

1 **CHAPTER 844. PROHIBITED CORONAVIRUS VACCINE MANDATES BY**  
2 **PRIVATE EMPLOYER**

3  
4 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**  
5 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT**  
6 **TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE**  
7 **SECRETARY OF STATE.**

8  
9 The Texas Workforce Commission (TWC) proposes new Chapter 844, relating to  
10 Prohibited Coronavirus Vaccine Mandates by Private Employer, comprising the  
11 following subchapters:

12  
13 Subchapter A. General Provisions, §§844.01 and §844.02

14 Subchapter B. Complaints, §§844.25 - 844.30

15 Subchapter C. Determinations, §§844.50 - 844.55

16 Subchapter D. Administrative Hearings and Judicial Review, §§844.75 -

17 ~~844.87~~[844.92](#)

18  
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 The purpose of Chapter 844 is to establish rules as required by Senate Bill (SB) 7, 88th  
21 Texas Legislature, Third Special Session (2023), which added Texas Health and Safety  
22 Code, Chapter 81D, Prohibited Coronavirus Virus Vaccine Mandates by Private  
23 Employer.

24  
25 SB 7 prohibits employers from taking adverse actions against applicants, employees, or  
26 contractors based on a refusal to be vaccinated against COVID-19. If an adverse action  
27 was taken by an employer against an applicant, employee, or contractor, the applicant,  
28 employee, or contractor can file a complaint and TWC will investigate. An employer who  
29 is determined to have taken a prohibited adverse action is subject to an administrative  
30 penalty unless the employer takes reasonable efforts to make the complainant whole. SB  
31 7 also allows TWC to recover the reasonable cost of investigation when it is determined  
32 that the employer took a prohibited adverse action.

33  
34 Chapter 844 rules address the requirements for and methods of submitting a complaint.  
35 The chapter also establishes an appeal procedure to provide ~~parties employers~~ notice and  
36 an opportunity to be heard at a meaningful time and in a meaningful manner.

37  
38 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

39  
40 **SUBCHAPTER A. GENERAL PROVISIONS**

41 **TWC proposes new Subchapter A, General Provisions, as follows:**

42  
43 **§844.01. Purpose**

44 New §844.01 defines the purpose of the Chapter 844 rules.

45  
46 **§844.02. Definitions**

1 New §844.02 defines "Adverse Action," "Agency," "Complainant," "Complaint Form,"  
2 "Contractor," "COVID-19," "Day," "Department," "Employee," "Employer,"  
3 "Governmental Entity," ["Party,"](#) and "Person." The definition of Employee would include  
4 an individual who seeks admission to or is employed under a medical residency program  
5 in Texas.

## 6 7 **SUBCHAPTER B. COMPLAINTS**

8 **TWC proposes new Subchapter B, Complaints, as follows:**

### 9 10 **§844.25. Complaint Requirements**

11 New §844.25 establishes the requirements and method to file a complaint. Complaints  
12 must be filed online within 90 days of the adverse action and must provide the name of  
13 the complainant, name of the employer, and the nature and description of the adverse  
14 action. The complainant must also declare that the information provided in the complaint  
15 is true and correct.

### 16 17 **§844.26. Valid Complaints**

18 New §844.26 addresses issues concerning the validity of a complaint. These issues  
19 include that the adverse action must have occurred after the effective date of SB 7, that  
20 the employer is not a governmental entity, and that the complaint is not duplicative of a  
21 prior complaint. All references to days in this chapter mean calendar days.

### 22 23 **§844.27. Jurisdiction**

24 New §844.27 defines when employers are subject to TWC's jurisdiction under this  
25 Chapter as it relates the connection of the work, complainant, and employer to Texas.

### 26 27 **§844.28. Dismissal**

28 New §844.28 allows TWC to dismiss complaints that are incomplete or do not meet the  
29 requirements of §844.26. Dismissed complaints can be refiled by the complainant within  
30 30 days of the dismissal.

### 31 32 **§844.29. Adverse Action**

33 New §844.29 provides context to the definition of adverse action by further addressing  
34 the reasonable person standard. Examples of an adverse action include, but are not  
35 limited to, terminating an employee, terminating a contractual relationship, demoting an  
36 employee, reducing pay or compensation, not hiring an employee, not offering a contract  
37 for a contract position, or a reduction in hours not related to a business need. When  
38 determining whether an employer's action was an adverse action, the Agency will  
39 consider the employer's good faith attempt to comply with a legal obligation as evidence  
40 that the employer's action would not be considered by a reasonable person to be for the  
41 purpose of punishing, alienating, or otherwise adversely affecting a complainant.

### 42 43 **§844.30. Investigation of Complaints in Health Care**

44 New §844.30 requires TWC to consult with the Texas Department of State Health  
45 Services (DSHS) when a complaint against a health care facility, health care provider, or  
46 physician concerns a policy that requires the use of protective medical equipment to

1 determine if the policy is reasonable. Section 844.30 also requires TWC and DSHS to  
2 enter an MOU to facilitate coordination.

3  
4 **SUBCHAPTER C. DETERMINATIONS**

5 **TWC proposes new Subchapter C, Determinations, as follows:**

6  
7 **§844.50. Preliminary Determination Order, Determination on Remedial Action, and**  
8 **Penalty and Cost Order**

9 New §844.50 defines the procedures for issuing a determination after the investigation is  
10 complete. A preliminary determination order will be mailed to ~~each party the employer~~  
11 informing ~~them the employer~~ whether TWC found a violation, which would require the  
12 imposition of an administrative penalty, and whether TWC will seek to recover  
13 investigative costs from the employer. SB 7 prescribes the administrative penalty amount  
14 of \$50,000 for each violation and did not provide TWC with discretionary authority to  
15 adjust the penalty amount. The preliminary determination order would inform the ~~parties~~  
16 ~~employer~~ of appeal rights and the ~~employer's~~ ability to take remedial action to avoid the  
17 administrative penalty. If an employer completes remedial action and submits proof of  
18 remedial action within 30 days of a preliminary determination order or decision, TWC  
19 will issue a determination on remedial action, which is an appealable document. Once the  
20 determination or decision is final, a penalty and cost order will be issued instructing the  
21 employer to make payment to TWC. If an employer fails to make payment in accordance  
22 with the penalty and cost order, TWC will refer the amount to the Office of the Attorney  
23 General in accordance with Texas Government Code §2107.003 as well as reporting the  
24 indebtedness to the Texas Comptroller of Public Accounts under the warrant hold  
25 provisions in Texas Government Code §403.055(f).

26  
27 **§844.51. Remedial Action**

28 New §844.51 establishes how an employer may take remedial action, in accordance with  
29 Texas Health and Safety Code §81D.006, to avoid the imposition of an administrative  
30 penalty. The section also defines acceptable proof of a remedial action and the method  
31 for submitting proof of remedial action, which must be submitted within 30 days of a  
32 preliminary determination order.

33  
34 **§844.52. Investigative Costs**

35 New §844.52 addresses when TWC may seek to recover the reasonable costs of an  
36 investigation.

37  
38 **§844.53. Corrected Determinations**

39 New §844.53 allows TWC to issue corrected determinations or decisions to correct an  
40 error including an incorrect ~~employer~~-address ~~for a party~~.

41  
42 **§844.54. Withdrawal of Complaint**

43 New §844.54 allows a complainant to withdraw a complaint before the preliminary  
44 determination order becomes final.

45  
46 **§844.55. Appeal and Determination Finality**

1 New §844.55 establishes that ~~a party an employer~~ can file an appeal to a determination  
2 within 30 days of the mailing date of the determination by submitting a written appeal by  
3 mail, fax, or other method approved by TWC on the preliminary determination order.

4  
5 **SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW**

6 **TWC proposes new Subchapter D, Administrative Hearings and Judicial Review, as**  
7 **follows:**

8  
9 **§844.75. Administrative Hearings**

10 New §844.75 states that an administrative hearing will be conducted by the Agency's  
11 Special Program Appeals department by electronic means.

12  
13 **§844.76. Parties**

14 Under ~~new~~New §844.76, the parties to the hearing are the complainant, the employer and  
15 TWC. ~~While the complainant is not a party to the appeal, a complainant would be invited~~  
16 ~~to the hearing as a witness because his or her testimony may be needed to decide whether~~  
17 ~~a violation occurred.~~

18  
19 **§844.77. Hearing Scheduling and Notice**

20 New §844.77 prescribes the procedures for scheduling and issuing a hearing notice upon  
21 the receipt of an appeal. The section states what information must be included in the  
22 hearing notice.

23  
24 **§844.78. Representation**

25 New §844.78 allows parties to be represented by an attorney or other individual of their  
26 choice.

27  
28 **§844.79. Ex Parte Communications**

29 New §844.79 prohibits ex parte communications without notice and an opportunity for all  
30 parties to participate.

31  
32 **§844.80. Hearing Procedures**

33 New §844.80 establishes hearing procedures for the administrative hearing including  
34 general procedures and procedures for evidence, witnesses, exchange of exhibits, and  
35 maintaining the hearing record.

36  
37 **§844.81. Postponement and Continuance**

38 New §844.81 addresses situations when the hearing can be postponed or continued.

39  
40 **§844.82. Default**

41 New §844.82 describes the procedures when a party fails to appear for the hearing and  
42 for a non-appearing party to file a motion to set aside the default.

43  
44 **§844.83. Timeliness**

45 New §844.83 establishes the timeliness guidelines for this chapter including address  
46 changes, dating of appeal documents, and the evidence required to overcome the

1 presumption of receipt.

2  
3 **§844.84. Withdrawal of an Appeal**

4 New §844.84 allows a party ~~an employer~~ to withdrawal an appeal before the hearing  
5 officer's decision is final.

6  
7 **§844.85. Decision**

8 New §844.85 states that the hearing officer's decision must be issued in writing as soon  
9 as possible after the hearing closes; states the information that must be included in the  
10 decision; and states that the decision must be mailed to the parties or their  
11 representatives. A decision can be reopened if the employer submits a notice to the  
12 hearing officer within 14 days of the mailing date of the decision that the employer  
13 intends to take remedial action. The employer would then have 30 days to submit proof  
14 of remedial action.

15  
16 **§844.86. Finality of Decision**

17 New §844.86 states that the hearing officer's decision becomes final 14 days after the  
18 date the decision is mailed unless before that date the hearing officer reopens the  
19 decision, a party files a timely appeal, or the commission decides to remove the case to  
20 itself ~~before that date~~.

21  
22 **§844.87. Commission**

23 New §844.87 sets forth the Commission's duties under this chapter, including which  
24 member of the Commission shall serve as chair when the Commission acts under this  
25 chapter.

26  
27 **§844.88. Removal of Order Pending Before a Hearing Officer**

28 New §844.88 allows the Commission to remove a pending hearing to itself.

29  
30 **§844.89. Commission Review of Hearing Officer Order**

31 New §844.89 establishes that the Commission may affirm, modify, or set aside a penalty  
32 order on the basis of previously submitted evidence or direct the taking of additional  
33 evidence.

34  
35 **§844.90. Notice of Commission Action**

36 New §844.90 defines the issues to be addressed in a notice of Commission action and  
37 requires the Commission to enter a written order for the payment of any penalty or  
38 investigative costs the Commission has assessed.

39  
40 **§844.91. Finality of Commission Order**

41 New §844.91 establishes that the Commission order is final 14 days after the date the  
42 order is mailed unless the Commission reopens the appeal or a party ~~the employer~~ files a  
43 motion for rehearing, ~~or there is a pending remedial action order.~~

44  
45 **§844.92~~87~~. Judicial Review**

46 New §844.92~~87~~ sets forth the method of seeking judicial review of the ~~agency~~ TWC's

1 ~~final hearing officer's~~ decision or order.

2  
3 **PART III. IMPACT STATEMENTS**

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

6  
7 There are additional estimated costs to the state and to local governments expected as a  
8 result of enforcing or administering the rules.

9  
10 There are no estimated cost reductions to the state and to local governments as a result of  
11 enforcing or administering the rules.

12  
13 There are estimated losses or increases in revenue to the state or to local governments as  
14 a result of enforcing or administering the rules.

15  
16 There are no foreseeable implications relating to costs or revenue of the state or local  
17 governments as a result of enforcing or administering the rules.

18  
19 There are no anticipated economic costs to individuals required to comply with the rules.

20  
21 There ~~is~~ are no anticipated adverse economic impact on small businesses,  
22 microbusinesses, or rural communities as a result of enforcing or administering the rules.

23  
24 Based on the analyses required by Texas Government Code, §2001.024, TWC has  
25 determined that the requirement to repeal or amend a rule, as required by Texas  
26 Government Code, §2001.0045, does not apply to this rulemaking.

27  
28 Takings Impact Assessment

29 Under Texas Government Code, §2007.002(5), "taking" means a governmental action  
30 that affects private real property, in whole or in part or temporarily or permanently, in a  
31 manner that requires the governmental entity to compensate the private real property  
32 owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the  
33 Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the  
34 property that would otherwise exist in the absence of the governmental action, and is the  
35 producing cause of a reduction of at least 25 percent in the market value of the affected  
36 private real property, determined by comparing the market value of the property as if the  
37 governmental action is not in effect and the market value of the property determined as if  
38 the governmental action is in effect. TWC completed a Takings Impact Assessment for  
39 the proposed rulemaking action under Texas Government Code, §2007.043. The primary  
40 purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to  
41 implement and interpret the provisions of Texas Health and Safety Code, Chapter 81D,  
42 Prohibited Coronavirus Virus Vaccine Mandates by Private Employer.

43  
44 The proposed rulemaking action will not create any additional burden on private real  
45 property or affect private real property in a manner that would require compensation to  
46 private real property owners under the US Constitution or the Texas Constitution. The

1 proposal also will not affect private real property in a manner that restricts or limits an  
2 owner's right to the property that would otherwise exist in the absence of the  
3 governmental action. Therefore, the proposed rulemaking will not cause a taking under  
4 Texas Government Code, Chapter 2007.

5  
6 Government Growth Impact Statement

7 TWC has determined that during the first five years the rules will be in effect, they:

- 8 --will create or eliminate a government program;
- 9 --will require the creation or elimination of employee positions;
- 10 --will require an increase or decrease in future legislative appropriations to TWC;
- 11 --will require an increase or decrease in fees paid to TWC;
- 12 --will create a new regulation;
- 13 -- will not expand, limit, or eliminate an existing regulation;
- 14 -- will change the number of individuals subject to the rules; and
- 15 -- will not positively or adversely affect the state's economy.

16  
17 Economic Impact Statement and Regulatory Flexibility Analysis

18 TWC has determined that the rules will not have an adverse economic impact on small  
19 businesses or rural communities, as the proposed rules place no requirements on small  
20 businesses or rural communities.

21  
22 Mariana Vega, Director, Labor Market Information, has determined that there is not a  
23 significant negative impact upon employment conditions in the state as a result of the  
24 rules.

25  
26 Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, has determined  
27 that for each year of the first five years the rules are in effect, the public benefit  
28 anticipated as a result of enforcing the proposed rules will be to ensure compliance with  
29 new state law.

30  
31 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to  
32 be within TWC's legal authority to adopt.

33  
34 **PART IV. COORDINATION ACTIVITIES**

35 SB 7 requires consultation with the Department of State Health Services.

36  
37 TWC will provide notice to employers and other stakeholders to increase awareness  
38 during the public comment period.

39  
40 **PART V. PUBLIC COMMENTS**

41 Comments on the proposed new rules may be submitted to  
42 [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than ~~August 26,~~  
43 ~~2024~~[November 4, 2024](#).

44  
45 **PART VI. STATUTORY AUTHORITY**

46 The rules are proposed to implement Senate Bill 7, 88th Texas Legislature, Third Special







- 1 (8) "COVID-19" means the 2019 novel coronavirus disease and any  
2 variants of the disease.  
3  
4 (9) "Day" means calendar day.  
5  
6 (10) "Department" means the Department of State Health Services.  
7  
8 (11) "Employee" means an individual who is employed by an employer,  
9 whether or not for compensation. The term does not include:  
10  
11 (A) a person related to the employer or the employer's spouse  
12 within the first or second degree by consanguinity or affinity,  
13 as determined under Texas Government Code, Chapter 573; or  
14  
15 (B) a contractor.  
16  
17 (12) "Employer" means a person, other than a governmental entity, who  
18 employs one or more employees.  
19  
20 (13) "Governmental Entity" means this state, an agency of this state, a local  
21 government entity, or a political subdivision of this state as defined in  
22 §821.4 of this title. This definition includes the definition of  
23 governmental entity as provided by Texas Health and Safety Code  
24 §81B.001(2).  
25  
26 (14) "Party" means the agency, a complainant or employer.  
27  
28 ~~(14)~~(15) "Person" includes corporation, organization, government or  
29 governmental subdivision or agency, business trust, estate, trust,  
30 partnership, association, and any other legal entity.  
31

## 32 **SUBCHAPTER B. COMPLAINTS**

### 33 **§844.25. Complaint Requirements.**

- 34  
35  
36 (a) A complaint must be filed in writing by the complainant completing the  
37 Complaint Form.  
38  
39 (b) A Complaint Form may only be submitted by online submission as identified  
40 through the Agency's website page related to COVID-19 mandate  
41 complaints or by other means authorized in writing by the Agency.  
42  
43 (c) The complainant must provide the following information on the Complaint  
44 Form:  
45  
46 (1) the name of the complainant;

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- (2) the name of the employer;
  - (3) the nature and description of any alleged Adverse Action the employer took against the complainant; and
  - (4) any other information specifically requested by the Agency on the Complaint Form that is necessary to resolve the complaint.
- (d) The complainant must declare that the information provided in the completed Complaint Form is true and correct.

**§844.26. Valid Complaints.**

- (a) A complaint may only be filed for an Adverse Action that occurred after the effective date of Senate Bill (SB) 7, 88th Texas Legislature, Third Special Session (2023), which was February 6, 2024.
- (b) The complaint must be received by the Agency within 90 days of the date of the Adverse Action. For adverse actions that occurred after the effective date of SB 7, and before the effective date of this chapter, a complaint must be received by the Agency within 90 days of the date this chapter becomes effective.
- (c) A contractor or applicant for a contract position may only file a complaint if the contractor or applicant for a contract position was or would have been a party to the contract with the employer.
- (d) A complaint must name an employer that is a non-governmental entity that satisfies the definition of employer in §844.02(12) of this chapter.
- (e) A complaint may only be filed by a complainant for an Adverse Action that was taken against the complainant for a refusal to be vaccinated against COVID-19.
- (f) A Complaint Form must be filled out completely and sufficiently to allow the Agency to attempt contact with the employer to investigate the Adverse Action.
- (g) A complainant may not file an additional complaint for an Adverse Action that has already been the basis of another complaint that is still pending or resulted in the issuance of a preliminary determination order, other than a dismissal under §844.28 of this subchapter, or for a complaint that was withdrawn under §844.54 of this chapter.
- (h) During the course of an investigation, a complainant or an employer may

1 provide additional information to the Agency prior to the issuance of a  
2 preliminary determination order, which the Agency will consider in addition  
3 to evidence offered in the original complaint.  
4

5 **§844.27. Jurisdiction.**  
6

7 (a) The Agency may exercise jurisdiction over complaints under this chapter in  
8 which:  
9

10 ~~(a)~~(1) the work was performed or would have been performed in Texas; and:  
11

12 ~~(b)~~(2) the employer:  
13

14 ~~(1)~~(A) is a resident employer; or  
15

16 ~~(2)~~(B) is a non-resident employer pursuant to the Texas Civil Practice  
17 & Remedies Code, Chapter 17, Subchapter C, also known as the  
18 "Texas Long-Arm Statute," when the following are met:  
19

20 ~~(A)~~(i) the employer employs the complainant in Texas at the  
21 time of the Adverse Action or the employer's contact with  
22 Texas is continuing and systematic; and  
23

24 ~~(B)~~(ii) exercising jurisdiction is consistent with:  
25

26 ~~(i)~~(I) fair play and justice as determined by the quality,  
27 nature, and extent of the employer's activities in Texas  
28 including the extent to which the employer avails itself  
29 of the benefits and protections of Texas law; and  
30

31 ~~(ii)~~(II) the relative convenience of the parties.  
32

33 ~~(e)~~(b) The Agency shall not exercise jurisdiction over complaints based on work  
34 performed or intended to be performed outside the United States.  
35

36 **§844.28. Dismissal.**  
37

38 (a) The Agency may dismiss a complaint that is incomplete or does not meet  
39 the requirements of §844.26 of this subchapter.  
40

41 (b) A dismissal under subsection (a) of this section becomes final unless a  
42 complainant refiles the complaint within the period to file a complaint or  
43 within 30 days of the mailing of the dismissal, whichever is later.  
44

45 **§844.29. Adverse Action.**  
46

- 1 (a) To support a finding of a violation under this chapter, the Adverse Action must  
2 cause a result that a reasonable person would regard as an objective and  
3 demonstrated harm to the complainant.  
4
- 5 (b) If an Adverse Action was taken, the Agency will consider the reason(s)  
6 provided by an employer when determining whether the Adverse Action was  
7 taken due to a refusal to be vaccinated against COVID-19 in violation of  
8 Texas Health and Safety Code, Chapter 81D.  
9

10 **§844.30. Investigation of Complaints in Health Care.**

11  
12 If a complaint against a health care facility, health care provider, or physician  
13 alleges an Adverse Action that involved an employer policy that includes  
14 requiring the use of protective medical equipment, as described in Texas Health  
15 and Safety Code §81D.0035(b), the Agency will consult with the Department to  
16 determine whether the policy was reasonable.  
17

18 **SUBCHAPTER C. Determinations**

19  
20 **§844.50. Preliminary Determination Order, Determination on Remedial Action,  
21 and Penalty and Cost Order.**  
22

- 23 (a) After an investigation, the Agency will mail a preliminary determination  
24 order to each party ~~the employer~~ stating whether the Agency determined the  
25 employer took an Adverse Action against the complainant for a refusal to be  
26 vaccinated against COVID-19 in violation of Texas Health and Safety Code,  
27 Chapter 81D.  
28
- 29 (b) If the Agency determines that a violation exists, but no remedial action has  
30 occurred prior to the preliminary determination order being issued, the  
31 preliminary determination will notify the parties ~~employer~~ ~~that~~:  
32
- 33 (1) ~~that~~ a violation has occurred;
  - 34 (2) an administrative penalty will be imposed;
  - 35 (3) ~~that~~ the employer may remediate the violation;
  - 36 (4) the amount of reasonable investigative costs, if any, the Agency will  
37 seek to recover from the employer; and  
38
  - 39 (5) ~~the employer~~ each party has the right to file an appeal.  
40
- 41  
42 (c) If the Agency determines that a violation exists, and the employer has taken  
43 remedial action prior to the preliminary determination order being issued, the  
44 preliminary determination will notify the parties ~~employer~~:  
45  
46

- 1  
2 (1) that a violation has occurred;  
3  
4 (2) whether the remediation was sufficient to remove the administrative  
5 penalty;  
6  
7 (3) whether an administrative penalty will be imposed;  
8  
9 (4) of the amount of reasonable investigative costs, if any, the Agency  
10 will seek to recover from the employer; and  
11  
12 (5) that each party ~~the employer~~ has the right to file an appeal.  
13  
14 (d) If an employer submits proof of remedial action after the preliminary  
15 determination order is issued, the Agency will issue to each party a separate  
16 determination on remedial action with separate appeal rights. An employer  
17 has 30 days to submit proof of remedial action from the mailing date of the  
18 preliminary determination order. If the employer does not submit proof of  
19 remediation within 30 days, and/or does not appeal, the Agency will not  
20 consider any proof of remediation. An employer's timely submission of proof  
21 of remedial action will be considered an employer appeal of the preliminary  
22 determination order and the appeal will be abated until the appeal period for  
23 the determination resolving the sufficiency of the remedial action has  
24 expired.  
25  
26 (e) If the employer files a timely appeal to the preliminary determination order,  
27 the employer may remediate at any time up until the hearing officer issues his  
28 or her decision, after which the employer must comply with the requirements  
29 of §844.85(e) of this chapter.  
30  
31 (f) After a preliminary determination order, a determination on remedial action,  
32 or decision becomes final, the Agency will issue a penalty and cost order to  
33 the employer detailing the final amount owed to the Agency by the employer  
34 with instructions for submitting payment.  
35  
36 ~~(g) Determinations and penalty and cost orders shall be mailed to the employer~~  
37 ~~at the best address available as required by §815.3 of this title, or at a location~~  
38 ~~the employer usually receives mail.~~  
39  
40 (g) Determinations shall be mailed to each party at the best address available as  
41 required by §815.3 of this title, or at the location each party usually receives  
42 mail.  
43  
44 (h) A penalty and cost order shall be mailed to the employer at the best address  
45 available as required by §815.3 of this title, or at a location the employer  
46 usually receives mail.

1  
2 ~~(h) A copy of the preliminary determination order will also be mailed to the~~  
3 ~~complainant.~~

4  
5 (i) An administrative penalty under this chapter is not an award of damages to  
6 the complainant and no funds will be issued to the complainant by the  
7 Agency.

8  
9 **§844.51. Remedial Action.**

10  
11 (a) Under Texas Health and Safety Code §81D.006(a)(1) and (2), an  
12 administrative penalty will not be assessed if prescribed remedial action is  
13 taken in response to a complaint. The remedial action required to avoid a  
14 penalty depends upon the specific facts ~~that~~which resulted in a violation.  
15 Depending upon the circumstances of the violation, remedial action may  
16 require:

17  
18 (1) if the complainant applied for an employment or contract position with  
19 the employer, and was not offered such position based upon his or her  
20 refusal to be vaccinated against COVID-19, the employer must offer  
21 the complainant the position applied for;

22  
23 (2) if the complainant is currently, or was recently, an employee or  
24 contractor of the employer, the employer shall take the following  
25 remedial steps as applicable to the violation. Not all steps may be  
26 applicable to remedy the Adverse Action ~~that~~which resulted in a  
27 violation:

28  
29 (A) reinstatement of the employee or contractor;

30  
31 (B) providing the employee or contractor with back pay from the  
32 date the employer took the Adverse Action; and/or

33  
34 (C) the employer must take every reasonable effort to reverse the  
35 effects of the Adverse Action. Reasonable efforts include, but  
36 are not limited to, reestablishing employee benefits for which  
37 the employee or contractor otherwise would have been  
38 eligible if the Adverse Action had not been taken.

39  
40 (b) Acceptable proof of a remedial action may include an offer or hiring letter  
41 on company letterhead, a signed new hire paperwork, a signed settlement  
42 letter, or completion of an Agency form by the complainant attesting to the  
43 remedial action.

44  
45 (c) Proof of remedial action shall be submitted online as identified through the  
46 Agency's website page related to COVID-19 mandate complaints, by other

1 means authorized in writing by the Agency, or to the assigned hearing  
2 officer in accordance with §844.85(e) of this chapter.

3  
4 **§844.52. Investigative Costs.**

- 5  
6 (a) If the Agency determines that the employer violated this chapter, the  
7 Agency may recover from the employer reasonable investigative costs  
8 incurred in conducting the investigation into whether the employer violated  
9 Texas Health and Safety Code, Chapter 81D, regardless of whether the  
10 employer took remedial action.  
11  
12 (b) The Agency may not recover from the employer investigative costs incurred  
13 in conducting an investigation into whether the employer took remedial  
14 action.  
15  
16 (c) The preliminary determination order will inform the employer of the  
17 investigative costs calculated by the Agency.  
18  
19 (d) The investigative costs may, at the discretion of the Agency, be included in  
20 the amount owed in the penalty and cost order even if the employer took  
21 remedial action.  
22

23 **§844.53. Corrected Determinations and Decisions.**

- 24  
25 (a) If Agency staff discover a clerical error of a non-substantive nature in  
26 connection with a determination or decision issued under this chapter,  
27 within the applicable appeal period, the Agency may reconsider and reissue  
28 the determination unless an appeal has already been filed.  
29  
30 (b) A reissued determination voids and replaces the determination or decision  
31 issued under this chapter requiring correction and becomes final unless an  
32 appeal is filed from the determination within 30 days of the date the reissued  
33 determination is mailed.  
34  
35 (c) Notwithstanding subsection (a) of this section, if a determination or decision  
36 issued under this chapter is mailed to ~~a party's an employer's~~ incorrect  
37 address, the Agency may reissue the determination to ~~the party's the~~  
38 ~~employer's~~ correct address at any time.  
39

40 **§844.54. Withdrawal of Complaint.**

- 41  
42 (a) A complainant may withdraw a complaint at any time before the date the  
43 preliminary determination order becomes final.  
44  
45 (b) A complainant withdrawing a complaint shall submit a form as prescribed  
46 by the Agency.



- 1  
2 (c) A complaint that is withdrawn may not be refiled and a new complaint  
3 cannot be filed for the same Adverse Action as the withdrawn complaint.  
4

5 **§844.55. Appeal and Determination Finality.**  
6

- 7 (a) Appealable Determinations:  
8

9 (1) An employer determined to have violated this chapter may appeal the  
10 preliminary determination order, within 30 days of the mailing date of  
11 the determination, to dispute whether a violation of Texas Health and  
12 Safety Code, Chapter 81D occurred, or the amount of the assessed  
13 investigative costs.  
14

15 (2) An employer determined to have not met the remedial action  
16 requirements under §844.51 of this subchapter may appeal the  
17 determination on remedial action within 30 days of the mailing date of  
18 the determination.  
19

20 (3) An employer may appeal a combined determination under §844.50(c)  
21 of this subchapter to dispute any of the issues contained therein within  
22 30 days of the mailing date of the determination.  
23

- 24 (b) A determination becomes final unless a party ~~the employer~~ files an appeal  
25 before the appeal deadline.  
26

- 27 (c) An appeal must be filed in writing by mail, common carrier, facsimile (fax),  
28 or other method approved by the Agency on the preliminary determination  
29 order or on the determination on remedial action.  
30

- 31 (d) A penalty and cost order is not an appealable document.  
32

- 33 (e) A complainant may appeal any determination or decision issued under this  
34 subchapter, regardless of the finding, within 30 days of the mailing date of  
35 the determination. ~~Complainants are not a party of interest and may not file~~  
36 ~~an appeal to the preliminary determination order or a determination on~~  
37 ~~remedial action.~~  
38

39 **SUBCHAPTER D. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW**  
40

41 **§844.75. Administrative Hearings.**  
42

- 43 (a) Administrative hearings shall be conducted subject to the rules and hearing  
44 procedures set out in Chapter 815 of this title, except to the extent that such  
45 sections are clearly inapplicable or contrary to provisions set out under this  
46 chapter.

- 1
- 2 (b) The hearing is not subject to Texas Government Code, Chapter 2001.
- 3
- 4 (c) Hearings may be conducted by electronic means, including but not limited to
- 5 telephonic hearings, unless the hearing officer determines that an in-person
- 6 hearing is necessary.
- 7
- 8 (d) Accommodations may be requested, including the need for an in-person
- 9 hearing or interpreters, through the hearing officer or Agency staff.

10

11 **§844.76. Parties.**

12

13 ~~(a)~~—The parties to proceedings under this chapter are the Agency, [the](#)

14 [complainant](#), and the employer named in the preliminary determination

15 order or determination on remedial action.

16

17 ~~(b)~~—~~While the complainant is not a party, the complainant may be invited to~~

18 ~~participate in the hearing as a witness.~~

19

20 **§844.77. Hearing Scheduling and Notice.**

- 21
- 22 (a) Upon receipt of an appeal, the Agency shall assign an impartial hearing
- 23 officer and mail a notice of hearing to the employer and complainant and/or
- 24 their designated representatives.
- 25
- 26 (b) The notice of hearing shall be in writing and include ~~a~~:
- 27
- 28 (1) [a](#) statement of the date, time, place, and nature of the hearing;
- 29
- 30 (2) a statement of the legal authority and jurisdiction under which the
- 31 hearing is to be held;
- 32
- 33 (3) a reference to the sections of the statutes and rules involved;
- 34
- 35 (4) [a](#) statement of the issues to be considered during the hearing; and
- 36
- 37 (5) either:
- 38
- 39 (A) a short, plain statement of the factual matters asserted; or
- 40
- 41 (B) an attachment that incorporates by reference the factual matters
- 42 asserted in the complaint.
- 43
- 44 (c) The notice of hearing shall be issued at least 10 days before the date of the
- 45 hearing unless all parties agree to waive this requirement.
- 46

1       **§844.78. Representation.**

2  
3       Parties have the right to be represented by an attorney or other individual of their  
4       choice in accordance with §815.18(3) of this title.

5  
6       **§844.79. Ex Parte Communications.**

- 7  
8       (a)    Except as provided in this chapter, and unless required for the disposition  
9       of ex parte matters authorized by law, the hearing officer may not  
10       communicate, directly or indirectly, in connection with any issue of fact or  
11       law with a party, representative of a party, witness, or individual providing  
12       testimony except on notice and opportunity for each party to participate.  
13  
14       (b)    The hearing officer may communicate concerning the case with an Agency  
15       employee who has not participated in the hearing but may do so only for  
16       the purpose of using the special skills or knowledge of the Agency and its  
17       staff in evaluating the evidence.

18  
19       **§844.80. Hearing Procedures.**

- 20  
21       (a)    General Procedure. The hearing shall be conducted informally and, in such  
22       manner, as to ascertain the substantive rights of the parties. The hearing  
23       officer shall develop the evidence. All issues relevant to the appeal shall be  
24       considered and addressed.  
25  
26       (1) Presentation of Evidence. The parties may present evidence that is  
27       material and relevant, as determined by the hearing officer. In conducting  
28       a hearing, the hearing officer shall actively develop the record on the  
29       relevant circumstances and facts to resolve all issues. To be considered as  
30       evidence in a decision, any document or physical evidence must be  
31       entered as an exhibit at the hearing. A party has the right to object to  
32       evidence offered at the hearing by the hearing officer or other parties.  
33  
34       (2) Evidence Generally. Evidence, including hearsay evidence, shall be  
35       admitted if it is relevant and if in the judgment of the hearing officer it is  
36       the kind of evidence on which reasonably prudent persons are accustomed  
37       to [relying on](#) in conducting their affairs. However, the hearing officer may  
38       exclude evidence if its probative value is outweighed by the danger of  
39       unfair prejudice, by confusion of the issues, or by reasonable concern for  
40       undue delay, waste of time, or needless presentation of cumulative  
41       evidence.  
42  
43       (3) Examination of Witnesses and Parties. The hearing officer shall examine  
44       parties and any witnesses under oath and shall allow cross-examination to  
45       the extent the hearing officer deems necessary to afford the parties due  
46       process.

1  
2 (4) Additional Evidence. The hearing officer, with or without notice to any of  
3 the parties, may take additional evidence deemed necessary, provided that  
4 a party shall be given an opportunity to rebut the evidence if it is to be used  
5 against the party's interest.  
6

7 (5) Appropriate Hearing Behavior. All parties shall conduct themselves in an  
8 appropriate manner. The hearing officer may expel any individual,  
9 including a party, who fails to correct behavior the hearing officer  
10 identifies as disruptive. After an expulsion, the hearing officer may  
11 proceed with the hearing and render a decision.  
12

13 (b) Records.

14  
15 (1) The hearing record shall include the audio recording of the proceeding and  
16 any other relevant evidence relied on by the hearing officer, including  
17 documents and other physical evidence entered as exhibits.  
18

19 (2) The hearing record shall be maintained in accordance with federal or state  
20 law.  
21

22 (3) Confidentiality of information contained in the hearing record shall be  
23 maintained in accordance with federal and state law.  
24

25 (4) Upon request, a party has the right to obtain one copy of the hearing  
26 record, including recordings of the hearing and file documents at no  
27 charge.  
28

29 **§844.81. Postponement and Continuance.**

30  
31 (a) On the hearing officer's own motion, or for good cause, at a party's request,  
32 the hearing officer may postpone or continue a hearing.  
33

34 (b) Requests for a continuance or postponement may be made informally by a  
35 party, either orally or in writing, to the hearing officer.  
36

37 (c) The hearing officer shall use his or her best judgement to determine when to  
38 grant a continuance or postponement of a hearing to secure all necessary  
39 evidence and to be fair to the parties.  
40

41 (d) The notice of the hearing must indicate the times and places at which the  
42 hearing may be continued unless waived by the parties.  
43

44 **§844.82. Default.**

45  
46 If a party to whom a notice of hearing provided under this chapter fails to appear

1 for a hearing, the hearing officer may proceed in that party's absence on a default  
2 basis. If a final decision is issued, the factual allegations listed in the notice of  
3 hearing may be deemed admitted. If a party fails to appear at a hearing, the  
4 hearing officer will issue a notice of default to that party. A party may file a  
5 motion no later than 14 days after the notice of default is mailed to set aside a  
6 default announced at the hearing and to reopen the record. If a timely motion to  
7 set aside a default is filed, the hearing officer may grant the motion, set aside the  
8 default, and reopen the hearing for good cause shown, or in the interests of  
9 justice. The hearing officer may issue a decision denying the motion to set aside  
10 a default without a hearing if the motion fails to allege a reason for the party's  
11 failure to appear or if a party has failed to appear at three or more scheduled  
12 hearings.

13  
14 **§844.83. Timeliness.**

15  
16 (a) Parties shall promptly notify, in writing or during the recorded hearing, the  
17 Agency of any change of mailing address. Determinations and decisions  
18 shall be mailed to the new address.

19  
20 (1) If a party properly designates a party representative, a  
21 determination or decision must be mailed to the designated  
22 party representative for it to become final.

23  
24 (2) The Agency is responsible for making an address change only if the  
25 Agency is specifically directed by the party to mail subsequent  
26 correspondence to the new address.

27  
28 (3) If the Agency addresses a document incorrectly, but the party  
29 receives the document, the time frame for filing an appeal shall  
30 begin as of the actual date of receipt by the party, whether or not the  
31 party receives the document within the appeal time frame. However,  
32 this does not apply if the party fails to provide a current address or  
33 provides an incorrect address.

34  
35 (b) A determination or decision mailed to a party shall be presumed to have  
36 been delivered if the document was mailed as specified in subsection (a)  
37 of this section.

38  
39 (1) A determination or decision shall not be presumed to have been  
40 delivered:

41  
42 (A) if there is tangible evidence of nondelivery, such as being  
43 returned to the sender by the US Postal Service; or

44  
45 (B) if credible and persuasive evidence is submitted to establish  
46 nondelivery or delayed delivery to the proper address.

1  
2 (2) If a party provides the Agency with an incorrect mailing address, a  
3 mailing to that address shall be considered a proper mailing, even  
4 if there is proof that the party never received the document.  
5

6 (c) The filing date for a complaint or an appeal shall be:  
7

- 8 (1) the postmark date or the postal meter date (where there is only  
9 one or the other);  
10  
11 (2) the postmark date if there is both a postmark date and a postal meter  
12 date;  
13  
14 (3) the date the document was delivered to a common carrier, which is  
15 equivalent to the postmark date;  
16  
17 (4) three business days before receipt by the Agency, if the document  
18 was received in an envelope bearing no legible postmark, postal  
19 meter date, or date of delivery by a common carrier;  
20  
21 (5) the date of the document itself, if the document date is fewer than  
22 three days earlier than the date of receipt and if the document was  
23 received in an envelope bearing no legible postmark, postal meter  
24 date, or date of delivery by a common carrier;  
25  
26 (6) the date of the document itself, if the mailing envelope containing  
27 the complaint or appeal is lost after delivery to the Board or  
28 Agency. If the document is undated, the filing date shall be deemed  
29 to be three business days before receipt by the Board or Agency; or  
30  
31 (7) the date of receipt by the Agency if the document was filed online or  
32 by fax.  
33

34 (d) Credible and persuasive testimony under oath, subject to cross-  
35 examination, may establish a filing date that is earlier than the dates  
36 established under subsection (c) of this section. A party shall be allowed to  
37 establish a filing date earlier than a postal meter date or the date of the  
38 document itself only upon a showing of extremely credible and persuasive  
39 evidence. Likewise, when a party alleges that a complaint or appeal has  
40 been filed that the Agency has never received, the party must present  
41 credible and persuasive evidence to support the allegation.  
42

43 (e) A decision or preliminary determination order shall not be deemed final  
44 if a party shows that a representative of the Agency has given misleading  
45 information on appeal rights to the party. The party shall specifically  
46 establish:

- (1) how the party was misled; or
- (2) what misleading information the party was given, and, if possible, by whom the party was misled.

(f) Appeal and complaint deadlines are extended one working day following a deadline which falls on a weekend, an official state holiday, a state holiday for which minimal staffing is required or a federal holiday.

(g) There is no good cause exception to the timeliness rules.

**§844.84. Withdrawal of an Appeal.**

A party ~~An employer~~ may request a withdrawal of its appeal at any time before the hearing officer's decision is issued. The hearing officer may grant the request for withdrawal in writing and issue an order of dismissal.

**§844.85. Decision.**

- (a) The hearing officer shall issue a written decision as soon as possible after the hearing is finally closed.
- (b) The Agency shall notify each party to a contested case of any decision of the hearing officer by mailing the decision to the parties or the parties designated representative if requested.
- (c) The decision shall include findings of fact and conclusions of law separately stated and a list of the individuals who appeared at the hearing. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed and any issues the parties waived notice of. The hearing officer shall rule on any contested determinations issued as a result of the complaint.
- (d) If the decision rules that the employer violated Texas Health and Safety Code, Chapter 81D or this chapter and if no remediation determination has been issued prior to the hearing, the hearing officer's decision shall indicate the amount of the administrative penalty, any applicable investigative costs, and inform the employer of the ability to avoid the administrative penalty by taking remedial action and submitting proof thereof.
- (e) If no decision has ruled on remedial action and the employer intends to take remedial action in response to a decision issued under subsection (d) of this section, the employer must notify the hearing officer of their intent to remedy

1 within 14 days of the decision being issued. Notice of intent to remedy must be  
2 filed in accordance with the instructions provided in the decision. Upon  
3 notification, the hearing officer's decision will be reopened for 30 days for the  
4 employer to provide proof of remedial action to the hearing officer.

- 5
- 6 (f) The hearing officer may hold an additional hearing to consider additional  
7 evidence of remediation. After consideration of any evidence of proof of  
8 remediation, the hearing officer shall issue a combined decision addressing all  
9 issues in front of the hearing officer resulting from the complaint.

10

11 **§844.86. Finality of Decision.**

12

13 The decision of the hearing officer becomes final 14 days after the date the  
14 decision is mailed unless before that date the hearing officer reopens the decision,  
15 a party files a timely appeal to the Commission, or the Commission by order  
16 removes to itself the proceedings pending before the hearing officer.

17

18 **§844.87. Commission.**

19

20 The duties of the Commission include reviewing the order of a hearing officer  
21 under this chapter. The member of the Commission who represents the public  
22 shall serve as chair when the Commission acts under this chapter.

23

24 **§844.88. Removal of Order Pending Before a Hearing Officer.**

- 25
- 26 (a) The Commission by order may remove to itself the proceedings pending  
27 before a hearing officer.
- 28
- 29 (b) The Commission promptly shall mail to the parties to the proceedings a notice  
30 of the order under subsection (a) of this section.
- 31
- 32 (c) A quorum of the Commission shall hear a proceeding removed to the  
33 Commission under subsection (a) of this section.

34

35 **§844.89. Commission Review of Hearing Officer Order.**

- 36
- 37 (a) The Commission may, on its own motion:
- 38
- 39 (1) affirm, modify, or set aside a decision issued under §844.85 of this  
40 subchapter on the basis of the evidence previously submitted in the case;  
41 or
- 42
- 43 (2) direct the taking of additional evidence.
- 44
- 45 (b) The Commission may permit the parties to initiate a further appeal before the  
46 Commission.



1  
2 **§844.90. Notice of Commission Action.**

3  
4 (a) The Commission shall mail to each party notice of:

5  
6 (1) the Commission's decision;

7  
8 (2) the violation;

9  
10 (3) the amount of any penalty assessed;

11  
12 (4) if applicable, the amount of any investigative costs; and

13  
14 (5) the parties' right to file a motion for rehearing.

15  
16 (b) The notice shall be mailed to the party's last known address, as shown by the  
17 Agency's records.

18  
19 (c) The Commission shall enter a written penalty order for the payment of any  
20 penalty or investigative costs the Commission has assessed.

21  
22 **§844.91. Finality of Commission Order.**

23  
24 An order of the Commission becomes final 14 days after the date the order is  
25 mailed unless before that date:

26  
27 (1) the Commission by order reopens the appeal; or

28  
29 (2) a party files a written motion for rehearing.

30  
31 ~~(3) —the employer submits or has submitted proof of remedial action under~~  
32 ~~Subchapter D of this chapter and a remedial action order has not yet~~  
33 ~~become final.~~

34  
35 **§844.92~~87~~. Judicial Review.**

36  
37 (a) If a final decision or order imposes an administrative penalty or the  
38 recovery of investigative costs, a party ~~an employer~~ may obtain judicial  
39 review of the decision by filing a petition in a Travis County district court  
40 against the Agency on or after the date on which the decision or order is  
41 final, and not later than the 14th day after that date.

42  
43 (b) Judicial review under this subchapter is by trial de novo based on the  
44 substantial evidence rule.

45  
46 (c) A party ~~An employer~~ may not obtain judicial review of the decision unless

1  
2

the party ~~employer~~ has exhausted the party's remedies as provided by this  
subchapter~~subtitle~~.