

CHAPTER 817. CHILD LABOR

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.

ON SEPTEMBER 17, 2024, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 4, 2024**

Estimated End of Comment Period: **November 4, 2024**

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §817.2, §817.5 and §817.6

Subchapter B. Limitations on the Employment of Children, §817.22 and §817.24

Subchapter C. Employment of Child Actors, §817.31 and §817.32

TWC proposes the following new subchapter to Chapter 817, relating to Violations and Administrative Penalties:

Subchapter D. Violations and Administrative Penalties, §817.34 - §817.36

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 817 is to address statutory changes enacted by House Bill (HB) 2459, 88th Texas Legislature, Regular Session (2023); clarify definitions and terms under Texas Labor Code, Chapter 51; provide policy clarifications; and make other technical corrections.

Prior to the enactment of HB 2459, only employers had appeal rights relating to child labor preliminary determination orders or child labor appeal tribunal decisions. HB 2459 repealed and replaced several sections of Texas Labor Code, Chapter 51, and amended Texas Labor Code §301.0015 to establish Commission review of child labor appeal tribunal orders. The administrative hearings process in Texas Labor Code, Chapter 51, now mirrors the process in Texas Labor Code, Chapter 61. TWC is taking the opportunity to use its policy function to provide additional clarity to employers regarding how inspections and penalties operate under Texas Labor Code, Chapter 51, along with technical cleanup.

Rule Review

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect

current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to readopt Chapter 817 as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§817.2. Definitions

Section 817.2(1) adds a definition for Agency.

Section 817.2(8) adds a definition for Commission.

Section 817.2(12) adds the definition of Employer from an entity to a person to be consistent with Texas Labor Code §51.002.

Section 817.2(12) adds a definition for Employers.

§817.5. Certificate of Age

Section 817.5(a)(1) is amended to clarify that applicants must use the TWC-provided application form.

§817.6. Appeals

Section 817.6 is amended to clarify that hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in TWC Chapter 815 Unemployment Insurance.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

TWC proposes the following amendments to Subchapter B:

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.22 is amended to clarify the roles of the Agency and Commission.

§817.24. Limitations on the Employment of Children to Solicit

Section 817.24 is amended to clarify the roles of the Agency and its Wage and Hour Department.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

TWC proposes the following amendments to Subchapter C:

§817.31. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old Children

Section 817.31 is amended to clarify the roles of the Agency and Commission.

§817.32. Application Exceptions

Section 817.32 is amended to clarify the roles of the Agency and Commission.

SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTY

The Commission proposes new Subchapter D as follows:

New Subchapter D, regarding violations and administrative penalties, provides clarification regarding TWC's interpretation of the enforcement provisions in Texas Labor Code, Chapter 51.

§817.34. Violations

New §817.34 clarifies the requirements to establish a violation under Texas Labor Code, Chapter 51, or this chapter. While an offense under Texas Labor Code, Chapter 51, includes a culpability requirement, a violation that may lead to an administrative penalty does not include a required culpability. As such, an offense will always be a violation, but a violation will not always be an offense. This section also clarifies that TWC has jurisdiction over child labor violations for the two-year period preceding the inspection, as established under Texas Labor Code §51.021, and jurisdiction over violations by a sexually oriented business for a five-year period preceding an inspection under Texas Labor Code §51.016. The new section also clarifies that TWC has jurisdiction to impose an administrative penalty for child labor violations that occurred during the two-year period even if the child is no longer working for the employer at the time the administrative penalty is imposed.

§817.35. Inspection; Collection of Information; Hinderance

New §817.35 clarifies the places that TWC may inspect by defining the basis that can be used to establish good reason to believe a violation has occurred and addresses TWC's authority to request records concerning the employment of a child. This section also specifies what actions are considered a hinderance to an inspection and a violation under Texas Labor Code, Chapter 51, and this chapter.

§817.36. Administrative Penalty

New §817.36 provides clarification regarding TWC's interpretation of the administrative penalty factors under Texas Labor Code §51.033 and requires the Commission to adopt a penalty matrix.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

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

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement the statutory changes in HB 2459, particularly the Commission's review of child labor appeal tribunal decisions, and to clarify the TWC's enforcement of the child labor protections in Texas Labor Code, Chapter 51.

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

Government Growth Impact Statement

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

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

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

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide better clarity regarding the enforcement of Texas Labor Code, Chapter 51.

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

PART IV. COORDINATION ACTIVITIES

HB 2459 amended Texas Labor Code, Chapter 51, to establish Commission review of child labor appeal tribunal orders. The proposed rule amendments clarify the rules and make technical corrections to align with the changes made to the Texas Labor Code. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than November 4, 2024.

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

- Texas Labor Code §51.023, which provides TWC with the specific authority to adopt rules necessary to promote the purpose of Texas Labor Code, Chapter 51; and
- Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 2.

CHAPTER 817. CHILD LABOR

SUBCHAPTER A. GENERAL PROVISIONS

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings.

- (1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system; administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended; and enforce child labor protections under Texas Labor Code, Chapter 51.
- ~~(2)(1)~~ Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.
- ~~(3)(2)~~ Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.
- ~~(4)(3)~~ Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.
- ~~(5)(4)~~ Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.
- ~~(6)(5)~~ Child--An individual under 18 years of age.
- ~~(7)(6)~~ Child actor--A child under the age of 14 who is to be employed as an actor or other performer.
- ~~(8)(7)~~ Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.
- (9) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The duties of

the Commission include reviewing the decision of a child labor appeal tribunal under Subchapter D, Chapter 51, of the Texas Labor Code. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(10)(8) Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.

(11)(9) Employee--An individual who is employed by an employer for compensation.

(12)(10) Employer--~~A person~~~~An entity~~ who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.

(13)(11) Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.

(14) Employs--To suffer or permit to work.

(15)(12) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.

(16) Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

§817.5. Certificate of Age.

(a) To request a certificate of age, an applicant must submit the following:

- (1) a completed application on a form provided by the Agency~~Commission~~;
- (2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1 1/2 inches, showing a full head shot of the applicant; and
- (3) proof of age. A copy of one of the following documents is required as proof of age:
 - (A) birth certificate;
 - (B) baptismal certificate showing the date of birth;

- (C) life insurance policy insuring the life of the child and reflecting the date of his or her birth;
 - (D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or
 - (E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent, guardian, or person having custody of the child as to the age of the child, ~~and also~~ a certificate signed by a physician specifying his or her opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his or her opinion concerning age is based.
- (b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

§817.6. Appeals.

Hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in Chapter 815 of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter ~~the Unemployment Insurance Rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Child Labor Rules~~ or under Texas Labor Code, Chapter 51.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

§817.22. Hardship Waiver of Hours Requirements for 14- and 15-Year-Old ~~14 and 15~~ ~~Year-Old~~ Children.

- (a) An applicant applying for a hardship waiver from the limitations on hours worked for 14- and 15-year-old ~~14 and 15 year old~~ children must obtain a certificate of age under the provisions of §817.5 of this chapter ~~title (relating to Certificate of Age)~~ and file a hardship application. The applicant may file both applications concurrently.
- (b) A hardship application must contain:
 - (1) full details of the prospective employment and the proposed hours to be worked;
 - (2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;

- (3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and
- (4) a written statement from the prospective employer. The prospective employer's statement shall provide:
 - (A) that the child will be employed; and
 - (B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.
- (c) A hardship application may contain any other information the applicant believes would support ~~the granting of~~ granting the waiver.
- (d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.
- (e) After all pertinent information has been reviewed by the Agency~~Commission~~, the waiver will be granted or denied. If additional information is needed before a decision is made, the Agency~~Commission~~ may gather additional facts and schedule a conference to review the merits of the application with interested persons.
- (f) At any conference, the Agency~~Commission~~ will be represented by an employee designated by the executive director, who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Agency~~Commission~~ as soon as practicable. No appeal to the Commission~~Commissioners~~ is authorized.
- (g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

§817.24. Limitations on the Employment of Children to Solicit.

- (a) A person may not begin the employment of a child to solicit as defined in Texas Labor Code §51.0145 and as described in §817.4(b) of this chapter ~~Chapter (relating to Statement of Commission Intent)~~, until the Agency's Wage and Hour ~~Commission's Labor Law~~ Department has received:
 - (1) a copy of the signed Parental Consent Form approved by the Agency~~Commission~~; and

- (2) the information required by statute to be provided to the individual who gives consent.
- (b) A copy of the Parental Consent Form may be obtained from the [Agency's Wage and Hour Commission's Labor Law](#) Department.
- (c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

§817.31. Child Actor Authorization.

- (a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this subchapter.
- (b) Every person applying for child actor authorization must submit:
 - (1) an application for authorization on a form provided by the [Agency Commission](#) and signed by a parent, guardian, or person having custody of the child;
 - (2) proof of age; and
 - (3) a photograph that complies with §817.5 of this [chapter title \(relating to Certificate of Age\)](#).
- (c) An authorization is effective when issued and expires when the child reaches 14 years of age; unless the [Agency Commission](#) establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

§817.32. Application Exceptions.

- (a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:
 - (1) communicates with the [Agency Commission](#) prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;
 - (2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;

- (3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;
 - (4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and
 - (5) submits a written post-production report to the ~~Agency~~ Commission, within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this chapter ~~(relating to Child Labor)~~.
- (b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:
- (1) the child reaches age 14;
 - (2) the child receives a Child Actor Authorization;
 - (3) the parent, guardian, or person having custody of the child revokes consent in writing; or
 - (4) the child's employment on the particular project by that employer ends.

SUBCHAPTER D. VIOLATIONS AND ADMINISTRATIVE PENALTIES

§817.34. Violations.

- (a) An offense under Texas Labor Code, Chapter 51, is criminal conduct and includes a requirement of culpability per Texas Penal Code, Chapter 6.
- (b) A person commits a violation by failing to adhere to a requirement or restriction of Texas Labor Code, Chapter 51, or this chapter. A person may commit a violation and an offense for the same activity. A violation under Texas Labor Code, Chapter 51, is administrative in nature and not criminal conduct and does not include a requirement of culpability.
- (c) An inspection may result in multiple violations, each with a penalty amount not to exceed \$10,000.
- (d) The Agency has jurisdiction over violations that occurred during the five-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.016.

(e) The Agency has jurisdiction over violations that occurred during the two-year period preceding, up to, and including the date of an inspection under Texas Labor Code §51.021.

§817.35. Inspection; Collection of Information; Hinderance.

(a) The Agency has authority to inspect, request proof or records, and collect information under Texas Labor Code §51.016 and §51.021.

(b) Per §51.016(h), the Agency has good reason to believe that an individual younger than 21 years of age is employed, has been employed, or has entered into a contract for the performance of work or the provision of service with a sexually oriented business based upon complaints, observations, or information obtained from law enforcement or the attorney general.

(c) Per §51.021, during working hours, the Agency, or its designee, may inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years. The Agency may consider location, historical data, industry characteristics, complaints, trends, or observations when determining whether good reason to believe a child is or has been employed exists.

(d) Per §51.021, during working hours, the Agency, or its designee, may collect information concerning the employment of a child who works, or within the last two years has worked, at a place inspected under Texas Labor Code §51.021(a)(1). The Agency may require the person to produce any records necessary to properly administer Texas Labor Code, Chapter 51, or this chapter.

(e) A person commits a violation under §51.021(b) if the person resists, delays, or obstructs the Agency's inspection or collection of information under this section, which includes, but is not limited to, preventing access to a place, failing to timely provide to the Agency requested information, or destroying records to obscure a violation.

§817.36. Administrative Penalties.

(a) The Commission shall adopt a penalty matrix that will be used to determine the amount of an administrative penalty under Texas Labor Code §51.033.

(b) When evaluating "the seriousness of the violation" under Texas Labor Code §51.033, the Commission will consider the level of risk of injury or death to a minor.

(c) When evaluating "the history of previous violations" under Texas Labor Code §51.033, the Commission will look at an employer's pattern or practice of violations.