the assessment" shall be referred to as "substituted  
12                  service."
- 13  
14                  (c) The Agency may attempt all forms of service authorized by the Act. Additionally,  
15                  the Agency may engage third-party designees to provide service, including a process  
16                  server, sheriffs or constables, common carrier, or other courier service when  
17                  attempting service, as applicable.
- 18  
19                  (d) Service by personal delivery and substituted service may be attempted at addresses  
20                  other than the address as shown by Agency records, including those designated under  
21                  Texas Business Organizations Code, Chapter 5 and from third-party background and  
22                  reporting agencies, online searches, and other government records.
- 23  
24                  (e) When collecting an overpayment of benefits from a claimant through a notice of  
25                  assessment, as authorized by §212.006(b) and §214.002(a)(3) of the Act, the term  
26                  "claimant" shall be substituted for the terms "employer" and "defaulting employer"  
27                  found in Chapter 213, Subchapters C and D of the Act, as applicable. Collection by  
28                  making a claimant assessment is limited to the third anniversary after the benefit  
29                  overpayment becomes final except as otherwise tolled by §213.033 of the Act.
- 30  
31                  (f) A party seeking to contest service shall do so under §213.032(c) of the Act.

32  
33                   **§815.191. Service of a Notice of Assessment by Personal Delivery or Mail.**

- 34  
35                  (a) This section applies to a service of a notice of assessment under §213.032(a)(1) and  
36                  (2) of the Act.
- 37  
38                  (b) An "employer's address as shown by commission records" includes the employer's  
39                  address as reported on its status report, as provided under §815.3 of this chapter, or  
40                  other address maintained by the Agency for the purpose of corresponding with the  
41                  employer.
- 42  
43                  (c) Service of a notice of assessment upon a claimant shall be served upon the claimant's  
44                  address as shown by Agency records. For service upon a claimant, this includes the  
45                  address as provided under §815.3(c) of this chapter, or other address maintained by  
46                  the Agency for the purposes of corresponding with the claimant.

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

25 (c) The Agency or its designee may make multiple substituted service attempts if there  
26 exist multiple manners reasonably calculated to give the employer notice of the  
27 assessment.