



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

Meeting Date and Time: March 15th, 2024, 10 am – 12 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: Mitchell Hamline School of Law, 875 Summit Avenue, St. Paul, MN, 55105, 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

Briana Kemp

Amir Malik

Aaron Sojourner

Brittany VanDerBill

Kim Vu-Dinh

Brian Elliot (Ex-Officio)

Lindsey Lee (Ex-Officio)

Members Absent

Burt Johnson

Deputy Commissioner Evan Rowe

Jonathan Weinhagen

Attorney General's Office (AGO) Staff Members Present

Carin Mrotz

Abdulaziz Mohamed



Agenda Items

1. Call to order and roll call

Rod Adams calls the meeting to order at 10:00 am. 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 February 7th minutes

A motion was made and seconded to approve the February 7th minutes. A vote was taken, and the motion passed unanimously.

4. Co-Enforcement of Labor Standards Presentation: Professor Janice Fine

Janice Fine, Professor in the Rutgers School of Management and Labor Relations, presented on strategic enforcement. The presentation featured the following:

- Findings from Minneapolis/St. Paul Study
- Evolution of the Economy and Labor practices
- Janitorial Services: Pre-1970s Working Conditions
- Growth of Subcontracting
- Impact on Working Conditions, Impact on Industry
- Who's Missing when Relying Solely on Complaints?
- Fear of Retaliation Keeps Workers Silent
- Main Components of Strategic Enforcement
- Creating Ripple Effects
- Individual vs Systemic Regulation
- Problem with Individualized Regulation
- Partnership Structure – Industry Teams
- Role of Community Partners
- Minnesota Misclassification Bill

5. Co-Enforcement of Labor Standards Presentation: CTUL

Veronica Mendez Moore of CTUL presented on using the co-enforcement for effective labor standards enforcement. The presentation featured the following:

- Why Co-Enforcement?
 - Reaching the Most Vulnerable Populations
 - Racial Equity



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- Breadth and Depth of Information
- Prevention and Compliance
- Level the Playing Field
- What is Required for Successful Co-Enforcement?
 - Ongoing communication and collaboration between community partners and state/city staff
 - Sustainable and significant funding for community partners to do this work

6. Co-Enforcement of Labor Standards Presentation: Brian Walsh

Brian Walsh, the former Director of the Labor Standards Enforcement Division for the City of Minneapolis, provided a case study of co-enforcement from the lens of local government:

- Brian Walsh emphasized the importance of achieving compliance through a continuum of enforcement tools, including education and empowerment of workers, collaboration with government agencies, unions, and community partners. He highlighted the significance of strategic compliance, triage in resource allocation, and transparency in decision-making. Brian Walsh discussed the impact of partnerships in enforcement efforts, citing examples like the McDonald's case. He concluded by stressing the need to prioritize labor standards compliance for business owners, acknowledging progress made through partnerships with worker centers and community organizations.

7. Co-Enforcement of Labor Standards: Discussion

The task force members asked questions to the presenters and engaged in a discussion as follows:

- Brittany VanDerBill inquired about the applicability of the ABC test, considering its origins alongside the Fair Labor Standards Act (FLSA) from the 1930s, and how it's relevant in addressing modern workplace issues. Janice Fine highlighted the historical precedent of involving unions and high-road employers in labor standards enforcement, dating back to Theodore Roosevelt's era, before explaining the components and importance of the ABC test in determining employee status, emphasizing its role in ensuring uniform definitions across agencies and enabling examination of supply chain dynamics, with examples from various industries such as garments, supermarkets, and the challenges posed by misclassification.
- Brittany VanDerBill thanked Janice for the response and cautioned about the potential adverse impacts on legitimate independent contractors due to the ABC test, urging consideration of unintended consequences considering the historical context of the FLSA.



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- Aaron Sojourner appreciated the discussion on income enforcement and emphasized the need for community resources to uncover relevant information, asking about funding and compensation models to recognize and capture the value co-enforcers bring to society. Veronica Mendez Moore discussed the need for significant funding, mentioning a request for \$800,000 from the City of Minneapolis for a program involving three organizations, emphasizing a one-to-one ratio of investigators to \$100,000 in enforcement contracts with community organizations, and highlighting the value created for compliance, the economy, workers, and society. Janice Fine discussed the substantial investments made in co-enforcement across various cities, highlighting examples like California's \$5 million allocation for domestic worker enforcement, emphasizing the need for longer-term contracts and deeper partnerships between agencies and organizations, and suggesting sector-specific funding mechanisms to address chronic patterns of violations, ultimately stressing the importance of holding employers accountable throughout the supply chain.
- Kim Vu-Dinh inquired about whether funding for co-enforcement initiatives has ever been sourced from settlements obtained by Attorney General offices, specifically asking if there has been a structured line item in settlement designated for this purpose. Janice Fine responded positively to the idea, highlighting that while it could be beneficial, it shouldn't compromise the restitution owed to workers, emphasizing the importance of ensuring workers receive full compensation for wages owed to them.
- Brian Walsh added that there's a valid discussion surrounding the utilization of licensing fees as a funding source for enforcement initiatives, noting that it could offer more stability and specificity tailored to sectors, while also mentioning the need for careful consideration regarding the potential risks and incentives associated with funding enforcement through settlements, highlighting the importance of avoiding perverse incentives such as issuing quotas for fines.
- Octavio Chung Bustamante, drawing from his experience as a former organizer, underscored the difficulties faced by workers, especially undocumented ones, in seeking assistance for issues like missing hours or unsafe conditions, highlighting the significance of organizations like CTUL. He also inquired about CTUL's capacity to handle cases and support workers. Veronica Mendez Moore explained that they have approximately nine organizers actively engaging workers in discussing their rights and advocating for change, handling individual and group cases while acknowledging the broader systemic issues. She emphasized that much of the work in enforcing labor rights goes beyond what they are directly funded for, with organizations like theirs often subsidizing these efforts through various sources of funding.
- Representative Emma Greenman raised questions about the process of worker engagement during investigations, particularly for vulnerable workers, and highlighted the importance of maintaining their involvement throughout the process. She inquired about the collaboration between agencies, community



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organizations, and unions to ensure effective worker engagement and emphasized the need for strategies to support workers and maintain their participation to ensure successful enforcement outcomes.

- Brian Walsh emphasized the value of partnerships between agencies and organizations like CTUL in making enforcement more accessible to vulnerable workers, highlighting the credibility lent to each other through collaboration. He identified challenges such as data practices laws hindering information sharing and discussed the notion of neutral government agencies, suggesting a need for a shift in mindset to prioritize enforcement and overcome barriers to effective partnership.
- Janice Fine agreed with Brian Walsh's remarks and emphasized the need for better information sharing between agencies and organizations like CTUL during enforcement cases. She suggested using common interest agreements as a tool to facilitate this sharing, citing their use in California and by the Department of Labor. Janice Fine stressed the importance of agencies recognizing the power imbalance between workers and employers and ensuring fairness while collaborating effectively with organizations.

8. Update on Legislative Process

An update and discussion were had on the Worker Misclassification legislation as follows:

- Representative Emma Greenman provided an update on the worker misclassification legislation, which incorporates recommendations from task force members and stakeholders. The bill addresses various issues, with a particular focus on the construction industry. She mentioned that the bill has passed through three of the four required stops in the House, with the final stop being in the Taxes Committee.
- Senator Clare Oumou Verbeten expressed excitement about carrying the bill on the Senate side. She mentioned that the bill has already had a hearing in the Senate Labor Committee and will be heard in the Senate Judiciary Committee soon. She also highlighted the importance of better coordination among agencies involved in enforcement. Senator Clare Oumou Verbeten mentioned addressing concerns through amendments and emphasized her willingness to engage in conversations and address any questions or concerns.
- Representative Emma Greenman mentioned the recent OLA report highlighting coordination issues in enforcement over the past 17 years. While the bill doesn't cover all the report's recommendations, it addresses concerns like the gig economy and the need for better agency coordination. Senator Mark Koran's comments echoed these concerns, indicating alignment between the report's findings and the ongoing legislative efforts.
- Brittany VanDerBill expressed concern about the level of detail in the bill compared to the high-level overview voted on in the last task force meetings. She noted an increase in factors for independent contractor analysis, which seemed



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contrary to streamlining, and questioned if the bill aimed to restrict independent contracting in construction. Representative Emma Greenman clarified that while the task force offers recommendations, the legislative process involves detailed work and amendments based on stakeholder feedback. Regarding the independent contractor test, the focus is on addressing abuse issues in the construction industry and strengthening enforcement tools. The goal is to ensure that independent contractors genuinely meet the criteria, not merely in name, based on years of experience and persistent issues highlighted in reports like the 2007 OLA report.

- Commissioner Nicole Blissenbach agreed with Representative Emma Greenman emphasized the importance of addressing challenges faced by DOLI in enforcing the current construction misclassification test. The goal is to streamline the test based on experiences and ensure more efficient enforcement. Measures like requiring a written contract aim to simplify enforcement processes and prevent entities from evading accountability by forming new entities. The focus is on enhancing enforcement effectiveness rather than capturing more independent contractors.
- Senator Clare Oumou Verbeten echoed agreement with Representative Emma Greenman and Commissioner Nicole Blissenbach. She highlighted specific recommendations from the task force, focusing on modifying the construction independent contractor statute to enhance enforcement efficiency, strengthen enforcement authority, and update liability provisions to deter misclassification and noncompliance. She emphasized the importance of translating these recommendations into detailed provisions within the bill.
- Brittany VanDerBill appreciated the clarification but stressed the need for more detailed information as a task force member. She emphasized the importance of having sufficient details to fulfill her role effectively and ensure accurate representation of the task force's recommendations. Brittany VanDerBill requested more comprehensive information moving forward to address her concerns. Representative Emma Greenman explained that although the bill incorporates task force recommendations, it has undergone changes in multiple committees and through amendments based on stakeholder feedback. She clarified that the bill isn't explicitly endorsed by the task force but rather includes recommendations from the last meeting.
- Kim Vu-Dinh clarified that the task force is advisory to the Attorney General's Office, emphasized its educational role, and sought clarification on whether crafting legislation is the Attorney General's responsibility. Carin Mrotz explained that while the committee's primary role is to study and make recommendations, the Attorney General's Office does support and endorse legislative to help consumers. She clarified that the task force's recommendations have been incorporated into the legislative process, although the bill itself isn't considered the direct product of the task force. Instead, the recommendations have influenced various parts of the legislation.



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- Senator Clare Oumou Verbeten expressed agreement with Carin Mrotz's explanation and emphasized her passion for pursuing legislation informed by the task force's work. She highlighted how the partnership aspect discussed in the task force influenced the legislation brought forward at the Capitol.

9. Public Comment Period

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

- Pete Giancola emphasized the importance of addressing insurance coverage for workers not covered by their employers, highlighting the financial incentive for insurance agents to sell policies to cover such workers. He suggested that focusing on insurance could prevent many of the issues the task force is trying to address and emphasized the significance of this aspect as he believes is often overlooked. Representative Emma Greenman appreciated Pete's insights, mentioning that similar concerns were raised by another task force member, Aaron Sojourner. She pointed out that the Department of Commerce's involvement in the legislation and recommendations addresses insurance authority. Representative Emma Greenman suggested further exploration of these issues in the remaining six months of the task force's tenure and potential collaboration with the Department of Commerce for better solutions.

10. Adjournment

Rod Adams adjourned the meeting at 12:00 pm.