



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

Meeting Date and Time: January 23rd, 2024, 2 pm – 4 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: GrandStay Hotel, 15982 Hwy 23 East, Spicer, MN, 56288, and Microsoft Teams

### **Attendance**

#### **Members Present**

Representative Emma Greenman  
Rod Adams  
Commissioner Nicole Blissenbach  
Octavio Chung Bustamante  
Daniel Getschel  
Brad Lehto (Melissa Hysing’s proxy)  
Burt Johnson  
Briana Kemp  
Amir Malik  
Deputy Commissioner Evan Rowe  
Aaron Sojourner  
Brittany VanDerBill  
Kim Vu-Dinh  
Jonathan Weinhagen  
Brian Elliot (Ex-Officio)  
Jonathan Moller (Ex-Officio)

#### **Members Absent**

Senator Clare Omou Verbaten

#### **Attorney General’s Office (AGO) Staff Members Present**

Carin Mrotz  
Abdulaziz Mohamed  
Laura Sayles



## **Agenda Items**

### **1. Call to order and roll call**

Representative Emma Greenman calls the meeting to order at 2:00 pm. A quorum was present.

### **2. Approval of meeting agenda**

A motion was made by Commissioner Nicole Blissenbach 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 January 8<sup>th</sup> minutes**

A motion was made by Octavio Chung Bustamante and seconded by Aaron Sojourner to approve the January 8<sup>th</sup> minutes. A vote was taken, and the motion passed unanimously.

### **4. Brief remarks from Attorney General Keith Ellison**

Attorney General Keith Ellison expressed gratitude for everyone attending the task force meeting. He thanked the co-chairs, lead staff member, and legislators for their work. The focus of the task force is on fulfilling the promise that hard work should result in sufficient income for individuals and their families, often referred to as the American Dream. Attorney General Keith Ellison highlighted the issue of workers not receiving the money they have earned due to misclassification, emphasizing the importance of fair treatment for both small businesses and employees. The task force aims to address misclassification and ensure that everyone abides by clear rules, making prosperity accessible to every Minnesotan. He concluded by expressing the office's commitment to reach all corners of the state to support every individual in Minnesota.

### **5. Department of Labor and Industry Presentation**

Commissioner Nicole Blissenbach presented on Worker Misclassification Task Force policy recommendations. The presentation featured the following:

- Presentation objectives
- Relevant statutes
- Construction misclassification
  - i. Promote compliance and improve enforcement efficacy
  - ii. Strengthen enforcement authority
  - iii. Enhance available remedies and penalties



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- General misclassification
  - i. Promote compliance and improve enforcement efficacy
  - ii. Strengthen enforcement authority
  - iii. Enhance available remedies and penalties
- DLI enforcement authority
  - i. Strengthen enforcement authority
- Construction contractor registration
  - i. Promote compliance and improve enforcement efficacy
  - ii. Strengthen enforcement authority
- Misclassification enforcement partnership
  - i. Create an interagency enforcement partnership to combat employee misclassification
  - ii. Provide for additional communication amongst affected entities
  - iii. Partnership duties
  - iv. Partnership structure
  - v. Outreach

The task force members asked questions to Commissioner Nicole Blissenbach and engaged in a discussion as follows:

- Representative Emma Greenman explained that the purpose of the initial conversations is to formulate recommendations for the 2024 session, with the intention to continue refining them. She emphasized that the legislative process might involve intricate details, but her vision for the task force's work is to focus on the broader picture and consolidate recommendations at a higher level.
- Brittany VanDerBill inquired about if there were any current or imminent obstacles preventing interagency collaboration. Commissioner Nicole Blissenbach acknowledged that there are no current barriers to meetings and discussions, but that some clarification is needed for information sharing and the potential for joint investigations.
- Brittany VanDerBill asked if there are conversations or plans in place to protect legitimate independent contractors from unintentional misclassification as employees. Commissioner Nicole Blissenbach suggested that having someone who could be classified as an independent contractor work as an employee may not violate state laws. She pointed out that in such a situation, employment taxes would be paid, along with adherence to regulations like overtime and minimum wage laws. Commissioner Nicole Blissenbach contended that the legal issues often associated with classifying someone as an independent contractor may not apply when considering the reverse scenario of having an independent contractor function as an employee.
- Burt Johnson expressed appreciation to Commissioner Nicole Blissenbach and her team for their presentation on addressing overarching themes. He highlighted shortcomings in the construction industry, such as labor broker exploiting workers.



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Burt Johnson commended Commissioner Nicole Blissenbach's efforts in empowering workers to seek redress and supported the idea of agency partnerships for strategic conversations and resource allocation. He sees the theme of agency collaboration as aligned with NELP's presentation.

- Brad Lehto inquired about whether there are penalties for each violation or if they apply individually to each affected worker. Commissioner Nicole Blissenbach explained that with wage-related violations, there can be daily penalties for each day that wages are demanded but not paid by the deadline, with no longer having a cap. Brad Lehto noted that this approach indicates a positive flow in terms of enforcement measures.
- Aaron Sojourner raised the question of coordination of state resources controlled directly by the state legislature, wondering if there are local, county, or federal resources that might be accessible and relevant to the conversation about coordination. He suggested considering these resources in the overall coordination effort. Commissioner Nicole Blissenbach highlighted a strong working relationship with entities overseeing similar statutes, including regular meetings with the Attorney General's Office and the United States Department of Labor's Wage and Hour Division. DLI also engages with the City of Minneapolis regarding overlapping jurisdiction on ordinances. Commissioner Nicole Blissenbach wondered if inviting representatives from the IRS would be beneficial to the task force.
- Octavio Chung Bustamante acknowledged the focus on holding bad actors accountable in the presentation. He shared an encounter with a non-union contractor facing challenges competing with larger contractors, leading them to adopt the independent contractor model. Octavio Chung Bustamante pointed out the existence of two groups within this non-union contractor, one consisting of full-time employees and the other of independent contractors. He expressed concern about potential disparities in benefits and work outcomes between the two groups, particularly for Latino workers. Commissioner Nicole Blissenbach acknowledged the importance of Octavio Chung Bustamante's observation and emphasized that it is common for employers, especially in the construction industry, to have both employees on the records and another group off the books, paid in cash with no records. She noted that this practice can create challenges for law-abiding employers and leads to a "race to the bottom" in terms of compliance.

## 6. General Discussion

The task force members engaged in a discussion as follows:

- Representative Emma Greenman highlighted the detailed aspects covered in the construction domain and the integration of those elements into the general misclassification statute. She suggested addressing the partnership aspect separately for a focused conversation. Representative Emma Greenman sought



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input, especially from those in the construction industry or working with construction contractors, on the direction and effectiveness of enforcement. She emphasized the need for penalties that carry significance and act as a deterrent throughout the chain of enforcement. Representative Emma Greenman invited general comments.

- Briana Kemp expressed appreciation for the Commissioner's work on the presentation. She supports adding misclassification as a prohibited activity, enhancing penalties, and establishing partnerships. Briana Kemp wants to explore accountability up and down the chain, especially targeting those at the top for profit motives. She underscored the importance of effective outreach and education to ensure workers understand and can implement the proposed changes in their everyday practices.
- Representative Emma Greenman noted the importance of creating a comprehensive list, recognizing that certain aspects may involve non-governmental tools or other communication models. She anticipates that additional elements related to code enforcement and communication models will be added and discussed throughout the ongoing conversation.
- Burt Johnson appreciated the focus on addressing abuses in the construction industry but highlighted the interconnectedness of the largely immigrant workforce facing exploitation, extending beyond construction. He noted that the legislation discussed reflects a more aggressive approach by the legislature towards the construction industry, and he emphasized that exploitation is not exclusive to construction, mentioning the origin of exploitative business models in the agricultural sector. Burt Johnson pointed out the importance of Commissioner Nicole Blissenbach's broader focus on addressing exploitation across various industries and expressed concern that exploitation observed in construction may bleed into other sectors, making it a pervasive issue requiring complex solutions.
- Octavio Chung Bustamante expressed appreciation about the collaboration among agencies, emphasizing that addressing the issue of people not receiving the money they deserve is everyone's responsibility.
- Kim Vu-Dinh sought clarification on Burt Johnson's point regarding the construction-specific provisions created by the legislature. She inquired whether there was an intent, when these provisions were established, for them to function as a pilot that could potentially be expanded to gauge effectiveness, or if the intention was to have provisions specifically for areas where misclassification is deemed high risk. Commissioner Nicole Blissenbach indicated that she wasn't present when the construction-specific provision was established, but that it was likely created to address issues unique to the construction industry, although there is also a general misclassification statute. The multi-factor analysis used in construction practices could potentially be applied to other industries.
- Representative Emma Greenman added on that the intent is to figure out effective strategies in construction that can be applied across the broader economy. The



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approach involves strengthening and addressing issues such as subcontractor complexities, aiming for a statute that service as an enforcement and deterrence mechanism applicable economy wide. She suggested learning from enforcement practices in specific areas and applying them to emerging industries, considering changes since the 2007 OLA report.

- Aaron Sojourner highlighted that similar issues to those in construction are present in janitorial services and under the banner of workplace fissuring. He questioned whether the multi-factor test specific to construction could be extended more broadly. Commissioner Nicole Blissenbach explained that she wasn't suggesting that the multi-factor test should always be confined to construction. Instead, she aims to explore approaches within the existing framework to improve enforcement. She acknowledged the possibility of future changes but emphasized the need to enhance current practices in the near term. The historical context of construction's unique enforcement mechanism, involving codes and licensing, influenced its initial legislative treatment.
- Burt Johnosn underscored the valuable lessons learned from addressing misclassification in the construction industry, emphasizing the importance of retaining effective measures, like the nine-factor test. He commended Commissioner Nicole Blissenbach for balancing the need to preserve successful practices in construction while reinforcing efforts across various industries.
- Representative Emma Greenman inquired about the potential benefits of a comprehensive approach, extending proposed changes to the general misclassification statute. She sought insights into how such modifications could enhance enforcement actions, acting as a more effective deterrent to misclassification, thereby benefiting both workers and the government in preventing these issues. Commissioner Nicole Blissenbach explained that the general misclassification statute historically had a penalty of up to \$1,000 per violation, which increased to \$10,000 for repeat or willful violations in the current year. She highlighted that, due to the low penalty, their focus was on cases with provable wage and hour violations for a more significant impact. The recent increase in penalties provides a larger deterrent effect, making a broader impact beyond wage and hour violations.
- Representative Emma Greenman stressed the importance of statutes promoting broad enforcement for effective deterrents against misclassification. She underscored the variety of issues across government agencies and supports a comprehensive, whole-of-government approach. Representative Emma Greenman values coordination among agencies to strategically address misclassification's impact on workers and industries, and the need for a "no wrong door" approach.
- Aaron Sojourner highlighted the varying powers of different agencies, citing OSHA's strong whistleblower protection. He emphasized the importance of understanding and utilizing the diverse tools each agency possesses to address



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misclassification effectively and coordinate efforts across different areas of expertise.

- Burt Johnson agreed with Representative Emma Greenman’s “no wrong door” callout, citing a recent criminal case where a labor broker resumed illegal activities despite legal action. He pointed out the inadequacy of current penalties, stressing the need for comprehensive, strategic enforcement across agencies to achieve a meaningful deterrent impact. Burt Johnson expressed concern about relying solely on individual agency enforcement, calling for collaborative efforts to address misclassification effectively.
- Representative Emma Greenman emphasized the need for a comprehensive, whole-of-government approach that goes beyond information sharing. She sought input on creating synergy and strategic alignment among different agencies, considering the cumulative impact and exploring potential statutory enhancements to enhance collaboration.
- Attorney General Keith Ellison expressed support for the idea of a regular, collaborative approach to address misclassification issues. He emphasized the importance of creating a cultural environment where compliant employers are encouraged, leading to fewer violators who can be identified and dealt with more effectively. Attorney General Keith Ellison commended the concept of an ongoing communication and information-sharing table with diverse tools and pledged a staff member’s regular presence to support the initiative.
- Jonathan Moller emphasized the importance of a private right of action for non-construction workers in cases of misclassification. He stressed that due to limited resources, allowing affected individuals to take legal action is crucial. Jonathan Moller noted that misclassification itself is not a violation under overtime and minimum wage laws, making a private right of action significant for workers who may not realize their misclassification until they need certain benefits. He sees the current time as opportune to prioritize this action, especially with statewide benefits like sick leave making misclassification more evident to affected workers.
- Attorney General Keith Ellison added onto Jonathan Moller’s point, highlighting the economic considerations in private law practice. He emphasized the importance of government agencies handling cases that might be less financially rewarding for private sector lawyers. Attorney General Keith Ellison believed that by relieving some cases from the private bar, government agencies can focus on tougher and less remunerative cases, providing support to individuals who may have experienced violations to a lesser extent.
- Representative Emma Greenman shifted the focus to the role of the Department of Revenue and how it can effectively coordinate with other agencies. Daniel Getschel emphasized the Department of Revenue’s commitment to sharing relevant information with DEED and the DOLI to enhance coordination and ensure appropriate next steps are taken. While there are limitations due to federal tax



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information, Daniel Getschel assures that they can work within those constraints to share information related to worker misclassification with DEED and DOLI.

- Representative Emma Greenman emphasized the need for a collaborative approach, acknowledged that individual agencies can't enforce their way out of the pervasive issue of worker misclassification. She stressed the importance of deterrence and compliance in creating an economy where employers follow the law, and workers receive their due rights. Representative Emma Greenman prompted the agencies to consider strategic enforcement and collaboration to identify areas where investigation and enforcement efforts can be strategically directed for maximum impact on deterrence.
- Daniel Getschel acknowledged resource limitations and the need for a collaborative approach. He suggested focusing on bigger cases with larger impacts and proposed establishing clear goals for the interagency team to work towards. Providing guidance and direction to the team is seen as a way to enhance collaboration among the agencies.
- Representative Emma Greenman expressed agreement with Daniel Getschel's idea of setting goals collaboratively with various agencies involved in compliance and enforcement work.
- Deputy Commissioner Evan Rowe emphasized that just the creation of a body to address worker misclassification is powerful, signaling the state's commitment to addressing the issue.
- Carin Mrotz mentioned that on January 1<sup>st</sup>, the Governor of Maryland established an interagency task force that is engaged in similar work with comparable roles, including involvement with boards and licensures.
- Representative Emma Greenman emphasized the need for a "no wrong door," where individuals can easily access information on misclassification. This streamlined approach aims to foster a culture of compliance. She also stressed the importance of unified government messaging for effective outreach and communication.
- Brad Lehto shared his experience of having to guide union members to multiple contacts for assistance due to the absence of a centralized point of contact.
- Representative Emma Greenman noted that the recommendations align with the feedback from workers and business owners. She opened the floor for any final comments or questions before public testimony.
- Brittany VanDerBill asked about the progress on the data request related to highly impacted industries discussed in previous meetings and expressed interest in obtaining statistics on industry shifts and impacts. Representative Emma Greenman mentioned the limitations of the office in obtaining data independently but highlighted their approach of seeking information from relevant entities and expressed willingness to discuss the matter further. Aaron Sojourner also acknowledged the challenge of obtaining specific data.





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- Brittany VanDerBill expressed interest in obtaining specific data related to highly impacted industries, wanting to understand decision making and the origins and statistics behind the testimony provided in previous meetings. Representative Emma Greenman noted that there is a lack of comprehensive data on misclassification, citing the complex enforcement system and the absence of detailed tracking mechanisms as contributing factors. Aaron Sojourner acknowledged the challenge of measuring illegal activities like misclassification due to underreporting. He expressed frustration about the difficulty in obtaining accurate data on the extent of misclassification in various industries, emphasizing the need for more sophisticated approaches beyond basic metrics.
- Representative Emma Greenman noted the importance of gathering data from places where workers report problems and acknowledged ongoing efforts to compile available data with the help of researchers.
- Jonathan Moller pointed out that record-keeping requirements are mainly for employers declaring employees, with no similar requirements for declaring independent contractors to agencies like DEED or DOLI. This lack of requirements contributes to the scarcity of data on independent contractor misclassification.
- Commissioner Nicole Blissenbach emphasized the importance of experiential data from enforcement actions in shaping future policies. She mentioned that their experiences in enforcement actions have informed the development of policy to address challenges faced in dealing with misclassification issues. Commissioner Nicole Blissenbach noted the importance of this experiential data alongside broader national data, highlighting the difficulty in obtaining information from those who don't follow regulations or keep records.

## **7. Public Comment Period**

Public testimony was given by a member of the public as follows:

- Karen Kroll, a self-employed freelance writer, expressed concern that efforts to address misclassification may inadvertently affect independent contractors who choose to remain independent. She highlighted that many independent contractors prefer the flexibility and autonomy that freelancing offers, often due to personal circumstances like caregiving responsibilities or health challenges. Karen Kroll emphasized that some proposals may unintentionally hinder the ability of independent contractors to earn income and build their own businesses. She cautioned against measures that might negatively impact the millions of individuals who find opportunities for self-reliance and entrepreneurship in the gig economy.
- Brad Connor, a retired executive, and former business owner, provided a 40,000-foot level overview, expressing concern about the potential impact of broad measures on independent contractors. He emphasized the importance of understanding the diverse segments within industries and highlighted the need for flexibility, particularly for older individuals who may seek gig work as a source of



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income in retirement. Bradd Connor suggested that focusing on specific segments within industries is crucial and underscored the significance of preserving flexibility for individuals who prefer the independent contractor model.

## **8. Next Steps**

Representative Emma Greenman outlined the next steps for the task force, indicating that the goal is to take some initial action by formulating recommendations. The task force will reconvene on February 7<sup>th</sup> in Minneapolis, with a focus on public or stakeholder testimony related to the recommendations. She emphasized that the recommendations will be more general and less legislative, serving as a starting point for discussions. The task force will then vote on these recommendations, and Representative Emma Greenman plans to share a draft for review before the meeting. Additionally, she mentioned using a rubric to organize policy areas and encouraged members to identify any missing topics or provide input on specific areas of interest. The focus will be on maintain a high-level perspective and not drafting detailed policies. Representative Emma Greenman also mentioned the importance of organizing discussions around enforcement, education, and outreach.

## **9. Adjournment**

Representative Emma Greenman adjourned the meeting at 7:21 pm