

1 **Policy Concept**  
2 **Chapter 817, Child Labor, and Chapter 821, Texas Payday Rules**  
3 **Rule Project #2021-20-817 – Child Labor and Payday Redeterminations**  
4

5 **Introduction and Background**  
6

7 The Texas Payday Law and Rules

8 Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas Legislature  
9 granted the Texas Workforce Commission (TWC) the authority to adjudicate wage claims and issue  
10 preliminary wage determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to  
11 appeal. If no appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage  
12 Claim Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision becomes  
13 final 14 days after mailing unless a party appeals to TWC's three-member Commission (Commission). A  
14 decision of the Commission becomes final 14 days after mailing unless a party files a Motion for  
15 Rehearing or for judicial review of the Commission's decision.  
16

17 Texas Labor Code, §212.054 allows for an examiner to issue a redetermination from an unemployment  
18 determination if there is an error or upon the discovery of new information. The examiner has 14 days  
19 from the mailing date of the original determination to issue the redetermination. The 14 days includes  
20 the period prior to the original determination becoming final. An unemployment examiner may issue a  
21 redetermination to correct a clerical or machine error at any time during a claimant's benefit year.  
22

23 Title 40 Texas Administrative Code (TAC) §815.16(6)(B) allows the Appeal Tribunal for  
24 unemployment hearings to issue a corrected decision as follows:  
25

26 "At any time during the 14-day period from the date a decision on an appeal is mailed, unless a  
27 party of interest has already appealed to the Commission, the appeal tribunal or the supervisor of  
28 appeals may assume continuing jurisdiction over the appeal for the purpose of reconsidering the  
29 issues on appeal and issuing a corrected decision. During the period in which continuing  
30 jurisdiction is assumed, the appeal tribunal, after notice to the parties, may take any additional  
31 evidence or secure any additional information it deems necessary to issue a decision."  
32

33 Texas Payday Law appeals are governed by 40 TAC §821.45, which incorporates the rules and hearing  
34 procedures set out in TWC's Unemployment Insurance rules at 40 TAC Chapter 815, except to the  
35 extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas  
36 Payday Rules or the Texas Payday Act.  
37

38 Employment of Children and the Texas Child Labor Rules

39 Under Texas Labor Code, Chapter 51, Employment of Children, the Texas Legislature granted TWC the  
40 authority to issue administrative penalties whenever TWC determines that a person who employs a child  
41 has violated Texas Labor Code, Chapter 51 or 40 TAC Chapter 817. If a violation has occurred, TWC is  
42 required to issue a preliminary determination (PD). The penalized person then has 21 days to appeal the  
43 PD. Child labor hearings are held by a hearing officer in TWC's Commission Appeals department. After  
44 the hearing officer issues a decision, only the penalized person may file a motion for rehearing within 14  
45 days or file for judicial review.  
46

1 **Rule Review of Chapter 817 and Chapter 821**

2 Texas Government Code, §2001.039 requires that every four years each state agency review and  
3 consider for readoption, revision, or repeal each rule adopted by that agency. The rule review of Chapter  
4 817 and Chapter 821 are due in 2022.

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6 **Purpose for the Proposed Rule**

7 The purpose for these proposed rules is to modify Chapter 817, Child Labor, and Chapter 821, Texas  
8 Payday Rules, to allow TWC's Child Labor unit and Labor Law department to reissue determinations  
9 and to make a minor definition change in 40 TAC §817.2. Additionally, the rules in Chapter 817 and  
10 821 will be reviewed in accordance with Texas Government Code, §2001.039.

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12 **Rule Revisions Required by Federal Regulation or State Statute**

13 None

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15 **Other Rule Revisions**

16 **Issue #1: Corrected Determination Order, Chapter 821**

17 Texas Payday Law and TWC rules do not set forth whether TWC may issue a corrected PWDO. Texas  
18 Labor Code, §61.002(a)(2) allows TWC to adopt rules as necessary to implement Texas Labor Code,  
19 Chapter 61.

20  
21 Staff recommends amending Chapter 821 to add new §821.48, which would provide that if an examiner  
22 discovers an error or additional information not previously available when the determination was made,  
23 the examiner may reconsider and reissue the PWDO within the 21-day period provided for in Texas  
24 Labor Code, §61.054.

25  
26 Proposed §821.48 would provide payday examiners with similar authority to unemployment examiners,  
27 albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar to 40 TAC  
28 §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law department would no  
29 longer have authority to reissue a corrected PWDO once that appeal is filed. Labor Law staff determined  
30 this to be a best practice to avoid interference with any actions the WCAT may have already taken with  
31 the filing of the appeal.

32  
33 Staff also recommends a caveat be included in proposed §821.48 for instances in which the examiner  
34 has mailed the PWDO to a party's wrong address. A PWDO mailed to an erroneous address does not  
35 become final; therefore, Labor Law staff recommends including in proposed §821.48 the right to reissue  
36 the PWDO to the correct address at any point after the error is discovered. This would only apply to  
37 errors made by the examiner, and not to situations in which the party provided TWC with the wrong  
38 address.

39  
40 While Texas Labor Code, §212.054 also allows for an unemployment examiner to issue a  
41 redetermination to correct a clerical or machine error at any time within the benefit year, this provision  
42 would not be included in proposed §821.48. There is nothing analogous to a benefit year under Texas  
43 Labor Code, Chapter 61, and the Labor Law department's process for issuing a determination is not  
44 automated to the extent TWC's unemployment determination process is.

45  
46 Proposing new §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the  
47 parties when an error is made, or additional information becomes available before the decision becomes

1 final. Additionally, resolving an erroneous PWDO by reissuing it rather than by setting up a costly  
2 appeal hearing would result in cost savings to TWC.

3  
4 Staff also recommends repealing 40 TAC §821.45, Appeals, and proposing the section as new §821.49  
5 to logically follow the corrected PWDO process in the rules. This action should not affect any  
6 documentation currently mailed to the parties.

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8 **Issue #2: Corrected Determination, Chapter 817**

9 Texas Labor Code, Chapter 51 and TWC rules also do not set forth as to whether TWC may issue a  
10 corrected PD. Texas Labor Code, §51.023 allows TWC to adopt rules as necessary to promote the  
11 purpose of Texas Labor Code, Chapter 51. Appeals are governed by 40 TAC §817.6.

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13 Using the same rationale as stated previously, staff recommends amending Chapter 817 to provide that if  
14 an error is discovered, or additional information not previously available when the determination was  
15 made becomes available, a PD may be reissued within the 21-day period provided for by Texas Labor  
16 Code, §51.033 unless an appeal is filed. The same provision for an erroneous address is also  
17 recommended.

18  
19 Staff recommends amending Chapter 817 to create new Subchapter D, Administrative Penalties, to  
20 include new §817.41, Corrected Preliminary Determination. Staff also recommends repealing §817.6,  
21 Appeals, and proposing the language under Subchapter D as new §817.42 to logically follow new  
22 §817.41.

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24 **Issue #3: Clarify Definition of "Employer" in Chapter 817**

25 Section 817.2(10) defines an Employer as "an entity who employs one or more employees or acts  
26 directly or indirectly in the interests of an employer in relation to an employee." This definition does not  
27 align with Texas Labor Code, Chapter 51, which uses only the term "person" in reference to the  
28 employment of a child. Staff recommends amending §817.2(10) to reference a person instead of an  
29 entity.

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31 **Issue #4: Rule Review of Chapter 817 and Chapter 821**

32 In accordance with Texas Government Code, §2001.039, staff will review the rules in Chapter 817 and  
33 Chapter 821 to ensure the reasons for adopting the rules continue to exist and align with current Child  
34 Labor unit and Labor Law department processes and procedures.

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36 **PC Decision Point**

37 Staff recommends amending 40 TAC Chapter 817 and Chapter 821 as presented to allow TWC's Child  
38 Labor unit and Labor Law department to reissue determinations and clarify the rule language. Staff also  
39 recommends reviewing Chapter 817 and Chapter 821 in accordance with Texas Government Code,  
40 §2001.039.