

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

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3 **PROPOSED 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) proposes the following new subchapter to Chapter  
9 815, relating to Unemployment Insurance:

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11 Subchapter H. Collection Action, §§815.190 - 815.192

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

14 The purpose of the proposed Chapter 815 rule change is to establish administrative rules to  
15 implement and interpret Senate Bill (SB) 695, which was passed in 2021 by the 87th Texas  
16 Legislature, Regular Session.

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18 When an employer does not timely pay its required unemployment taxes after being notified of  
19 the debt, the Texas Unemployment Compensation Act (TUCA) provides regulations for  
20 collecting the past due contributions. TUCA, Chapter 213, Subchapter C provides methods for  
21 collections of unpaid unemployment contributions, penalties, and interest by civil suit or Notice  
22 of Assessment (NOA). TWC is required to take this action. An NOA is only attempted after  
23 TWC has exhausted other avenues of tax collections including the tax statement, default notices,  
24 pre-assessment notifications, tax liens, and tax levies.

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26 An NOA is a written decision of a tax authority where the amount of taxable income is  
27 determined and the amount of tax due is calculated. In 1989, House Bill 1941, 71st Texas  
28 Legislature, Regular Session, provided for collection of delinquent unemployment benefit taxes,  
29 penalties, or interest by serving an NOA on an employer that owes unemployment taxes. The  
30 Legislature granted TWC this authority after an audit by the Office of the State Auditor  
31 contained findings regarding the significant amount of time taken before a judgment can be  
32 obtained by civil suit.

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34 The NOA correspondence totals the amount of taxes, penalties, or interest owed by the  
35 employer. Once the NOA is served upon the employer, TWC loses jurisdiction over the NOA  
36 and may not change it. After being served, the employer's sole avenue of redress of an  
37 grievance is through judicial review. If the employer does not seek judicial review, or if the  
38 assessment is upheld after judicial review, the assessment is final and is recorded as a judgment  
39 against the employer. The final NOA has the same effect as a final judgment of a district court.

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41 SB 695, a TWC initiative that amended Texas Labor Code, §213.032(a), was signed by the  
42 Governor on June 4, 2021, and became effective on September 1, 2021.

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44 Prior to the passage of SB 695, Texas Labor Code, §213.032(a) required TWC to serve an NOA  
45 in the same manner as provided in Texas Rules of Civil Procedure Rule 106.

1 Texas Rules of Civil Procedure Rule 106 allows for service by personal service or by certified  
2 mail by any person authorized by Texas Rules of Civil Procedure Rule 103. However, per Texas  
3 Rules of Civil Procedure Rule 103, an interested party, such as TWC, may not serve any process.  
4 This meant that TWC was required to use a process server to mail its NOAs to liable employers.  
5 With the passage of SB 695, this limitation is no longer in place.  
6

7 Additionally, SB 695 addressed substituted service. In certain situations, an employer that owes  
8 unpaid contributions, interest, or penalties may try to escape liability by avoiding service of the  
9 NOA by personal service or mail. An example would be an employer residing in a gated  
10 community that will not allow access to a process server and the employer will not accept the  
11 mail. In these situations, Texas Rules of Civil Procedure Rule 106 states that a court may grant a  
12 substituted method of service. This created substantial difficulties as TWC could not seek  
13 substituted service because it did not have a cause number to petition for substituted service as  
14 no suit has been filed. Filing suit would defeat the Legislature's intended purpose of granting  
15 TWC the authority to issue NOAs as it is not uncommon for service to be unsuccessful in person  
16 or by mail.  
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18 Effective December 31, 2021, the Texas Supreme Court updated Texas Rules of Civil Procedure  
19 Rule 106 to allow substituted service "in any other manner, including electronically by social  
20 media, email, or other technology, that the statement or other evidence shows will be reasonably  
21 effective to give the defendant notice of the suit."  
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## 23 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### 24 **SUBCHAPTER H. COLLECTION ACTION**

25 TWC proposes new Subchapter H, as follows:  
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#### 28 **§815.190. Service of a Notice of Assessment in General**

29 New §815.190 provides general information about service of a Notice of Assessment.  
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31 New §815.190 clarifies that the language in Texas Labor Code, §213.032(a)(3), which states, "in  
32 another manner that is reasonably calculated to give the employer notice of the assessment," be  
33 referred to as substituted service and that contesting service must be done in Travis County  
34 district court as required by Texas Labor Code, §213.032(c). New §815.190 also clarifies that  
35 Texas Labor Code, §213.032(a) provides TWC with the flexibility to serve parties itself or by  
36 designated third party.  
37

38 New §815.190 informs parties of the addresses TWC may use for service by personal delivery or  
39 substituted service.  
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41 Texas Labor Code, §212.006(b) and §214.002(a)(3) allow for NOAs to be served upon claimants  
42 as well as employers. New §815.190 interprets certain language in Texas Labor Code, Chapter  
43 213 to more clearly apply to claimant assessments in those situations. To that end, new §815.190  
44 states the language in Texas Labor Code, §213.033(a) prescribing a three-year limitation on  
45 employer assessments for employer contributions, penalties, and interest be limited to the third  
46 anniversary after the benefit overpayment becomes final when it relates to claimant assessments.

1 This interpretation is prudent as overpayment amounts may change during the dispute resolution  
2 process.

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4 **§815.191. Service of a Notice of Assessment by Personal Delivery or Mail**

5 New §815.191 provides information and clarification regarding service of an NOA by personal  
6 delivery or mail.

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8 New §815.191 clarifies what constitutes "address as shown by commission records" for Texas  
9 Labor Code, §213.032(a)(2) and that TWC or its designee may make multiple service attempts  
10 under Texas Labor Code, §213.032(a)(1) and (2) prior to attempting substituted service.

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12 New §815.191 clarifies what address(es) shall be used when serving an NOA upon a claimant by  
13 personal delivery or mail.

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15 **§815.192. Service of a Notice of Assessment by Substituted Service**

16 New §815.192 provides information and clarification regarding service of an NOA by  
17 substituted service.

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19 New §815.192 clarifies that TWC or its designee may make multiple attempts at substituted  
20 service. It also provides methods by which TWC may effectuate substituted service. The  
21 enumerated methods are intended to put parties on notice of methods TWC intends to use and  
22 considers to be proper to effectuate substituted service, although the list is not exhaustive or  
23 dispositive in all circumstances.

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25 Such methods may include those methods specifically mentioned by Texas Rules of Civil  
26 Procedure Rule 106(b) including by social media, email, or other technology, TWC-established  
27 contact methods, including the Unemployment Tax Services and the Unemployment Benefits  
28 Services portals, or other mailing addresses that are not maintained in TWC records as required  
29 by Texas Labor Code, §213.032(a)(2). Other mailing addresses may include those obtained from  
30 third-party background and reporting agencies, online searches, and other government records.

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32 Additionally, certain corporations may need to be served as prescribed by Texas Business  
33 Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17. This would  
34 be applicable when attempting personal or substituted service upon the corporation's registered  
35 agent or the Secretary of State if no valid agent exists. Only Texas Labor Code, §213.032(a)(2)  
36 contains a requirement that the NOA be mailed to an address in TWC records, so personal or  
37 substituted service can be attempted upon registered agents.

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39 **PART III. IMPACT STATEMENTS**

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

42  
43 There are no additional estimated costs to the state and to local governments expected as a result  
44 of enforcing or administering the rules.

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

3  
4 There are estimated increases in revenue to the state as a result of enforcing or administering the  
5 rules. TWC anticipates a positive impact to the unemployment trust fund as a result of increased  
6 service of NOAs and the corresponding recovery of debt owed to the trust fund. There are no  
7 estimated losses or increases in revenue to local governments as a result of enforcing or  
8 administering the rules.

9  
10 There are no foreseeable implications relating to costs or revenue of the state or local  
11 governments as a result of enforcing or administering the rules.

12  
13 There are no anticipated economic costs to individuals required to comply with the rules.

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

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

#### 21 22 Takings Impact Assessment

23 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that  
24 affects private real property, in whole or in part or temporarily or permanently, in a manner that  
25 requires the governmental entity to compensate the private real property owner as provided by  
26 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas  
27 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that  
28 would otherwise exist in the absence of the governmental action, and is the producing cause of a  
29 reduction of at least 25 percent in the market value of the affected private real property,  
30 determined by comparing the market value of the property as if the governmental action is not in  
31 effect and the market value of the property determined as if the governmental action is in effect.  
32 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas  
33 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as  
34 discussed elsewhere in this preamble, is to establish administrative rules to implement and  
35 interpret SB 695.

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

#### 43 44 Government Growth Impact Statement

45 TWC determined that during the first five years the rules will be in effect, they:  
46 --will not create or eliminate a government program;

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

8

9 Economic Impact Statement and Regulatory Flexibility Analysis

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

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

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17 Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, determined that for each  
18 year of the first five years the rules are in effect, the public benefit anticipated as a result of  
19 enforcing the proposed rules will be increased efficiency and effectiveness in successfully  
20 collecting debts owed to the State of Texas and a corresponding positive trust fund impact.

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

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25 **PART IV. PUBLIC COMMENTS**

26 Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov)  
27 and must be received no later than September 12, 2022.

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29 **PART V. STATUTORY AUTHORITY**

30 The rules are proposed under Texas Labor Code, §301.0015(a)(6), which provide TWC with the  
31 authority to adopt, amend, or repeal such rules as it deems necessary for the effective  
32 administration of TWC services and activities.

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34 The proposed rules affect Texas Labor Code, Title 4.

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## CHAPTER 815. UNEMPLOYMENT INSURANCE

### SUBCHAPTER H. COLLECTION ACTION

#### §815.190. Service of a Notice of Assessment in General.

- (a) This section applies to a service of a notice of assessment under §213.032(a) of the Act.
- (b) As used in this subchapter, service "in another manner that is reasonably calculated to give the employer notice of the assessment" shall be referred to as "substituted service."
- (c) The Agency may attempt all forms of service authorized by the Act. Additionally, the Agency may engage third-party designees to provide service, including a process server, sheriffs or constables, common carrier, or other courier service when attempting service, as applicable.
- (d) Service by personal delivery and substituted service may be attempted at addresses other than the address as shown by Agency records, including those designated under Texas Business Organizations Code, Chapter 5 and from third-party background and reporting agencies, online searches, and other government records.
- (e) When collecting an overpayment of benefits from a claimant through a notice of assessment, as authorized by §212.006(b) and §214.002(a)(3) of the Act, the term "claimant" shall be substituted for the terms "employer" and "defaulting employer" found in Chapter 213, Subchapters C and D of the Act, as applicable. Collection by making a claimant assessment is limited to the third anniversary after the benefit overpayment becomes final except as otherwise tolled by §213.033 of the Act.
- (f) A party seeking to contest service shall do so under §213.032(c) of the Act.

#### §815.191. Service of a Notice of Assessment by Personal Delivery or Mail.

- (a) This section applies to a service of a notice of assessment under §213.032(a)(1) and (2) of the Act.
- (b) An "employer's address as shown by commission records" includes the employer's address as reported on its status report, as provided under §815.3 of this chapter, or other address maintained by the Agency for the purpose of corresponding with the employer.
- (c) Service of a notice of assessment upon a claimant shall be served upon the claimant's address as shown by Agency records. For service upon a claimant, this includes the address as provided under §815.3(c) of this chapter, or other address maintained by the Agency for the purposes of corresponding with the claimant.

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2 (d) The Agency or its designee may make multiple service attempts by personal delivery  
3 and registered or certified mail before attempting substituted service.  
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5 **§815.192. Service of a Notice of Assessment by Substituted Service.**  
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7 (a) This section applies to substituted service of a notice of assessment under  
8 §213.032(a)(3) of the Act.  
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10 (b) The Agency may use the following methods to effectuate substituted service:  
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12 (1) Those methods specifically mentioned by the Texas Rules of Civil Procedure  
13 Rule 106(b);  
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15 (2) By Agency-established contact methods including the Unemployment Tax  
16 Services and the Unemployment Benefits Services portals or their equivalents;  
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18 (3) Mail to another known address;  
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20 (4) As set out in Texas Business Organizations Code, Chapter 5, and Civil Practice  
21 and Remedies Code, Chapter 17; and  
22

23 (5) Other means of service expressly permitted or prescribed by state law.  
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25 (c) The Agency or its designee may make multiple substituted service attempts if there  
26 exist multiple manners reasonably calculated to give the employer notice of the  
27 assessment.