

1 **CHAPTER 821. TEXAS PAYDAY RULES**

2 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
3 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
4 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

5 ON MARCH 17, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE
6 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

7 Estimated Publication Date of the Proposal in the *Texas Register*: **April 3, 2020**
8 Estimated End of Comment Period: **May 4, 2020**

9 The Texas Workforce Commission (TWC) proposes the amendments to the following section of
10 Chapter 821, relating to Texas Payday Rules:

11 Subchapter C. Wage Claims, §821.43

- 12 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 13 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 14 PART III. IMPACT STATEMENTS
- 15 PART IV. COORDINATION ACTIVITIES

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

17 The purpose of the proposed Chapter 821 rule change is to clarify that a claimant can withdraw a
18 wage claim at any time up to the point at which TWC's written order becomes final. An order
19 becomes final for all purposes under the following circumstances:

20 --If either party does not file an appeal within 21 days from the date the Preliminary Wage
21 Determination Order is mailed.

22 --If either party does not file an appeal within 14 days from the date the Wage Claim Appeal
23 Tribunal or Commission order is mailed.

24 --A denial of a Motion for Rehearing becomes final 14 days after the date it is mailed.

25 --A denial of a Motion for Rehearing, or order of the Commission when no Motion for
26 Rehearing has been filed, becomes final 14 days from the date it is mailed regardless as to
27 whether a party files for judicial review of the decision.

28 Per §821.43 as currently written, a claimant may withdraw a wage claim whether or not it has
29 become final. When a withdrawal request is submitted and approved, TWC no longer enforces
30 any orders issued (including administrative penalties) and releases all liens and freezes. It is as if
31 the claimant never filed the wage claim.

32 The Agency has determined that §821.43(a)(2) creates legal challenges by implying that the
33 wage claimant may alter or set aside a claim that has become final.

1 Because a claimant may not alter or set aside a claim after the TWC decision is final, TWC no
2 longer accepts a wage claim withdrawal submitted pursuant to §821.43(a)(2). Instead, in cases in
3 which a wage claim decision has become final and the claimant wants TWC to halt collection
4 action, the claimant may file a Satisfaction of Payment Declaration.

5 A Satisfaction of Payment Declaration differs from a withdrawal in that TWC will still recognize
6 that an order has been issued, but the Collections and Civil Actions department will cease
7 collections action on wages owed by the employer to the claimant under a wage claim. The
8 employer will still be liable for any administrative penalties assessed on the claim. TWC will
9 release any liens or freezes on the claim once the employer pays any administrative penalties
10 owed.

11 TWC does not process contractual settlements between parties regarding wage claims. If the
12 parties reach an outside settlement, and the TWC order is not yet final, the claimant may
13 withdraw a wage claim. If an order has become final, the claimant may declare satisfaction of
14 payment with respect to the settlement. The Satisfaction of Payment Declaration has the effect of
15 ceasing the wage order collection process.

16 A claimant may not rescind a withdrawal of wage claim or Satisfaction of Payment Declaration
17 once it has been submitted. If the employer does not fulfill the terms of the settlement, the
18 claimant may not "undo" either action.

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

20 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
21 therefore, are not discussed in the Explanation of Individual Provisions.)

22 **SUBCHAPTER C. WAGE CLAIMS**

23 **TWC proposes the following amendments to Subchapter C:**

24 **§821.43. Wage Claim Withdrawal**

25 Section 821.43(a) is amended to delete paragraphs (1) and (2) to clearly stipulate that a claimant
26 may withdraw a wage claim at any point up to when TWC's written order becomes final.

27 **PART III. IMPACT STATEMENTS**

28 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
29 rules will be in effect, the following statements will apply:

30 There are no additional estimated costs to the state and to local governments expected as a result
31 of enforcing or administering the rules.

32 There are no estimated cost reductions to the state and to local governments as a result of
33 enforcing or administering the rules.

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

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

1 There are no anticipated economic costs to individuals required to comply with the rules.
2 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
3 communities as a result of enforcing or administering the rules.
4 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
5 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
6 Legislature, Regular Session (2017), codified at Texas Government Code §2001.0045, does not
7 apply to this rulemaking.

8 Takings Impact Assessment

9 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
10 affects private real property, in whole or in part or temporarily or permanently, in a manner that
11 requires the governmental entity to compensate the private real property owner as provided by
12 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
13 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
14 would otherwise exist in the absence of the governmental action, and is the producing cause of a
15 reduction of at least 25 percent in the market value of the affected private real property,
16 determined by comparing the market value of the property as if the governmental action is not in
17 effect and the market value of the property determined as if the governmental action is in
18 effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under
19 Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action,
20 as discussed elsewhere in this preamble, is to clarify that a wage claim may only be withdrawn
21 by the claimant up to the point at which TWC's written decision becomes final.

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

29 Government Growth Impact Statement

30 TWC has determined that during the first five years the proposed amendments will be in effect:
31 --the proposed amendments will not create or eliminate a government program;
32 --implementation of the proposed amendments will not require the creation or elimination of
33 employee positions;
34 --implementation of the proposed amendments will not require an increase or decrease in future
35 legislative appropriations to TWC;
36 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
37 --the proposed amendments will not create a new regulation;
38 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
39 --the proposed amendments will not change the number of individuals subject to the rules; and
40 --the proposed amendments will not positively or adversely affect the state's economy.

41 Economic Impact Statement and Regulatory Flexibility Analysis

1 TWC has determined that the proposed rule will not have an adverse economic impact on small
2 businesses or rural communities, as these proposed rules place no requirements on small
3 businesses or rural communities.

4 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
5 significant negative impact upon employment conditions in the state as a result of the rules.

6 Paul Carmona, Director of the Regulatory Integrity Division, has determined that for each year
7 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
8 the proposed rules will be clarity for all parties with respect to the conditions under which a
9 wage claim may be withdrawn.

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

12 **PART IV. COORDINATION ACTIVITIES**

13 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
14 Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
15 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.

16 Comments must be received or postmarked no later than 30 days from the date this proposal is
17 published in the *Texas Register*.

18 The rules are proposed under Texas Labor Code §61.002(a)(2), which directs TWC to adopt
19 rules as necessary to implement Chapter 61, the Texas Payday Law.

20 The proposed rules affect Texas Labor Code Chapter 61.

1 **Chapter 821. TEXAS PAYDAY RULES**

2 **SUBCHAPTER C. WAGE CLAIMS**

3 **§821.43. Wage Claim Withdrawal.**

4 (a) The Commission shall allow a claimant to withdraw a wage claim at any time
5 before the date when the Commission's written decision becomes final.~~only under~~
6 ~~the following circumstances:~~

7 ~~(1) Before the Commission's written decision is final; or~~

8 ~~(2) After the Commission's written decision is final, if the claimant certifies to~~
9 ~~the Agency that the wage claim is fully satisfied.~~

10 (b) A claimant withdrawing a wage claim shall submit a form as prescribed by the
11 Commission.

12 (c) The Commission shall apply the withdrawal of a wage claim to both
13 administrative penalties and wages.

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