

FDCM Letter



2022 Fraud Deterrence and Compliance Monitoring (FDCM) Letter

ID/NO: FDCM Letter 03-2022

TO: Local Workforce Development Board Executive Directors
Fraud Deterrence and Compliance Monitoring Directors
Wage and Hour Department Staff
Workforce Development Directors
Appellate Services Staff
Integrated Service Area Managers
Office of General Counsel

FROM: Chuck Ross, Division Director of Fraud Deterrence and Compliance Monitoring

DATE: October 6, 2022

SUBJECT: **Board Instructions: Texas Wage and Hour Assistance**

PURPOSE

To remind Texas Workforce Commission (TWC), Workforce Solutions, and Workforce Board (Board) staff of the requirement to provide assistance with the Texas Payday Law and Child Labor Appeals to workers and employers.

BACKGROUND

Section 18 of the Agency-Board Agreement (ABA) for an Integrated Workforce System requires Boards comply with written instructions issued by the Fraud Deterrence and Compliance Monitoring (FDCM) Division with respect to providing claim services to workers seeking redress through the Texas Payday Law. This section of the ABA also instructs staff to accept and fax all wage claim and child labor appeals on the day received. The requirements for Boards to provide assistance to Payday Law claimants is not new; it has existed in previous iterations of the ABA, most recently in Section 26, Coordination of Unemployment and Texas Payday Law Assistance to Job Seekers and Employers.

Section 18 also addresses displaying required posters and providing assistance to Unemployment Insurance (UI) claimants. Separate letters will be issued regarding those topics.

INFORMATION

Staff should be aware that, effective September 1, 2022, the Labor Law Investigations department was renamed to the Wage and Hour department. Websites, forms, and other documents bearing the “Labor Law” name are being updated to reflect the new “Wage and Hour” name. Staff should ensure they are using the correct version of any forms by always downloading forms from the Texas Payday Law webpage: <https://www.twc.texas.gov/programs/wage-and-hour/texas-payday-law>.

Staff and customers can find more information about the wage claim process on TWC’s website.

- [Information about the Texas Payday Law](#), including how to submit a wage claim
- [Learn about Payday Law appeals](#)

WAGE AND HOUR DEPARTMENT CONTACT INFORMATION

- **Online:** [Online Wage Claim](https://apps.twc.texas.gov/WAGECLAIM/logon). (<https://apps.twc.texas.gov/WAGECLAIM/logon>)
- **Phone:** 512-475-2670 or 800-832-9243
- **Mail:** Texas Workforce Commission
Wage and Hour Department
101 East 15th Street, Room 514
Austin, Texas 78778
- **FAX:** 512-524-6211
- **Email:** wage.hour@twc.texas.gov – For Supporting Documents only.
Wage claims and appeals must be filed online, mailed, or faxed.

WAGE CLAIM APPEALS CONTACT INFORMATION

- **Online:** [Notice of Payday Law Wage Claim Appeal](https://apps.twc.texas.gov/UBS/appealsContactUsSp.do)
(<https://apps.twc.texas.gov/UBS/appealsContactUsSp.do>)
- **Mail:**

Texas Workforce Commission Wage Claim Appeals 101 East 15th Street Austin, Texas 78778	Texas Workforce Commission Commission Appeals 101 East 15th Street, Rm 678 Austin, Texas 78778
---	---
- **FAX:** 512-463-9318 (Appeal Tribunal) 512-475-2044 (Commission Appeal/MR)

BOARD REQUIREMENTS REGARDING PAYDAY LAW CLAIMS AND APPEALS

The ABA establishes the following requirements for Boards and staff in relation to Texas Payday Law claims.

Section 18.5 of the ABA requires that staff assist customers with filing a Texas Payday Law claim, filing or responding to an appeal on a Payday claim, or submitting documentation needed for a Payday claim or appeal. A customer could be an individual filing a wage claim or an employer responding to a wage claim must be allowed to use available resources such as computers, fax machines, or phones.

Staff must assist customers with:

- **Filing a Payday Wage Claim:** Completing the [online wage claim](#) form is the preferred method to file a claim. Filing online is secure and ensures claimants complete the required information. Claimants who use the online wage claim can confirm their claim was submitted by logging back into the secure system. Alternatively, claimants can submit a Payday Wage Claim by completing the paper Wage Claim Form (WH-1) found on the [Texas Payday Law - Wage Claim](#) page.

Claimants should fill out the paper Wage Claim form completely, accurately, and legibly. The form must be attested to by the claimant.

- **Submitting a Wage Claim Appeal:**
 - **Wage Claim Appeal Tribunal:** An appeal to the Preliminary Wage Determination Order must be filed within 21 days of the mail date of the Wage Determination order. Advise claimants that completing the [online wage claim appeal](#) is the preferred method. Appealing online is secure and ensures customers complete the required information. Alternatively, claimants can appeal in writing by mail or fax. (See [Wage Claim Appeals Contact Information, below](#))
 - **Commission Appeal:** The Commission appeal must be filed within 14 days of the mail date of the Wage Claim Appeal Tribunal decision. Advise claimants that completing the [online wage claim appeal](#) is the preferred method. Alternatively, claimants can appeal in writing by mail or fax. (See [Wage Claim Appeals Contact Information, below](#))
 - **Motion for Rehearing:** A Motion for Rehearing by the Commission must be filed within 14 days of the mail date of the Wage Claim Appeal Tribunal decision. Advise claimants that completing the [online wage claim appeal](#) is the preferred method. Alternatively, claimants can appeal in writing by mail or fax. (See [Wage Claim Appeals Contact Information](#))
- **Submitting Documentation Needed for a Claim or Appeal:** Claimants should submit copies of any payroll checks or stubs and any other information to support the claim or appeal. If the wage claim has insufficient information, the claim may be returned or dismissed. Supporting documents may be submitted by e-mail, fax, or mail. (See [Wage and Hour Contact Information](#) or [Wage Claim Appeals Contact Information](#))

Section 18.6 requires staff assist employers with responding to a Payday claim, filing or responding to an appeal on a Payday claim, or submitting documentation needed for a Payday claim or appeal. Employers must be allowed to use available resources such as computers, fax machines, or phones.

Staff must assist employers with:

- **Responding to a Wage Claim** by helping the employer submit the completed Employer Response to Wage Claim form. The response form is provided with the wage claim notice and must be submitted, along with supporting documentation, within 14 days of the mail date. (See [Wage and Hour Contact Information](#))
- **Submitting a Wage Claim Appeal** by helping the employer submit a completed appeal. An appeal must be filed within 21 days of the mail date of the Preliminary Wage Determination order, or 14 days of the mail date of the Wage Claim Appeal Tribunal decision, or 14 days of the mail date of the Commission decision. Advise employers that completing the [online wage claim appeal](#) is the preferred method. Appealing online is secure and ensures employers complete the required information. Alternatively, employers can appeal in writing by mail or fax. (See [Wage Claim Appeals Contact Information](#))
- **Submitting Documentation Needed for a Claim or Appeal:** Employers should submit copies of any payroll checks or any other information to support the information provided for the claim

or appeal. Supporting documents may be submitted by e-mail, fax, or mail. (See [Wage and Hour Contact Information](#) or [Wage Claim Appeals Contact Information](#))

Section 18.7 requires staff provide the toll-free number for the Wage and Hour department, formerly referred to as the Labor Law department, either verbally or in writing at the Workforce Solutions office, or verbally over the phone.

- The Wage and Hour department contact number is 512-475-2670 or 800-832-9243.

Section 18.8 requires Boards to provide printed copies of the paper wage claim form and provide access to computers so customers can file a claim.

- **Online Application:** apps.twc.texas.gov/WAGECLAIM/logon
- **Paper Form:** Download forms from <https://www.twc.texas.gov/programs/wage-and-hour/texas-payday-law>

Section 18.9 requires staff accept and fax all completed wage claims, appeals, or other documents on the day they are received and provide the customer with a fax confirmation. See [Contact Information](#).

- Wage Claim appeals should be faxed to the Appeal Tribunal or Commission Appeals, as detailed in the section above.
- Child Labor appeals should be faxed to the Commission Appeals department.

PROCEDURES

HOW TO FILE A TEXAS PAYDAY LAW (WAGE) CLAIM

Staff assisting customers wishing to **file** a wage claim should advise customers to:

- ❖ Submit a Payday Wage Claim online, or by completing the paper form.
- **ONLINE:** Filing online is secure and ensures claimants complete the required information. Claimants who use the online system can confirm the claim was submitted by logging into the system.
 - Direct Link to Application – <https://apps.twc.texas.gov/WAGECLAIM/logon>
 - Or go to www.twc.texas.gov/programs/wage-and-hour/texas-payday-law and select “File a Payday Wage Claim” Customers can find information on How to File A Wage Claim.
 - Log in by entering their User ID (UID) and password. New users must sign up for a UID.
 - Select “**Start New Wage Claim.**”
- **PAPER:** Customers can file by completing the paper Wage Claim Form (WH-1). The form must be complete, accurate, and legible. Paper forms can be submitted by fax or mail. Wage Claim forms cannot be submitted by email but supporting documents can be emailed.
 - Download forms from www.twc.texas.gov/programs/wage-and-hour/texas-payday-law.

- [Wage Claim English](#)
 - [Wage Claim Spanish](#)
- ❖ Submit copies of any payroll checks or stubs and any other information to support the claim by email, fax, or mail. Make sure to write the claimant's full name and wage claim number on each document submitted. If the wage claim has insufficient information, the claim may be returned or dismissed.
 - ❖ Notify the Wage and Hour Department if the customer changes their address or phone number. TWC needs the customer's current contact information when sending payment or requesting additional information.
 - ❖ Call the Wage and Hour Department at 512-475-2670 or 800-832-9243 with any questions.

HOW TO FILE A PAYDAY LAW (WAGE) CLAIM APPEAL

Wage Claim Appeal to the Appeal Tribunal: Staff should advise customers of the following:

- ❖ Submit an appeal within 21 days of the mail date of a Preliminary Wage Determination Order.
- ❖ Appeals must include the customer's name, Wage Claim number, claimant's Social Security number or employer's Tax ID number, current address, date TWC mailed the Preliminary Wage Determination Order, copy of the determination, if possible, any dates on which the customer will not be able to participate in a hearing, and any accommodations needed.
 - [Online Wage Claim Appeal](#) (preferred method). The online application is secure and ensures customers complete the required information.
 - **Fax:** 512-463-9318
 - **Mail:** TWC Wage Claim Appeals, 101 E. 15th St., Austin, TX 78778-0001

Wage Claim Commission Appeal: Staff should advise customers of the following:

- ❖ Submit a Commission appeal within 14 days of the mail date of the Wage Claim Appeal Tribunal decision.
- ❖ Appeals must include the customer's name, Wage Claim number, Appeal number, claimant's Social Security number or employer's Tax ID number, current address, and date TWC mailed the Appeal Tribunal decision.
 - [Online Commission Appeal](#) (preferred method). The online application is secure and ensures customers complete the required information.
 - **Fax:** 512-475-2044
 - **Mail:** TWC Commission Appeals, 101 E. 15th St. Rm 678, Austin, TX 78778-0001

Wage Claim Motion for Rehearing: Staff should advise customers of the following:

- ❖ Submit a Motion for Rehearing (MR) by the Commission within 14 days of the mail date of the Wage Claim Appeal Tribunal decision. The MR must include the customer's name, Wage Claim number, Appeal number, claimant's Social Security number or employer's Tax ID number, current address, and date TWC mailed the Commission Appeal decision.

- [Online Motion for Rehearing](#) (preferred method). The online application is secure and ensures customers complete the required information.
- **Fax:** 512-475-2044
- **Mail:** TWC Commission Appeals, 101 E. 15th St. Rm 678, Austin, TX 78778-0001

Staff should also advise customers to notify the Appellate Services Division if the customer changes their address or phone number. TWC needs the customer's current contact information when sending appeal information.

CHILD LABOR APPEALS

Staff should advise employers who are filing an appeal to a Child Labor determination of the following:

- ❖ Submit an Appeal within 21 days of the mail date of the Preliminary Determination Order – Child Labor.
- ❖ Appeals must include the employer's name, employer's Tax ID number, current address, and, for a Commission appeal, the Case Number.
 - **Fax:** 512-936-6284
 - **Mail:** TWC CA Hearings Unit, 101 E. 15th St. Rm 678, Austin, TX 78778-0001

ANSWERING QUESTIONS ABOUT THE WAGE CLAIM PROCESS

Staff assisting customers may provide the following additional information when assisting customers with a wage claim.

- After the Wage and Hour Department receives a wage claim, the claimant is notified by mail that the document was received and is given an estimate of the time frame by which TWC will issue a Preliminary Wage Determination Order (PWDO).
- Simultaneously, the employer is notified that a wage claim was filed, and a response is requested. The employer will receive an Employer Response form with a photocopy of the claim and any documents submitted. Once TWC begins the investigation, an investigator may contact either party if additional information is needed.
- Based on the investigation, TWC will issue a PWDO. Both the claimant and the employer will have appeal rights to the PWDO.
- To appeal, the party must submit an appeal. See deadlines listed in the Appeals section, above.
 - If the customer delivers an appeal to the Workforce office, Boards must fax the appeal the same day it is received. TWC will use the date we **receive** the fax or online form, to determine whether the appeal is on time.
 - If customer requests the appeal be mailed, staff should offer to fax the appeal the same day to ensure the appeal is received on the date the customer delivered it to the office.
- If neither party requests an appeal, and if the amount ordered due is not submitted by the employer within 30 days, it will be referred to the Wage and Hour Collections Unit for collection action.

It is important to note that wage amounts awarded in wage claim cases are not drawn from state funds. Any monies awarded to a claimant must first be collected from the employer before they are paid out. Employers must submit funds directly to the Wage and Hour Collections department. The Workforce office must not accept any funds from an employer and the employer should not pay the claimant directly.

- If the money cannot be collected, then a lien or bank levy may be filed against the employer. Any money collected on a claimant's behalf will be forwarded to the most current address TWC has on file. It is the claimant's responsibility to notify TWC in writing if their address or phone number changes at any time.
- Staff should advise customers to notify the Wage and Hour Department if the customer changes their address or phone number. TWC needs the customer's current contact information when sending payment or requesting additional information.

WITHDRAWAL OF A WAGE CLAIM

Although rare, some claimants wish to withdraw their wage claim after submitting it. A wage claim may only be withdrawn, using a Withdrawal of Wage Claim form (WH-119), while under investigation, on appeal, or within the period to file an appeal, otherwise, a Satisfaction of Payment Declaration form (WH-120) must be completed.

- Download forms from <https://www.twc.texas.gov/programs/wage-and-hour/texas-payday-law>

Staff should instruct customers of the following:

- Withdrawing a wage claim is final. Claimants may not cancel the withdraw once it is submitted.
- **Section 1** of the Withdrawal form must be completed by **all** claimants.
- **Section 2** must be filled out only if collection actions have begun. Claimants may call 800-832-9243 to find out if TWC has started collection actions. **This section must be signed and sworn to before a Workforce Solutions office staff or a notary public.** Staff completing Section 2 of the Withdrawal form must verify the claimant's identity by viewing a photo ID before signing the sworn statement.

Note: A Satisfaction of Payment Declaration form (WH-120) differs from a withdrawal in that TWC will still recognize that an order has been issued; however, TWC will no longer pursue collection actions on wages owed by the employer to the claimant under a wage claim. The employer will still be liable to TWC for any administrative penalties assessed on the claim. TWC will release any liens or freezes on the claim once any administrative penalties owed are paid to TWC.

ATTACHMENTS

- [Desk Aid on Texas Payday Law Assistance](#)

ACTION REQUIRED

All TWC and Board staff, supervisors, and managers should be aware of the information in this letter.

INQUIRIES

Staff should direct any questions to their supervisor or manager.

Keywords: Texas Payday Law, Wage Claim, Labor Law, Wage and Hour

Rescissions: Technical Assistance Bulletin (TA) 288

Expiration: Until Rescinded