



Meeting Minutes: Attorney General’s Advisory Task Force on Worker Misclassification

Meeting Date and Time: January 8th, 2024, 2 pm – 4 pm
Minutes Prepared By: Abdulaziz Mohamed
Location: State Capitol 316, and Microsoft Teams

Attendance

Members Present

Representative Emma Greenman
Rod Adams
Commissioner Nicole Blissenbach
Octavio Chung Bustamante
Daniel Getschel
Melissa Hysing
Burt Johnson
Briana Kemp
Amir Malik
Senator Clare Omou Verbaten
Deputy Commissioner Evan Rowe
Aaron Sojourner
Brittany VanDerBill
Kim Vu-Dinh
Brian Elliot (Ex-Officio)

Members Absent

Jonathan Weinhagen
Jonathan Moller (Ex-Officio)

Attorney General’s Office (AGO) Staff Members Present

Carin Mrotz
Abdulaziz Mohamed
Laura Sayles



Agenda Items

1. Call to order and roll call

Co-chair Rod Adams calls the meeting to order at 2:00 pm. A quorum was present.

2. Approval of meeting agenda

A motion was made by Representative Emma Greenman and seconded by Deputy Commissioner Evan Rowe to approve the agenda as presented. A vote was taken, and the motion passed unanimously.

3. Approval of December 13th minutes

A motion was made by Representative Emma Greenman and seconded by Burt Johnson to approve the December 13th minutes. A vote was taken, and the motion passed unanimously.

4. Follow-up from November and December Testimony

Follow-ups from the November and December testimony was given as follows:

- Carin Mrotz mentioned that the task force has received follow-ups from DoorDash and Task Rabbit's December testimony but is still awaiting follow-ups from Uber's November testimony.
- Rod Adams stated that Aaron Sojourner is leading the compilation of task force research questions, and if anyone has any inquiries or requests for additional items, they should contact Aaron Sojourner. Additionally, Rod Adams mentioned that the Attorney General's Office lacks research capacity, so any research questions should be directed to Aaron Sojourner.

5. Discussion on Research and Data

Discussion on Research and Data was had by task force members as follows:

- Rod Adams stated that Aaron Sojourner is leading the compilation of task force research questions, and if anyone has any inquiries or requests for additional items, they should contact Aaron Sojourner. Additionally, Rod Adams mentioned that the Attorney General's Office lacks research capacity, so any research questions should be directed to Aaron Sojourner.
- Brittany VanDerBill suggested exploring the number of independent contractors in Minnesota and assessing their classification, aiming to understand the impact on the economy, including data on lost or changed dollars, if we were to reclassify independent contractors.



6. National Employment Law Project Presentation

Laura Padin, Director of Work Structures at the National Employment Law Project, presented on Model Misclassification Policies. The presentation featured the following:

- Cross-agency task force
- Strong standalone penalties
- Liability up the chain
- Notice requirements
- Funding for state enforcement
- Clear test with employment presumption
- Regulating technology used to control workers

The task force members asked questions to Director Laura Padin and engaged in a discussion as follows:

- Brittany VanDerBill raised a question regarding the accuracy and relevance of the ABC test, particularly in the context of the modern workplace. She pointed out that our world has changed significantly, and she questioned whether the ABC test, created in the 1930s, remains applicable to the current work environment. Laura Padin responded by acknowledging that she doesn't have the specific creation date for the ABC test but provided context by discussing the Fair Labor Standards Act from the 1930s. She explained that the broad definition of employment in that act aimed to address issues like outsourcing and subcontracting, emphasizing the importance of having most people covered by labor and employment laws. Laura Padin highlighted the public policy goals of ensuring minimum labor standards for workers, such as minimum wage, overtime, paid leave, and unemployment insurance. She expressed concerns about carving out more people from these protections, citing serious negative consequences.
- Kim Vu-Dinh followed up on the age of the ABC test, noting that many laws are based on older ones, and age alone shouldn't determine its accuracy. She then inquired about a state where the ABC test has a carve-out, asking about the practical impact. Kim Vu-Dinh questioned if, in execution, the IRS test's clear-cut nature makes the ABC test irrelevant and how it plays out in that state. Laura Padin clarified that the Virginia law starts with a presumption of employment, and it can be rebutted if the hiring entity clearly meets the IRS standard (a control test). She acknowledged the IRS standard as somewhat more ambiguous but used it as an example of a law starting with a presumption of employment, placing the burden on the hiring entity. Laura Padin noted that while it operates differently than the ABC test, it shares the presumption of employment.
- Kim Vu-Dinh sought clarification, asking if the Virginia law implies you can use the IRS standard only if it clearly contradicts the control factors established by the ABC test. Laura Padin explained that the Virginia law uses the IRS standard but starts with the presumption that everyone is an employee. Unlike the ABC test,



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there's no presumption either way with the IRS standard. In Virginia, the law presumes everyone is an employee, placing the burden on the employer to demonstrate otherwise.

- Burt Johnson inquired about whether the attachment of labor standards to public subsidy and funding should be considered within the topics of public policy examples or as separate category. He provided an exemplification of prevailing wage construction, established to level the playing field, and prevent a race to the bottom in worker wages. He questioned whether this should be considered part of existing categories or if it warrants an additional category in public policy discussions. Laura Padin agreed with Burt Johnson's point, considering the attachment of labor standards to public subsidy and funding as an enforcement tool. She acknowledged that public contracts can be a significant tool for raising labor standards and preventing worker misclassification. She highlighted the importance of ensuring that contractors, at every level of the chain, adhere to minimum labor standards and do not misclassify their workers.
- Senator Clare Omou Verbaten raised a concern about workers not receiving their wages and the difficult they face in piecing together information through text messages to prove their owed wages. She emphasized the challenge of putting the burden on workers and suggested that employers should be responsible for keeping proper documentation in the first place, and then expressed a desire to hear recommendations on this issue. Laura Padin acknowledged the challenges with different types of misclassifications, including issues with records for those paid completely off the books, and agreed with the Senator's suggestion of putting the burden on the employer to keep good records. She mentioned that some existing misclassification laws already require employers to maintain accurate, and if they fail to do so, the burden is on them, not the worker, when it comes to producing documentation.
- Aaron Sojourner asked about the variation across states and effectiveness of different task forces in addressing labor standards, adding that examples of particularly good or less effective task forces could be instructive for the discussion. Laura Padin mentioned variation in the effectiveness of task forces, with some being more successful. She noted industry-specific task forces, like in construction, but recommended against them, advocating for broader, general task forces. Laura Padin highlighted a successful example, the 2007 New York Joint Enforcement Task Force, which combined agency resources, conducted industry sweeps, and reported transparently on findings, uncovering misclassifications and unreported wages.
- Aaron Sojourner followed up, discussing the Financial Crimes Enforcement Network (FinCEN) and their guidance on workers' compensation premium fund. He explained that FinCEN deals with banks and suspicious activity reports related to activities like money laundering. Aaron Sojourner highlighted FinCEN's alert and guidance to financial institutions on recognizing workers' comp premium fraud. He's interested in finding ways to leverage that in state policy. Laura Padin



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expressed amazement at the information Aaron Sojourner shared about FinCEN's guidance on workers' comp premium fraud, noting it as an interesting use of technology to combat fraud. She requested Aaron Sojourner to send her materials on the topic for further reading.

- Brittany VanDerBill asked if the information about high-violation industries could be sent to the task force. Laura Padin confirmed that they have compiled data on high-violation industries, primarily based on state investigations and reports from state task forces. She agreed to send that information to the task force.
- Amir Malik inquired if the states mentioned with the presumption of employment were exhaustive or if there were others not mentioned in the discussion. Laura Padin clarified that the states mentioned using the ABC test for the presumption of employment were not exhaustive. She mentioned having a full list of states that use the ABC test and offered to send that information. However, she noted that she doesn't have an exhaustive list of states that use other presumption of employment tests but would try to find and provide that information as well.
- Representative Emma Greenman mentioned presumption and the test. She then asked about the impact of the presumption, considering the educational and outreach aspects before enforcement. Representative Emma Greenman referred to the New York example and wondered if, after passing the presumption, there were efforts in education and outreach to help people make correct designations before reaching enforcement. Laura Padin affirmed Representative Emma Greenman's points, emphasizing that the presumption makes it clearer where to start and whose burden it is to prove otherwise. She referred to the Fair Play Construction Act in New York and mentioned a report from 2022, suggesting that misclassification in construction has decreased in New York City since the passage of the ABC test in 2010. Laura Padin acknowledged the challenge of conclusively establishing causation but considered it evidence that a clear standard, starting with a presumption of employment, benefits workers and helps establish their rights.
- Representative Emma Greenman inquired about criminal penalties for misclassification in other states, especially when considering public contracts and funds like the UI Trust Fund. She sought information on whether states have clear criminal penalties for fraud or related concerns in cases of misclassification. Laura Padin mentioned that some states have criminal penalties on the books for misclassification cases. However, she acknowledged that she is not sure about the frequency of their usage and emphasized that these penalties are typically associated with defrauding the government or engaging in wage theft. Laura Padin said she'd look up specific examples of criminal penalties being applied in misclassification cases and follow up with the task force.
- Kim Vu-Dinh inquired about the presence of different tests used by various agencies within states like Minnesota and sought advice on best practices for managing the diversity of tests across agencies. Laura Padin suggested that the best practice would be to have the same test for every state law, starting with a presumption of employment. She mentioned that employers could avoid issues by



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classifying their workers as employees, and having unfirm state laws that would reduce ambiguity and make things clearer.

- Kim Vu-Dinh followed up and asked if Laura Padin had observed any states unifying their different agency tests under one standard, especially when examining misclassification laws. Laura Padin mentioned that Massachusetts has unified its tests under the ABC test for all applicable laws, but in general, most states still use different tests for different laws.
- Burt Johnson questioned public spending beyond public contracting, exploring scenarios where public funds are used directly or indirectly. He highlighted instances where entities hire companies or provide grants and subsidies, questioning if there are Labor Standards attached to public dollars in such contexts. Burt Johnson raised concerns about companies misusing federal funds and suggests that public policy could enhance accountability for employers benefiting from public funds, citing the Attorney General's Office pursuing Medicare fraud cases as an example. Laura Padin acknowledged the importance of incorporating Labor Standards in government contracts and procurement processes. She suggested that during the request for proposals or rulemaking stages. Conditions for contract should explicitly include Labor Standards. Laura Padin emphasized the significance of considering Labor Standards in the bidding process, such as acknowledging requirements for higher prevailing wages or minimum wages. She highlighted that public dollars play a crucial role in raising Labor Standards, not just as an employer but also as a funder, setting a standard for those receiving government funding.
- Burt Johnson raised the question about whether the False Claims Act or similar mechanisms have been utilized to hold companies accountable for misclassification, specifically in cases where there are direct or indirect subsidies involved, leading to a loss in the public treasury. Laura Padin expressed that she is not familiar with any examples of using the False Claims Act to address misclassification. She found the question interesting and expressed interest in following up on it to gather more information.

7. Discussion about Policy Priorities

The task force members and AGO staff engaged in a discussion about policy priorities as follows:

- Rod Adams suggested breaking down policy in four buckets for moving forward:
 - Detection, Investigation, and Enforcement
 - Education and Outreach
 - Deterrence and Non-Governmental Measures
 - Test and Penalties
- Carin Mrotz sought clarification on what Rod Adams meant by non-governmental measures for deterrence. Rod Adams explained that by “non-governmental” in the context of deterrence, he refers to working with organizations outside of the



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government. He provides an example of an enforcement model in Minneapolis where organizations engage with workers to discuss their employment status, ensuring proper wages and benefits. The approach involves collaborations with non-government entities for know-your-rights training and reporting wrongdoing to relevant state or city agencies.

- Brittany VanDerBill sought clarification on the term “test,” inquiring whether it specifically refers to the ABC test or any form of evaluation. Representative Emma Greenman suggested that the concept is on the table for discussion, highlighting the need for the task force to delve into specific areas.
- Brittany VanDerBill followed up and suggested the IRS test as an alternative, emphasizing its suitability for independent contractors who genuinely operate as such without exploitation. She sought consideration of this test as part of the task force’s discussions. Rod Adams acknowledged that all options are being considered, emphasizing that ongoing discussions do not guarantee specific recommendations. He noted that the importance of research and investigation before potential policy additions by the task force.
- Representative Emma Greenman sought clarification from Daniel Getschel regarding whether the test used by the Minnesota Department of Revenue is the IRS test. Daniel Getschel answered that there’s multiple tests that are utilized to determine whether someone is an independent contractor versus an employee.
- Kim Vu-Dinh suggested exploring both civil and criminal approaches within the enforcement bucket. Representative Emma Greenman supports the idea of exploring civil and criminal approaches within the enforcement bucket, leveraging existing infrastructure for effective enforcement mechanisms and penalties.
- Commissioner Nicole Blissenbach acknowledged the overlap between a good enforcement strategy and education/outreach. She supported discussing agency enforcement, coordination, and penalties separately, considering logical steps and opportunities, with a focus on agency enforcement and state entity coordination, addressing the larger issues that involve multiple stakeholders.
- Representative Emma Greenman suggested focusing on penalties and enforcement in separate sections to facilitate deeper discussion. She emphasized the goal of narrowing the focus, sequencing discussion, and eventually making recommendations on pressing issues. The proposal is to start with the enforcement and investigations section, considering the expertise and preparedness of certain individuals in the group.
- Burt Johnson expressed agreement with the suggesting organization into four buckets. He appreciated the division of work into manageable chunks and sees it as an effective way to address the complex topic. Burt Johnson acknowledged that each task force member may have a specific area of interest within these buckets and breaking it up into groups will allow for more focused discussions and contributions from each member.
- Senator Clare Omou Verbaten emphasized the importance of strong penalties to deter businesses from absorbing the costs associated with misclassifications. She



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highlighted the need to determine effective penalties that make it challenging for businesses to engage in misclassification practices. Senator Clare Omou Verbaten also underscored the importance of clarity in the legislative process, ensuring that the reasons for implemented specific penalties are clearly communicated and understood.

- Burt Johnson emphasized the importance of considering penalties in relation to question #5, particularly in terms of the standard quantity. He mentioned that the current penalties often involve restitution of contract wages, but the impact of misclassification goes beyond that. Burt Johnson suggested understanding the public cost associated with misclassification, such as unemployment and revenue impacts, to better deter misclassification practices. He highlighted the need to assess the various factors influencing the costs of misclassification to implement effective changes.
- Aaron Sojourner pointed out that when considering penalties, it's crucial to understand the employer's perspective, weighing the benefit of breaking the law against the risk of getting caught and the potential consequences. He mentioned there's economic analysis available on this aspect. Regarding the four buckets, Aaron Sojourner questioned whether co-enforcement fits and suggested that education and outreach could be part of detection. He sought clarification on the logic behind the four buckets, especially in relation to questions about contractor liability. Representative Emma Greenman acknowledged the artificial nature of the four buckets, particularly when considering up-the-chain questions like contractor liability. She proposed starting with specific policies or approaches related to each bucket, addressing issues such as presumption, the choice of tests (ABC, IRS), and other relevant factors. Representative Emma Greenman suggested organizing the conversation around education and outreach, emphasizing the importance of pragmatic adjustments based on timing and other factors as they move forward. She encouraged task force members to identify and focus on one or two buckets that align with their interests.
- Brittany VanDerBill expressed concern about negative consequences for legitimate contractors as the task force focuses on protecting employees. She sought clarification on whether issues related to the ABC test, penalties, and other considerations fall under a specific bucket or if they should be addressed differently. Rod Adams stated that it is crucial to go as broad as possible within the designated buckets to ensure that no relevant aspects are overlooked. He suggested bringing back specific concerns related to negative consequences for legitimate contractors to the relevant group discussions, and the task force will address them collectively.
- Daniel Getschel emphasized the need for legislative considerations in discussing tests and penalties. He suggested establishing working goals and understandings for consistency across state agencies. Daniel Getschel also highlighted the importance of involving agencies in the discussion to determine the administrability of tests, recommending collaboration with attorneys and staff from different



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agencies to gain insight into what is working well and what isn't. He stressed the importance of not losing sight of these considerations in the ongoing discussions.

- Kim Vu-Dinh suggested keeping the buckets of deterrence and education separate, emphasizing that deterrence is only possible when individuals are knowledgeable about the law. She pointed out the importance of educating both employees and employers, especially small and nonprofit employers who may have misinformation due to poor accounting advice or practices, Kim Vu-Dinh believed it would be helpful to consider different reasons for violations when discussing these buckets.
- Amir Malik shared insights into the differences between outreach and enforcement, even when working with non-governmental agencies like CTUL and others. He highlighted that while the same person might handle both tasks, the structures are different. Amir Malik emphasized that the formal process of filing complaints with agencies involves more structure and adherence to specific procedures compared to the more flexible nature of outreach activities. Based on his experience, he suggested keeping these tasks separate due to their distinct nature.
- Carin Mrotz reiterated Commissioner Blissenbach's proposal to focus on agency enforcement starting January 23rd and set aside discussions on the other buckets for the time being. A motion was made and seconded on the proposal. A vote was taken, and the motion passed unanimously.

8. Adjournment

Co-chair Rod Adams adjourned the meeting at 3:38 pm