



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

Meeting Date and Time: February 7th, 2024, 2 pm – 4 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: CTUL, 3715 Chicago Ave, Minneapolis, MN, 55408, and Microsoft Teams

Attendance

Members Present

Representative Emma Greenman
Rod Adams
Commissioner Nicole Blissenbach
Octavio Chung Bustamante
Daniel Getschel
Senator Clare Oumou Verbaten
Melissa Hysing
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)

Attorney General's Office (AGO) Staff Members Present

Carin Mrotz



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 and seconded to approve the agenda as presented. A vote was taken, and the motion passed unanimously.

3. Approval of January 23rd minutes

A motion was made and seconded to approve the January 23rd minutes. A vote was taken, and the motion passed unanimously.

4. Review of Policy Proposals from January 23rd meeting

Representative Emma Greenman showcased the *Government Investigation & Enforcement* policy proposals. The policy proposals are as follows:

- To ensure an effective and efficient whole of government approach to misclassification enforcement, the state should create an interagency misclassification enforcement and education partnership made up of DLI, DOR, DEED, Commerce and the Attorney General.
- With the goal of strengthening the communication and collaboration amongst the government partner entities, the partnership should:
 - set goals to maximize Minnesota's efforts to detect, investigate, and deter employee misclassification;
 - adopt a statement that the policy of the State of Minnesota is to prevent employers from misclassifying their workers;
 - share data and make referrals amongst the partner entities;
 - serve as the primary point of contact for workers, businesses and the public impacted by misclassification; and
 - engage in public outreach and education.
- Modify Minnesota's construction independent contractor statute (Minn. Stat. § 181.723) to promote enforcement efficiency, strengthen enforcement authority for DLI, and enhance available remedies and penalties to disincentivize misclassification and systemic noncompliance.
- Provide a private right of action by employees who have been misclassified.
- Modify the contractor registration system (326B.701) to:
 - simplify the registration application process by streamlining requirements and making them applicable to all persons required to register;



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- prohibit employers from requiring an individual, who is the person's employee, to register in the contractor registration system; and
- change the connection between the contractor registration system and the IC multi-factor analysis in Minn. Stat. § 181.723, to clarify the relationship and documentation required for an independent contractor relationship in the construction industry to exist.

5. Public Testimony Related to Proposals

Public testimony related to the policy proposals were given by members of the public as follows:

- Bernie Burnham, President of the Minnesota AFL-CIO, spoke in favor of the task force's recommendations to reduce worker misclassification in Minnesota. She emphasized the importance of ensuring that all workers, regardless of union affiliation, have safe workplaces, sustainable jobs, time for their families, and dignified retirements. Bernie Burnham highlighted how many employers, across various industries, exploit workers by misclassifying them as independent contractors, depriving them of essential protections and benefits. She urged for stronger enforcement of worker misclassification laws to deter this unfair and illegal practice.
- Paul Slattery, an organizer and political director for Teamsters Union Local 120, representing 12,000 members across various industries, highlighted how worker misclassification and workforce fissuring are strategies used to reduce labor costs and resist unionization, especially in delivery, trucking, and distribution industries. He expressed strong support for the task force's recommendations, emphasizing the need for robust enforcement, including creating a misclassification enforcement partnership and policies to discourage workforce fissuring.
- Doug McNair, who worked as a delivery driver for five years, asked whether workers will have the freedom to choose between being classified as W2 employees or independent contractors. As a response, Paul Slattery stated that as a W2 employee, individuals have certain rights such as unemployment benefits and workers' compensation, providing more opportunities for fair wages and working conditions compared to being classified as an independent contractor. Representative Emma Greenman added that the legal structure of employment and labor laws isn't about providing choice but rather ensuring compliance and clarity for both employers and employees regarding their rights and obligations under the law. Jonathan Moller also stated that under existing law, the determination of whether a worker is an employee or independent contractor is based on the actual facts of the work relationship, and she believes that the proposal wouldn't alter this analysis.
- Woodrow Piner, a business representative with the North Central States Regional Council of Carpenters, highlighted the efforts to combat illegal business practices in the construction industry, including worker exploitation through



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misclassification and other means, and urged for strategic enforcement to hold developers and contractors accountable for such exploitation. Senator Clare Oumou Verbaten sought clarification on the coordinated strategy and categorization of efforts discussed. Woodrow Piner described a team tracking projects and collecting data to identify patterns of exploitation, using a database to monitor developers, subcontractors, and brokers, and commended government agencies for naming specific projects, which helps hold end users accountable for exploitation. Senator Clare Oumou Verbaten expressed gratitude for the database tracking efforts, highlighting the difficulties workers face in piecing together information, emphasizing the need for employers to be held accountable for not providing necessary wage information.

- Priscillas Aguilares shared his harrowing journey from Honduras to the United States and testified about his experiences working for companies, including incidents of falling at work, being mistreated, and ultimately getting fired unfairly. He described living conditions and the lack of proper compensation and medical care, expressing hope for assistance from the task force to address injustices like his. Octavio Chung Bustamante thanked Priscillas Aguilares for sharing his story.
- Lucas Franco, the regional research manager for the Laborers Construction union representing 13,000 members across Minnesota and North Dakota, expressed support for the draft recommendations to address widespread misclassification in the construction industry, citing instances of exploitation and the need for accountability measures to prevent it. He emphasized the importance of agency cooperation, accountability, and transparency to ensure worker justice and the halt the race to the bottom in the construction sector. Aaron Sojourner asked if there were examples of state policies elsewhere in the country that effectively addressed the connection between public subsidy dollars and accountability for employers' treatment of their workers, suggesting potential considerations for Minnesota to strengthen accountability mechanisms and ensure public funds support law-abiding employers. Lucas Franco highlighted various approaches from other states, such as Washington's use of qualified allocation plans to incentivize high-road practices and extending responsible contracting practices to ensure taxpayer subsidies support responsible contractors, emphasizing the importance of closing the accountability gap and holding developers and project owners accountable for their projects' outcomes. Burt Johnson inquired about the differences in worker payment methods and treatment between HUD-funded projects with prevailing wage requirements and low-income housing tax credit-funded projects lacking labor standards. Lucas Franco underscored the substantial contract in labor standards between projects funded by tax increment financing or low-income housing tax credits lacking robust labor standards and those funded by the Minnesota Housing Finance Agency with prevailing wage requirements, elucidating the critical role of prevailing wage standards in fostering fair competition and transparency in the construction sector while addressing prevalent issues evident in projects lacking such standards. Jonathan Moller raised a concern about a gap in the proposed



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recommendations regarding limited data sharing solely among enforcers, suggesting the inclusion of agencies like housing finance and transportation, which could also play a role in addressing related issues. Lucas Franco emphasized the importance of data transparency for grant-giving agencies like the Minnesota Housing Finance Agency, citing their past successful engagement and collaboration with the agency to address issues of exploitation in construction projects, indicating its potential for motivating preventive actions. Amir Malik asked whether there are reasons why Lichtechn projects typically do not trigger prevailing wage standards like TIF projects do and whether there should be a policy to enforce prevailing wage standards for Lichtechn projects. Lucas Franco explained that Lichtechn projects were established as a federal tax program under the Reagan administration, potentially leading to a lack of prevailing wage standards, suggesting a legal foundation exists to enhance standards, including implementing prevailing wage, and highlighting challenges in ensuring consistent labor standards across different cities with TIF programs. Burt Johnson inquired if Lucas sees parallels between vertical integration in the stone façade manufacturing industry, potentially leading to misclassification and control from the top, akin to issues seen in other industries like package delivery. Lucas Franco confirmed that there are significant parallels between the vertical integration in the stone manufacturing industry, where a decision was made to switch W2 employees to independent contractors, and similar issues observed in other industries within construction.

- Albaro Chavez, a construction worker from St. Paul, shares his and his father's experiences of enduring wage theft, verbal abuse, lack of timely or sufficient pay, absence of overtime compensation, and workplace accidents without receiving workers' compensation due to misclassification as independent contractors, highlighting the pervasive injustices within the construction industry and his determination to advocate for workers rights.
- Veronica Mendez, co-director of CTUL, expressed support for policy proposals addressing misclassification, emphasizing the need for stronger enforcement, penalties, and modifications to contractor registration systems to protect workers across various industries, highlighting the systemic barriers to accountability and the importance of incentivizing workers to speak up against abuses while commending the task force for including worker testimony in the process. Senator Clare Oumou Verbaten expressed gratitude for the work being done and acknowledges the burden on workers who experience exploitation, asking about ways to change systems within state agencies to better support workers when they come forward to report abuse. Veronica Mendez emphasized the importance of enforcement agencies prioritizing protection against retaliation for workers and ensuring communication, consequences, and penalties for employers who don't follow the rules. Amir Malik asked if workers are aware at the beginning of their projects that they won't have access to healthcare or other benefits, and inquired about potential actions state agencies could take to address this issue based on previous testimonies. Veronica Mendez answered that workers in the non-union



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residential sector often enter the industry aware that they won't have access to healthcare or workers compensation, driven by desperation, although they know they deserve better, leading to successful organizing efforts to fight for their rights and needs. Commissioner Nicole Blissenbach emphasized the crucial role of workers' compensation coverage in protecting employees but noted that fear and intimidation often prevent workers from accessing it, underscoring the importance of proposals to strengthen enforcement and incentivize compliance. Veronica Mendez expressed gratitude for the collaboration between community organizations, unions, and government departments like DLI, highlighting the importance of strengthening partnerships for effective enforcement efforts. Briana Kemp named the prevalent issue of workers being misclassified as independent contractors, leading to the lack of workers' compensation and benefits, often resulting in cash payments without a clear understanding of the employment relationship.

- Tony McGarvey, a representative of the Minneapolis Painters and Tapers Union, emphasized the detrimental impact of worker misclassification not only on workers but also on law-abiding employers and the national economy, expressing support for proposed measures aimed at addressing the issue.
- Anna Vergara, a former investigator for the AGO and DLI, highlights the importance of involving the Minnesota Department of Human Rights in addressing worker misclassification, emphasizing the prevalence of discrimination based on immigration status in her investigations and the potential role of the Department of Human Rights in penalizing such discriminatory employers.
- James Foster, a small business owner in the construction industry, discusses the challenges he faces competing against larger companies that engage in fraudulent practices such as lying, cheating, and stealing from their workers, highlighting how this unfair competition affects both his business and the communities where his workers reside, emphasizing the broader impact of wage theft beyond just wages.

6. Discussion and Adoption of Recommendations

The task force members engaged in a discussion and adoption of the policy recommendations as follows:

- Representative Emma Greenman proposed an amendment to the recommendations to include language that allows for coordination with other government agencies for effective enforcement. She invited task force members to weigh in on that amendment or to keep the language broad and as is.
- Commissioner Nicole Blissenbach suggested keeping the language general, noting the difference between agencies with enforcement responsibilities and those with a stake but not enforcement authority, emphasizing the importance of partnership and information sharing while considering the confidentiality of joint investigations.



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- Senator Clare Oumou Verbaten emphasized the significance of immigration and national origin discrimination as a major racial justice issue and stressed the importance of including this aspect in the ongoing conversation and partnership.
- Carin Mrotz highlighted the importance of consulting with agencies before naming them in policy to ensure they have the capacity and capability to participate effectively in the proposed partnership.
- Representative Emma Greenman proposed two options: either adopting general language and later refining specific agencies mentioned for further proposals or leaving it as is and discussing it further. She expressed uncertainty about which approach to take.
- Senator Clare Oumou Verbaten offered to reach out to the Department of Human Rights to get their perspective.
- Brian Elliot offered that the language could remain generalized and then later on be specified when translated it into policy.
- Representative Emma Greenman proposed amending the recommendations to include general language, suggesting that they can later revisit the specifics during the policy-making process. She then suggested voting on the recommendations as amended.
- Aaron Sojourner offered that considerations for a private right of action and sharing gains from enforcement actions with whistleblowers could be addressed separately in a different context or bucket.
- Deputy Commissioner Evan Rowe suggested that the topic of whistleblowers could be included in the discussion as part of the private right of action, though he offered that it may already be addressed or could be brought up separately for further discussion.
- Commissioner Nicole Blissenbach mentioned that there are existing remedies available for individuals who bring a private right of action, including anti-retaliation provisions and compensatory damages for those who have been fired or retaliated against.
- Amir Malik expressed his support for incentivizing whistleblowers financially, highlighting its importance in leveling the playing field for all employers, He suggested that this aspect should be examined further, separate from incentivizing third parties.
- Kim Vu-Dinh suggested a minor change in the wording of the recommendations, proposing to start the list with “make recommendations” to clarify that the task force does not possess legislative authority. Representative Emma Greenman noted that point and mentioned that she wasn’t planning on keeping the header as is.
- Jonathan Moller sought clarification on Aaron’s suggestion, proposing that the bullet point could be revised to something like “strengthened whistleblower incentives to incentivize third parties to report misclassification violations.”
- Commissioner Nicole Blissenbach highlighted the focus on retaliation provisions in the past, indicating that this year they strengthened many of them. She noted that retaliation is distinct when discussing unemployment insurance (UI) to individuals



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being separated from employment, and she mentioned antidiscrimination measures related to the use of public benefits, which would encompass UI.

- Aaron Sojourner acknowledged concerns about retaliation being an obstacle for agencies to obtain relevant information and emphasizes the importance of addressing this issue seriously.
- Representative Emma Greenman mentioned that next meeting will focus on co-enforcement models where work organizations and community organizations collaborate with the government, emphasizing the need for deeper discussions on more complex questions with a focus on recent changes in law, but that a general bullet point could be added on strengthening whistleblower protections and incentives.
- Aaron Sojourner suggested language around exploring incentives and protections for whistleblowers regarding misclassification.
- Representative Emma Greenman restated that the vote will encompass the six main points along with two proposed amendments: the first to enhance communication and collaboration among government entities and the second to explore strengthening incentive and protections for whistleblowers regarding misclassification.
- To the count of 14 ayes, 0 nays, and one abstention, the policy recommendations have been adopted as amended.

7. Discussion on Timing and Structure of Future Proposals and Recommendations

Discussion of timing and structure of future proposals and recommendations took place as follows:

- Representative Emma Greenman outlined the next steps, indicating that they will focus on models of co-enforcement and education in March. She suggested moving on to notice and deterrence questions, incorporating research pieces, and addressing tests and penalties by June or July, organizing efforts based on members' interests and expertise.

8. Adjournment

Representative Emma Greenman adjourned the meeting at 4:00 pm