

1 **Amendments to Chapter 821**
2 **Texas Payday Rules**
3 **Policy Concept**

4 **Background**

5 The Texas Payday Act (Texas Labor Code, Title 2, Subtitle C, [Chapter 61](#), Payment of
6 Wages) does not prohibit the withdrawal of a wage claim. Texas Workforce Commission
7 (TWC) Chapter 821 [Texas Payday Rules §821.43](#) was adopted by TWC’s three-member
8 Commission (Commission) to establish a process for claimants to withdraw wage claims.

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10 [Rule §821.43](#) currently allows a claimant to withdraw a wage claim under the following
11 circumstances:

- 12 • A wage claim has been filed, but the wage determination order is not yet final
13 ([§821.43\(a\)\(1\)](#)).
- 14 • A wage determination order has become final, but the claimant certifies that the wage
15 claim is fully satisfied ([§821.43\(a\)\(2\)](#)).

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17 **Issue**

18 Per [Rule §821.43](#), a claimant may withdraw a wage claim whether or not it has become
19 final. When a withdrawal request is submitted and approved, TWC no longer enforces
20 any orders issued (including administrative penalties) and releases all liens and freezes. It
21 is as if the claimant never filed the wage claim.

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23 In consultation with staff, the Executive Director (ED) has determined that §821.43(a)(2)
24 creates legal challenges by implying that an order that has become final may be altered or
25 set aside by the wage claimant.

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27 Because a claimant may not alter or set aside a claim after the Commission decision is
28 final, TWC no longer accepts a wage claim withdrawal submitted pursuant to
29 [§821.43\(a\)\(2\)](#). Instead, in cases in which a wage claim decision has become final and the
30 claimant wants TWC to halt collection action, the claimant may file a Satisfaction of
31 Payment Declaration.

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33 Typically, such a change would become effective when the underlying rule has been
34 amended. However, because [§821.43\(a\)\(2\)](#) has been identified to conflict with the statute
35 and TWC is now aware of this issue, the ED believes that the best course of action is to
36 decline to follow the administrative rule rather than to permit the conflict to continue.

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38 **Recommendation**

39 Staff recommends amending §821 to conform with statute by clarifying that a wage claim
40 may be withdrawn only when the order has not yet become final.

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42 To provide context, the preamble to such an amendment would clarify that a Satisfaction
43 of Payment Declaration differs from a withdrawal in that TWC will still pursue
44 administrative penalties on the claim and the employer will still be credited with a
45 violation. TWC’s Collections and Civil Actions department will, however, cease actions

1 to collect on wages ordered, since the claimant will have declared that these wages have
2 been paid to their satisfaction.

3
4 **Decision Point – Bad Faith Administrative Penalty**

5 [Texas Payday Law §61.053](#) provides that if a claims examiner, a wage claim appeal
6 tribunal, or the Commission find that an employer acted in bad faith in not paying wages
7 in accordance with the Texas Payday Law, an administrative penalty may be assessed
8 against the employer. [Texas Payday Rule §§821.44\(a\)\(1\) and \(2\)](#) stipulate that an
9 employer has acted in bad faith when the employer acts with the knowledge that the
10 failure to pay wages is in violation of the Texas Payday Law or Rules or in reckless
11 disregard for the requirements of the law or rules.

12
13 Per Regulatory Integrity Division guidance, “knowledge” refers to an employer's
14 awareness or understanding of the law. An employer who knows there are state payday
15 laws, fails to pay wages owed to an employee, and understands that his failure to pay is
16 against the law acts in bad faith under the first prong of the bad faith rule.

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18 “Reckless disregard” means that the employer acts without regard to or with indifference
19 to the consequences of his actions or the harm that might be caused by the conduct. An
20 employer who fails to pay wages owed to an employee without making an effort to
21 determine what the Texas Payday Law requires, and without considering whether its
22 failure to pay would violate the law, acts in bad faith under the second prong of the bad
23 faith rule.

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25 To comport with this guidance, a bad faith administrative penalty is never assessed as
26 part of the first issuance to an employer of a preliminary wage determination order
27 (PWDO) ordering wages. In this instance, the PWDO contains the following warning:

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29 **Penalty Warning Statement:**

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31 It has been determined that the employer violated the provisions of
32 the Texas Payday Law when the claimant’s earned wages were not
33 paid in accordance with the law. If it is determined that an employer
34 has acted in bad faith, the Commission may assess an administrative
35 penalty for failure to pay wages as required by law. In this case, no
36 penalty is assessed.

37
38 Staff also provides a copy of the Texas Payday Law and Rules to the employer when the
39 PWDO is rendered. This puts the employer on affirmative notice of the requirements of
40 the statute and the rule.

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42 The bad faith penalty provisions of [Texas Payday Law §61.053](#) are permissive. As such
43 there may be latitude for the Commission to issue the assessment as a conditional
44 penalty.

1 An example would be where a subsequent violation of the Texas Payday Law by the
2 employer resulted in a finding of bad faith, and a penalty is assessed. Collection of the
3 penalty could be conditioned on non-payment of the ordered wages to the Commission
4 by a set time limit after the order has become final. In cases where the wages are paid to
5 the Commission before the set time, the penalty would not attach, so there would be no
6 collection activity to enforce with respect to a penalty. In this circumstance, the
7 subsequent violation would still be counted as a wage claim filed against the employer
8 and the finding of bad faith would remain since the decision had become final, but there
9 would be no administrative penalty.

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11 In the case where the wages were not paid to the Commission by the set time, the
12 subsequent violation would be counted as a wage claim filed against the employer; the
13 finding of bad faith would remain since the decision had become final; and the
14 administrative penalty would attach. TWC would take collection activity against the
15 employer for the wages and the penalty.

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17 Staff seeks direction regarding whether to pursue application of a conditional penalty as
18 described herein. Such an approach would involve policy and administrative
19 considerations. Additional legal research will be required to more fully explore any bar
20 to its application.