

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
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.**

7
8 **ON JULY 26, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
9 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

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11 Publication Date of the Proposal in the *Texas Register*: **August 12, 2022**

12 End of Comment Period: **September 12, 2022**

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

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

18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 The purpose of the proposed Chapter 815 rule change is to establish administrative rules to
21 implement and interpret Senate Bill (SB) 695, which was passed in 2021 by the 87th Texas
22 Legislature, Regular Session.

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

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

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

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

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

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

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

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

28 29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

30 31 **SUBCHAPTER H. COLLECTION ACTION**

32 TWC proposes new Subchapter H, as follows:

33 34 **§815.190. Service of a Notice of Assessment in General**

35 New §815.190 provides general information about service of a Notice of Assessment.

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

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

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

9
10 **§815.191. Service of a Notice of Assessment by Personal Delivery or Mail**

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

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

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

20
21 **§815.192. Service of a Notice of Assessment by Substituted Service**

22 New §815.192 provides information and clarification regarding service of an NOA by
23 substituted service.

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

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

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

44
45 **PART III. IMPACT STATEMENTS**

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

3
4 There are no additional estimated costs to the state and to local governments expected as a result
5 of enforcing or administering the rules.

6
7 There are no estimated cost reductions to the state and to local governments as a result of
8 enforcing or administering the rules.

9
10 There are estimated increases in revenue to the state as a result of enforcing or administering the
11 rules. TWC anticipates a positive impact to the unemployment trust fund as a result of increased
12 service of NOAs and the corresponding recovery of debt owed to the trust fund. There are no
13 estimated losses or increases in revenue to local governments as a result of enforcing or
14 administering the rules.

15
16 There are no foreseeable implications relating to costs or revenue of the state or local
17 governments as a result of enforcing or administering the rules.

18
19 There are no anticipated economic costs to individuals required to comply with the rules.

20
21 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
22 communities as a result of enforcing or administering the rules.

23
24 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
25 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
26 does not apply to this rulemaking.

27
28 Takings Impact Assessment

29 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
30 affects private real property, in whole or in part or temporarily or permanently, in a manner that
31 requires the governmental entity to compensate the private real property owner as provided by
32 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
33 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
34 would otherwise exist in the absence of the governmental action, and is the producing cause of a
35 reduction of at least 25 percent in the market value of the affected private real property,
36 determined by comparing the market value of the property as if the governmental action is not in
37 effect and the market value of the property determined as if the governmental action is in effect.
38 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
39 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
40 discussed elsewhere in this preamble, is to establish administrative rules to implement and
41 interpret SB 695.

42
43 The proposed rulemaking action will not create any additional burden on private real property or
44 affect private real property in a manner that would require compensation to private real property
45 owners under the United States Constitution or the Texas Constitution. The proposal also will
46 not affect private real property in a manner that restricts or limits an owner's right to the property

1 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
2 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

3
4 Government Growth Impact Statement

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

- 6 --will not create or eliminate a government program;
- 7 --will not require the creation or elimination of employee positions;
- 8 --will not require an increase or decrease in future legislative appropriations to TWC;
- 9 --will not require an increase or decrease in fees paid to TWC;
- 10 --will not create a new regulation;
- 11 --will not expand, limit, or eliminate an existing regulation;
- 12 --will not change the number of individuals subject to the rules; and
- 13 --will not positively or adversely affect the state's economy.

14
15 Economic Impact Statement and Regulatory Flexibility Analysis

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

19
20 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
21 negative impact upon employment conditions in the state as a result of the rules.

22
23 Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, determined that for each
24 year of the first five years the rules are in effect, the public benefit anticipated as a result of
25 enforcing the proposed rules will be increased efficiency and effectiveness in successfully
26 collecting debts owed to the State of Texas and a corresponding positive trust fund impact.

27
28 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
29 within TWC's legal authority to adopt.

30
31 **PART IV. PUBLIC COMMENTS**

32 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
33 and must be received no later than September 12, 2022.

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35 **PART V. STATUTORY AUTHORITY**

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

39
40 The proposed 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

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.