

Chapter 821. TEXAS PAYDAY RULES

Subchapter C. WAGE CLAIMS

40 TAC §821.45

The Texas Workforce Commission proposes amendments to §821.45, relating to appeals of Payday Law preliminary wage determination orders.

Background: Texas Labor Code Chapter 61, Payment of Wages (Payday Law), provides for the implementation of rules and laws relating to payment of wages. The Payday Law provides for the adjudication of wage claims by certain employees asserting claims against certain employers in Texas regarding wages that are due and unpaid. More specifically, the Payday Law sets forth provisions, including, but not limited to, the following:

designation of paydays,
payment on days other than on paydays,
payment after termination of employment,
payment of commissions and bonuses,
form of payment,
delivery of payment,
deductions from wages,
filing a wage claim,
penalties for failure to pay wages,
the initial investigation process, and
appeals processes regarding wages claimed unpaid and due.

The purpose of the proposed amendments is to provide notice of and a cross-reference to the location of the rules used relating to appeal hearings under the Act. The Payday Law hearings conducted by the Special Hearings Department are subject to the Unemployment Insurance Rules, found at Title 40 Texas Administrative Code (TAC), Chapter 815. The use of the Unemployment Insurance appeal process is required by Texas Labor Code §61.058(a). The cross-reference in the Payday Rules is added to provide clarification to the public regarding the statutorily required appeals processes.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is 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 this rule;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering this rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering this rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering this rule; and

there are no anticipated costs to persons who are required to comply with this rule as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering this rule because this rule only clarifies what is already required in the statute, and is meant to help the public locate the rules that apply to Payday Law hearings.

Chester Skorupa, Director of Labor Law, has determined that for each year of the first five years that this rule will be in effect, the public benefit anticipated as a result of the adoption of the proposed rule will be to assist the public in locating rules that apply to Payday Law hearings based on appeals to the Special Hearings Department.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to Chester Skorupa, Director of Labor Law, Texas Workforce Commission, Labor Law, 101 East 15th Street, Suite G-1, Austin, Texas, 78778-0001; Fax Number (512) 834-3632; or E-mail to chester.skorupa@twc.state.tx.us. Comments must be received by the Texas Workforce Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended rule is proposed under Texas Labor Code §§61.002(a)(2), 301.061 and 302.002, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary relating to the Payday Law and for the effective administration of the Texas Workforce Commission's services and activities. The proposal affects the Texas Labor Code, Title 2.

§821.45.Appeals.

(a) (No change.)

(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 [his] 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 TAC 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.

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

Filed with the Office of the Secretary of State, on July 6, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 20, 2000

For further information, please call: (512) 463-8812