



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

Meeting Date and Time: August 20<sup>th</sup>, 2024, 1:00 pm – 3:00 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: Minnesota State Capitol Room 120, and Microsoft Teams

### **Attendance**

#### **Members Present**

Representative Emma Greenman  
Rod Adams  
Commissioner Nicole Blissenbach  
Octavio Chung Bustamante  
Daniel Getschel  
Commissioner Paul Marquart  
Burt Johnson  
Melissa Hysing  
Briana Kemp  
Amir Malik  
Aaron Sojourner  
Brittany VanDerBill  
Kim Vu-Dinh  
Brian Elliot (Ex-Officio)  
Lee Atakpu (Ex-Officio)

#### **Members Absent**

Senator Clare Oumou Verbaten  
Deputy Commissioner Evan Rowe

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

Carin Mrotz  
Laura Sayles



## Agenda Items

### 1. Call to order and roll call

Representative Emma Greenman calls the meeting to order at 1:00 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 June 24<sup>th</sup> minutes

A motion was made and seconded to approve the June 24<sup>th</sup> minutes. A vote was taken, and the motion passed unanimously.

### 4. Presentation: History of Work and Distinctions between Employees and Independent Contractors

A presentation on the History of Work and Distinctions between Employees and Independent Contractors was given by John W. Budd, Professor of Work and Organizations at the University of Minnesota's Carlson School of Management. The presentation featured the following:

- Goal: Provide a broader context around work and its regulation to help the task force develop a principled approach for thinking about misclassification.
- The Purposes of Work
  - Work: Purposeful human activity involving physical or mental exertion that is not undertaken solely for pleasure and that has economic or symbolic value.
  - Employment: Selling work effort in return for pay.
- The Emergence of Employment
  - Survive, Provide, personally care for someone, feel good about oneself, fulfill a norm (be accepted as a member of a community), be free/independent, compulsion by an entity with greater power, build culture and permanence, and serve as a tribe, nation, or God(s).
  - But employment becomes widespread with the emergence of capitalism and, especially, the industrial revolution.
- Regulating the U.S. Employment Relationship
  - Three Perspectives: Neoliberalism, Pluralism, and Unitarism.
  - Three Eras: The 19<sup>th</sup> Century Free Market Era, New Deal Era, and Postwar Employment Law Era.
- Final Thoughts



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- So Who Should be Covered?

## **5. Discussion: History of Work and Distinctions between Employees and Independent Contractors**

Based on the presentation given, the task force members asked questions and engaged in a discussion as follows:

- Representative Emma Greenman questioned whether the existing legal frameworks for labor were adequate to address the complexities of the modern workforce. Professor John Budd suggested comparing contracting and regulatory perspectives to understand their underlying assumptions. He criticized the current system for being inconsistent, as employment classifications often shift based on cost-saving strategies rather than clear principles, resulting in a complex and messy legal landscape.
- Melissa Hysing asked whether the complexity and variety of tests under laws stem from their origins in different ideological paradigms, wondering if the historical layering of these differing worldviews on employment relationships contributed to the current messy legal landscape. Professor John Buddy explained that the legal mess results from the interplay of various judges' perspectives, historical precedents, and intellectual frameworks, all of which end up adding to the overall complication of the legal landscape.
- Representative Emma Greenman asked for advice on how to evaluate and improve the current system by understanding it through the lens of economic relationships rather than just layering additional programs. Professor John Budd acknowledged that the complexity arises from differing stakeholder perspectives and historical contexts. He emphasized that while recognizing these varied views might lead to more productive discussions, it doesn't resolve the inherent conflicts. Going back to an earlier question, Professor Budd questioned whether some gig economy arrangements, like those of rideshare drivers, genuinely represent a contracting regime or merely appear to do so to evade employment regulations. He argued that such arrangements often lack the clarity and specification typical of true contracts.

## **6. Discussion: Guiding Principles and Criteria for Evaluating Tests for Employment**

The task force members engaged in a discussion as follows:

- Representative Emma Greenman aimed to ground the discussion by focusing on the core question of what goals and criteria should guide the distinction between employees and independent contractors. She emphasized the need to develop common principles for evaluating these classifications, considering both substantive factors and practical aspects like effectiveness and enforceability. Representative Emma Greenman wanted to clarify the purpose of these



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distinctions and ensure that policy decisions address the broader impacts and trade-offs involved.

- Brittany VanDerBill highlighted Professor John Budd's slides that focused on highlighting power, economic dependency, and the ability to achieve dignity--not necessarily control. She emphasized dignity for workers is important and we don't want anyone exploited or misclassified, which also applies to legitimate independent contractors and business owners.
- Carin Mrotz noted that the concept of independent contractors originally aimed to shift liability from employers to workers, who assume the risk. She observed that contemporary discussions often focus more on control over work conditions rather than risk. Carin Mrotz emphasized that while risk and control are interconnected, modern issues with misclassification also highlight the need to address both factors in evaluating independent contractor status.
- Aaron Sojourner argues that classification should align control, liability, and profit, asking whether these should go to the buyer (employment) or the seller (contracting). He emphasized that workers dependent on a single buyer might need employment protections, while those with multiple clients might not. The aim is to create a sensible and effective classification system.
- Kim Vu-Dinh highlighted that equal access to information is often lacking in contracting, affecting workers' ability to understand the implications of their agreements and protections.
- Commissioner Nicole Blissenbach expressed that the problem of inconsistent classification and protections has evolved over time, with policymakers and judges both contributing to the complexity. She suggested further exploring how different tests for worker protections have evolved across various areas, like unemployment, workers' comp, and OSHA, to better understand and reconcile these inconsistencies.
- Representative Emma Greenman emphasized the importance of examining the evolution and interaction of various classification tests to understand inconsistencies and improve how companies manage worker classifications. Commissioner Nicole Blissenbach added that they also serve different purposes: unemployment insurance not only provides a safety net but also encourages workers to find suitable employment, whereas minimum wage is aimed at protecting the most vulnerable workers.
- Representative Emma Greenman asked why it makes sense to have a separate legal designation and paradigm for independent contracting. Brittany VanDerBill highlighted that there is a clear distinction between exploited workers forced into independent contracting and those who choose it willingly, acknowledging that awareness needs improvement. She stated Aaron's point about bundling control, liability, and profit sounds clean cut on the surface. But in her client relationships, she and her clients share some if not all of those factors. Brittany VanDerBill emphasized that choice plays a crucial role in the independent contracting model, provided it's not used to evade legal responsibilities.



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- Representative Emma Greenman followed up and asked about the value of having a separate designation for freelancers versus integrating everyone into a single framework. Brittany VanDerBill noted flexibility as a key benefit of independent contracting, allowing people to manage their work around personal needs and commitments, like health issues or caregiving. She noted that while employment is not suitable for everyone, independent contracting also isn't ideal for everyone, but it offers valuable flexibility for those who choose it.
- Amir Malik suggested focusing on work itself rather than the classification of workers. He proposed that society should ensure certain protections and requirements apply whenever work is performed, regardless of whether someone is an independent contractor or employee, addressing issues like discrimination and provide consistent protections for all workers.
- Kim Vu-Dinh questioned whether the flexibility valued as an independent contractor could be achieved within a traditional employment framework, asking, if all things equal, whether a preference would be had for employment over contracting. Brittany VanDerBill disagrees with the premise, arguing that the flexibility she experiences as an independent contractor is not comparable to W2 roles, which often have more rigid structures and controls. She also emphasized that the freedom to choose clients and control work conditions are key benefits of contracting that she finds difficult to replicate in traditional employment.
- Kim Vu-Dinh sought clarification on whether Brittany VanDerBill's preference is due to the ability to choose projects and clients rather than legal classification. Representative Emma Greenman added on that the discussion may seem to be about power rather than the legal distinctions involved in misclassification. Brittany VanDerBill emphasized that, in practice, W2 roles rarely offer the same flexibility as independent contracting, and Representative Emma Greenman added that while theoretically W2 employment could provide similar flexibility, employers often do not offer such conditions for employees.
- Aaron Sojourner questioned the difficulty of leaving a W2 job, noting that while there's no legal barrier, the challenges come from the uncertainty and expense of job searching. Brittany VanDerBill noted that while restrictive contracts can complicate leaving a W2 job, the main issue is financial risk. In W2 employment, losing one job impacts all income, whereas independent contractors have multiple clients to spread their risk.
- Carin Mrotz discussed the challenges with the DLI test for determining misclassification, particularly the criterion of whether the work is central to the employer's operations. She pointed out issues where businesses argue that certain roles, like cleaning for Walmart or driving for Uber, are not core functions, seeking suggestions on handling these factors, especially for freelance writers providing content to magazines, for example.
- Representative Emma Greenman suggested focusing on what should be evaluated in worker classification rather than sticking to current tests, noting freelancers build client bases, a benefit not given to employees, and emphasized



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distinguishing between core business needs and the role of independent contractors. Carin Mrotz wanted to understand how the intent of current worker classification tests aligns with modern work practices and whether these tests address contemporary work scenarios accurately.

- Representative Emma Greenman introduced a detailed chart to clarify the key principles for evaluating worker classification tests, distinguishing between the practical relationship between labor buyers and sellers and broader public policy considerations. She aimed to ensure that the evaluation criteria reflect the core issues and challenges of worker classification, and she stressed the importance of understanding what is being measured and how it should be assessed, particularly when making trade-offs that impact workers' protections.
- Commissioner Nicole Blissenbach emphasized the importance of regulation in protecting the most vulnerable workers and preventing abuse. She pointed out that laws like minimum wage and overtime protections exist because allowing people to contract out of these protections would need to exploitation. She stressed the need to maintain a baseline of protection in any worker classification tests or regulations, recognizing that not all individuals can negotiate fair terms on their own.
- Representative Emma Greenman supported Commissioner Nicole Blissenbach's view on regulating to protect vulnerable workers and stressed the need to consider bargaining power and negotiation in work relationships, advocating for moving to a balanced approach, focusing on economic power distribution.
- Melissa Hysing suggested that the task force should be clear and intentional about the paradigm guiding the approach to employment law and contract work, believing it'll help address the issues and debates that are being discussed.
- Kim Vu-Dinh suggested avoiding labeling their work with a specific paradigm to prevent potential biases or negative connotations.
- Representative Emma Greenman suggested focusing on future needs and principles rather than sticking strictly to historical paradigms, recommending identifying underlying ideological assumptions to guide the discussion.
- Amir Malik highlighted how businesses shifting costs to government programs, like Walmart did, affects society. He noted that some workers prefer independent contractor status to avoid taxes and argues for a more democratic approach in deciding who bears costs like healthcare, influencing business models and employment practices.
- Representative Emma Greenman concluded by asking everyone to review the summary chart and provide feedback, highlighting the need to clarify measurement criteria and encouraged members to review relevant materials and testimony before the next meeting.

## **7. Task Force Business**

Discussion of task force business was done as follows:



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- Representative Emma Greenman outlined the next steps for the task force, including reviewing the current tests used in Minnesota law with a new perspective, and examining tests employed by other states. The plans involves scheduling at least four meetings: two focused on tests—one for expert input and discussion and another for testimony from workers and businesses—one dedicated to research and potential wrap-up, and one for drafting recommendations. These meetings will help analyze and discuss both current and alternative tests, aiming to ensure comprehensive coverage and thoughtful consideration, leading up to recommendations based on the gathered research, testimony, and task force business.

## **8. Adjournment**

Representative Emma Greenman adjourned the meeting at 3:00 pm.