



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

Meeting Date and Time: May 29th, 2024, 9:30 am – 12:30 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: Department of Labor and Industry (Minnesota Room), 443 Lafayette Rd, St. Paul, MN, 55155, and Microsoft Teams

### **Attendance**

#### **Members Present**

Representative Emma Greenman

Rod Adams

Commissioner Nicole Blissenbach

Octavio Chung Bustamante

Commissioner Paul Marquart (Proxy for Daniel Getschel)

Senator Clare Oumou Verbaten

Bernie Burnham (Proxy for Melissa Hysing)

Richard (Proxy for Briana Kemp)

Amir Malik

Aaron Sojourner

Brittany VanDerBill

Kim Vu-Dinh

Deputy Commissioner Evan Rowe

Brian Elliot (Ex-Officio)

Lindsey Lee (Ex-Officio)

#### **Members Absent**

Burt Johnson

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 9:30 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 March 15<sup>th</sup> minutes**

A motion was made and seconded to approve the March 15th minutes. A vote was taken, and the motion passed unanimously.

### **4. Review of Legislative Activities and Status of HF 4444/SF 4483**

Senator Clare Oumou Verbaten and Representative Emma Greenman provided an overview of legislative activities and the status of HF 4444/SF 4483. The bill authors and task force members engaged in discussion as follows:

- Senator Clare Oumou Verbaten emphasized the importance of the bill's creation of an intergovernmental partnership for misclassification enforcement and education. The bill aims to streamline enforcement efforts across different government agencies to better detect, investigate, and enforce misclassification, with penalties established specifically for misclassification itself. Additionally, the bill includes clarifying changes to the construction independent contractor test and grants workers the right to take legal action when they've been misclassified.
- Representative Emma Greenman provided an overview of the changes made during the legislative process, including clarifications on the partnership, adjustments to the construction test, and revisions regarding individual liability, particularly emphasizing the importance of knowingly committing misclassification for penalties to apply. She also mentioned efforts to pass Section 530 reform, aiming to decouple Minnesota's task code from the IRS standard.

### **5. Education: Testimony from Business, Workers, and Others**

Public testimony was given by members of the public on education as follows:

- Gary Thaden, the government affairs director for the Minnesota Mechanical Contractors Association and the National Electrical Contractors Association, highlighted the importance of disseminating information about the passed legislation to contractors statewide. He suggested utilizing various platforms like



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agency websites and home building sections to inform homeowners about the benefits of hiring compliant companies. Gary Thaden stressed the need for swift action in implementing the legislation and engaging different stakeholders, including government agencies and industry organizations, to ensure compliance and dissemination of information. He closed by thanking state employees involved in the process.

- Tim Worke, Chief Executive Officer for the Associated General Contractors of Minnesota, discussed the need for clear, detailed guidance for contractors. He suggested various methods for disseminating information and provide support, including in-person seminars, webinars, frequently asked questions pages, administrative hotlines staffed by experts, and industry-wide forums. Tim Worke stressed the importance of timely responses and suggested providing a plain English summary of the law's requirements, along with identifying a single agency point of contact for inquiries.
- Connie Armstrong, general counsel for Harris Company, expressed concerns about the implications of the legislation, particularly regarding the confidentiality of tax documents and the uncertainty it brings to the construction industry's business practices. She emphasized the need for clear guidance and standardized procedures to ensure compliance across the industry, especially for smaller subcontractors who may not have access to legal counsel. Connie Armstrong suggested the development of checklists or forms to streamline the compliance process and ensure consistency in requests from contractors.
- Davis Senseman, founder and CEO of Davis Law Office, an Elevate Hennepin group that provides advice to Hennepin County businesses, highlighted the challenges businesses face in understanding and complying with employee classification laws. They expressed appreciation for efforts to consolidate information and emphasized the importance of leveraging existing resources like county-specific programs and nonprofits to support small businesses in navigating these regulations. David Senseman emphasized the need for clear guidelines and accessible information to help small businesses understand their obligations under the law.
- Representative Emma Greenman asked Davis Senseman what types of small businesses they hear from through their work. Davis Senseman mentioned working with a variety of small businesses, including construction contractors, retail shops, restaurants, bars, and service industries, emphasizing that businesses of all types encounter questions about employee classification as they grow and hire additional staff.
- Kim Vu-Dinh asked Davis Senseman if they had any other ideas on where small businesses might be obtaining their information. Davis Senseman responded that small businesses often get information from Google searches and from each other, which can lead to incorrect advice. They noted that while programs like Elevate Hennepin have improved the quality of information over time, the reliance on



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potentially unreliable internet sources and informal advice networks remains a significant issue.

- Carin Mrotz shared an anecdote about a mother who, as a new entrepreneur, faced a state audit after incorrectly classifying independent contractors. Carin Mrotz then asked Davis Senseman about the types of resources available for non-traditional business owners who need guidance on such issues but lack a business background. Davis Senseman explained that they work with many entrepreneurs who lack formal business education. Through programs like Elevate Hennepin and the City of Minneapolis initiatives, they provide critical advising resources, helping businesses comply with regulations and thrive. They emphasized the importance of such programs, suggesting they could serve as models for other counties to support non-traditional business owners.
- Karen Kroll, a self-employed freelance writer, shared her work experience, detailing the administrative process involved and the resources she used, such as the Secretary of State website and IRS publications, to ensure compliance. She emphasized the importance of consulting with her accountant for such decisions and acknowledged the complexities and constant changes in tax regulations.
- Ingrid Christensen, owner of a language services company, employs about 2,000 independent contractors annually. Despite her business's complexity, she highlighted the lack of business degree programs addressing such intricate operations. Ingrid Christensen initially classified all linguists as 1099 contractors without issue until industry associations highlighted potential compliance concerns. She now relies heavily on experts for guidance on proper worker classification and compliance.

## **6. Discussion: Testimony from Business, Workers, and Others**

Based on the public testimony given, the task force members engaged in a discussion as follows:

- Commissioner Nicole Blissenbach expressed optimism about the partnership after hearing the testimony. She emphasized the need to distill information from various agencies into a straightforward format, acknowledging that while it will be a significant effort, it's worthwhile and could make a difference.
- Brittany VanDerBill highlighted the valuable perspectives and suggestions related to education and awareness presented during the testimony. She noted the importance of addressing concerns proactively before legislation is passed, emphasizing the need for more stakeholder feedback to avoid issues and confusion later on, and suggested hiring a single point of contact to streamline processes.
- Kim Vu-Dinh mentioned the importance of strategy and questioned whether there could be a way to prioritize Minnesota's resources online to ensure they are utilized effectively.
- Representative Emma Greenman highlighted the importance of ensuring that government resources are user-friendly and easily accessible, especially in the



content of online searches. She emphasized the need for information to be disseminated effectively and locally relevant, rather than being buried under generic search results.

- Richard emphasized the importance of establishing a unified, one-stop resources for information to ensure consistency and avoid confusion, highlighting the need for the same information to be available in multiple places, reducing the likelihood of conflicting interpretations and ensuring that users receive accurate guidance, particularly when conducting online searches.
- Carin Mrotz emphasized the need for accurate online resources, citing how the Secretary of State improved search results. She stressed the importance of small business owners conducting through research and updating their knowledge, especially on worker classification. Additionally, she highlighted the need for reliable online information to avoid accessing irrelevant resources from different states.
- Amir Malik reflected on the importance of connecting businesses with resources, recalling his experience with outreach efforts. He highlighted the need for clearer understanding of worker classification tests, particularly the ABC test, and suggested making resources easily accessible to ensure better education on the subject.
- Brittany VanDerBill raised questions about ensuring businesses understand their responsibilities under legislation, suggesting the need for official notices to be sent to every business or independent contractor in the state. She also questioned the appropriateness of advising business owners to seek legal counsel and proposed addressing the issue for clarity.
- Representative Emma Greenman discussed questions regarding communication with businesses, particularly regarding the resources available to them, such as the Secretary of State's office. She emphasized the need for clear information and guidance, especially for small businesses that may not be well-connected with professional associations. Additionally, Representative Emma Greenman highlighted the importance of considering successful local programs like Elevate Hennepin and exploring ways to expand such initiative statewide to support entrepreneurship consistency across regions.
- Deputy Commissioner Evan Rowe emphasized the extensive network of small business supports available, such as economic development consultants and community foundations, as vital resources for entrepreneurs seeking guidance and professional assistance. He suggested leveraging these networks to effectively disseminate information and navigate regulatory changes, emphasizing their importance in supporting small businesses.

## **7. Discussion on Timing and Structure of Remaining Meetings and Topics**

Discussion of timing and structure of remaining meetings and topics took place as follows:



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- Representative Emma Greenman emphasized the need to assess whether the state is collecting the correct information and suggested canvassing networks to understand where people get their information. She proposed exploring the current employment classification tests, particularly the ABC test, and the idea of adopting a presumption of employment. Representative Emma Greenman outlined the need for additional meetings to cover these topics comprehensively, including testimony and comparisons with other states. She also mentioned revisiting research questions and data to form a set of recommendations. Finally, Representative Emma Greenman suggested two scheduling options: either five meetings over the summer to conclude by the end of August or monthly meetings to finish by the year's end.
- Kim Vu-Dinh asked if there would be a time allocated for drafting materials or if this task would be delegated to an agency. She suggested involving her students and using it as a learning opportunity for them. Carin Mrotz mentioned that she will follow-up with Kim Vu-Dinh on that.
- Carin Mrotz emphasized the need for the task force to review the OLA report and suggested having someone from the OLA present their findings and recommendations at a meeting. She also clarified that the task force members' terms were administratively set up for two years, allowing flexibility in scheduling the remaining meetings, whether to cram them before the end of August or extend the term slightly beyond that, depending on the group's consensus.
- Representative Emma Greenman suggested spacing out the meetings over a few more months rather than cramming them into the summer, considering the importance of thorough discussions and everyone's availability.
- Representative Emma Greenman suggested dedicating an entire meeting to research, possibly splitting it to include OLA findings and other research. She proposed discussing the presumption of employment, which is already part of Minnesota law, and examining different classification factors from various tests. She emphasized the importance of evaluating these factors before deciding on new tests and asked for input on structuring these discussions and the related testimonies effectively. Representative Emma Greenman also highlighted the need to address the challenge of multiple tests across agencies and the value of potentially having a unified test.
- Brittany VanDerBill raised a question about the overall process for examining different tests, emphasizing the importance of hearing testimonies from businesses and individuals. She also mentioned a researcher who conducted a study on AB5 in California and expressed the need to include their insights into the discussion. Representative Emma Greenman took note of Brittany VanDerBill's suggestion, emphasizing that insights from both businesses and empirical research would be valuable in the discussions about different tests and their components.



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- Amir Malik raised the question of whether enforcement falls within the purview of the task force, suggesting that understanding enforcement mechanisms is crucial for shaping labor laws and conducting effective outreach. Representative Emma Greenman emphasized the importance of considering the enforceability of the tests, highlighting the need to understand how they are perceived by the public, workers, and businesses from a compliance perspective, ensuring that any regulations proposed are practical and realistic.
- Aaron Sojourner suggested forming a smaller working group to articulate the leading options, strengths, weaknesses, and trade-offs of different approaches, aiming for inclusivity and diversity to ensure a comprehensive understanding before sharing findings for broader discussion.
- Representative Emma Greenman suggested including relevant stakeholders and seeking input from agencies to gather institutional knowledge on enforceability perspectives regarding different tests.
- Senator Clare Oumou Verbaten highlighted the importance of budgeting for implementing the suggestions discussed in future meetings, emphasizing the need to allocate resources for partnership implementation, particularly as the legislative session transitions into the budget year.
- Commissioner Nicole Blissenbach emphasized the importance of establishing the partnership before determining its resources needs, highlighting the significance of in-depth discussions once the partnership is formed to address the goals effectively. She also noted the considerable expense involved in recent mailings related to earn sick and safe time, underscoring the need for resources to support the partnership's objectives.
- Representative Emma Greenman highlighted the need to refocus on the partnership's objectives, especially concerning government enforcement and local government involvement. She emphasized the importance of strengthening relationships with trade associations, unions, and other stakeholders for effective collaboration in education, compliance, and deterrence efforts. Additionally, she suggested action steps to advance discussions on the presumption piece and evaluate different test options, aiming for a meeting in July or early August to discuss leading options.

## **8. Adjournment**

Rod Adams adjourned the meeting at 11:25 am.