

1 **CHAPTER 821. TEXAS PAYDAY RULES**

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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.**

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8 The Texas Workforce Commission ("TWC" or "Agency") adopts the repeal of the following
9 section in Chapter 821, relating to Texas Payday Rules:

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11 Subchapter C, Wage Claims, §821.45

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13 TWC adopts the following new sections to Chapter 821, relating to Texas Payday Rules:

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15 Subchapter C. Wage Claims, §821.48 and §821.49

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17 The repeal and new sections are adopted *without changes* to the proposal, as published in the
18 September 9, 2022, issue of the *Texas Register* (47 TexReg 5468), and, therefore, the adopted
19 rule text will not be published.

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

22 The purpose of the adopted Chapter 821 rule change is to modify the chapter to allow the
23 Agency's Labor Law department to reissue determinations.

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25 Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas
26 Legislature granted the Agency authority to adjudicate wage claims and issue preliminary wage
27 determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to appeal. If no
28 appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage Claim
29 Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision
30 becomes final 14 days after mailing unless a party appeals to TWC's three-member Commission
31 (Commission). A decision of the Commission becomes final 14 days after mailing unless a party
32 files a Motion for Rehearing or for judicial review of the Commission's decision.

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34 The Texas Payday Law and TWC rules do not state whether the Agency may reissue a corrected
35 PWDO. Currently, when an error is made on the PWDO or additional information becomes
36 available between issuance of the PWDO and when the decision is final, there is no clear
37 authority for the Agency to issue a corrected PWDO. This can result in costly appeal hearings to
38 resolve minor clerical errors.

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40 In statute and rule related to unemployment claims, the Agency has similar authority to that
41 adopted in this rulemaking. Texas Labor Code, §212.054 allows for an examiner to issue a
42 redetermination of an unemployment determination if there is an error or upon the discovery of
43 new information. The examiner has 14 days from the mailing date of the original determination
44 to issue the redetermination. The 14 days includes the period prior to the original determination
45 becoming final. An unemployment examiner may issue a redetermination to correct a clerical or
46 machine error at any time during a claimant's benefit year.

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2 Title 40 Texas Administrative Code (TAC) §815.16(6)(B) allows the Appeal Tribunal for
3 unemployment hearings to issue a corrected decision as follows:
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5 "At any time during the 14-day period from the date a decision on an appeal is mailed,
6 unless a party of interest has already appealed to the Commission, the appeal tribunal or
7 the supervisor of appeals may assume continuing jurisdiction over the appeal for the
8 purpose of reconsidering the issues on appeal and issuing a corrected decision. During the
9 period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the
10 parties, may take any additional evidence or secure any additional information it deems
11 necessary to issue a decision."
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13 Clear written authority in rule would allow TWC to exercise plenary power over decisions which
14 have mailed but are not yet final. As adopted, TWC would not exercise this authority if an appeal
15 has been filed. A reissued PWDO would void and replace any prior incorrect PWDOs, and the
16 appeal period would start again allowing either party 21 days to file an appeal from the mailing
17 date of the reissued PWDO.
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19 Texas Payday Law appeals rules and procedures are governed by current rule 40 TAC §821.45,
20 which incorporates the rules and hearing procedures set out in TWC's Unemployment Insurance
21 rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or
22 contrary to provisions set out under the Texas Payday Rules or the Texas Payday Act.
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24 Finally, Texas Government Code, §2001.039 requires that every four years each state agency
25 review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC
26 reviewed the rules in Chapter 821 and determined that the rules are needed, reflect current legal
27 and policy considerations, and reflect current TWC procedures. The reasons for initially adopting
28 the rules continue to exist and any changes to the rules are described in Part II of this preamble.
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30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

31 **SUBCHAPTER C. WAGE CLAIMS**

32 TWC adopts the following amendments to Subchapter C:
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35 **§821.45. Appeals.**

36 Section 821.45 is repealed and the language is moved to new §821.49.
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38 **§821.48. Corrected Preliminary Wage Determination Order**

39 New §821.48 provides that if an examiner discovers an error or receives additional information
40 not previously available when the determination was made, the examiner may reconsider and
41 reissue the PWDO within the 21-day period provided for in Texas Labor Code, §61.054.
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43 New §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the
44 parties when an error is made or additional information becomes available before the decision
45 becomes final. New §821.48 provides payday examiners with similar authority to unemployment
46 examiners, albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar

1 to 40 TAC §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law
2 department would no longer have authority to reissue a corrected PWDO once that appeal is
3 filed. Labor Law staff determined this to be a best practice to avoid interference with any actions
4 the WCAT may have already taken with the filing of the appeal. The reissued PWDO would
5 supersede any previous incorrect PWDOs. Either party would then have 21 days from the
6 mailing date of the most recent reissued PWDO to file an appeal.

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8 New §821.48 includes a caveat for instances in which the examiner has mailed the PWDO to a
9 party's wrong address. This would only apply to errors made by the examiner, and not to
10 situations in which the party provided the Agency with the wrong address.

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12 **§821.49. Appeals.**

13 New §821.49 replaces repealed §821.45. The language in §821.45 is moved to new §821.49 to
14 logically follow the corrected PWDO process in the rules.

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

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19 **PART III. PUBLIC COMMENTS**

20 The public comment period closed on October 10, 2022. No comments were received.

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22 **PART IV. STATUTORY AUTHORITY**

23 The rules are adopted under Texas Labor Code, §61.002(a)(2), which allows TWC to adopt rules
24 as necessary to implement Texas Labor Code, Chapter 61.

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26 The adopted rules affect Texas Labor Code, Chapter 61.

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CHAPTER 821. TEXAS PAYDAY RULES

SUBCHAPTER C. WAGE CLAIMS

~~§821.45. Appeals.~~

- ~~(a) If either party files an appeal to a preliminary wage determination order, the Commission shall consider all issues, including the amount of wages in controversy.~~
- ~~(b) The Commission shall hear all timely requests for reopening and grant such requests if it appears the petitioner has shown good cause for the petitioner's failure to appear at the prior hearing.~~
- ~~(c) Hearings conducted under the Act are subject to the rules and hearing procedures set out in the Unemployment Insurance Rules at 40 T.A.C. Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Payday Rules or under the Act.~~

§821.48. Corrected Preliminary Wage Determination Order.

- (a) If an examiner discovers an error in connection with a preliminary wage determination order or discovers additional information not previously available, the examiner, within the period specified in §61.054 of the Act may reconsider and reissue the preliminary wage determination order, unless a party has already filed an appeal.
- (b) An examiner's reissued preliminary wage determination order voids and replaces the order requiring correction. A reissued preliminary wage determination order becomes final unless a party files an appeal from the reissued preliminary wage determination order within the period specified in §61.054 of the Act. The period to request an appeal shall begin on the date the examiner mails the reissued preliminary wage determination order.
- (c) Notwithstanding subsection (a) of this section, if an examiner mails a preliminary wage determination order to a party's incorrect address solely because of the examiner's own error, the examiner may reissue a preliminary wage determination order to the party's correct address at any time.

§821.49. Appeals.

- (a) If either party files an appeal to a preliminary wage determination order, the Commission shall consider all issues, including the amount of wages in controversy.
- (b) The Commission shall hear all timely requests for reopening and grant such requests if it appears the petitioner has shown good cause for the petitioner's failure to appear at the prior hearing.

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(c) Hearings conducted under the Act are subject to the rules and hearing procedures set out in Chapter 815 of this title (relating to Unemployment Insurance), except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter or under the Act.