



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

Meeting Date and Time: September 20th, 2024, 9:00 am – 11:00 am
Minutes Prepared By: Abdulaziz Mohamed
Location: Minnesota State Capitol Room 316, and Microsoft Teams

Attendance

Members Present

Representative Emma Greenman
Commissioner Nicole Blissenbach
Octavio Chung Bustamante
Daniel Getschel
Burt Johnson
Melissa Hysing
Briana Kemp
Amir Malik
Deputy Commissioner Evan Rowe
Aaron Sojourner
Brittany VanDerBill
Kim Vu-Dinh
John Stanoch
Brian Elliot (Ex-Officio)
Lee Atakpu (Ex-Officio)

Members Absent

Senator Clare Oumou Verbaten
Commissioner Paul Marquart
Rod Adams

Attorney General’s Office (AGO) Staff Members Present

Carin Mrotz
Abdulaziz Mohamed



Agenda Items

1. Call to order and roll call

Burt Johnson calls the meeting to order at 9:20 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 August 20th minutes

A motion was made and seconded to approve the August 20th minutes. A vote was taken, and the motion passed unanimously.

4. Presentation: Estimating Payroll Fraud in Minnesota

A presentation on the Estimating Payroll Fraud in Minnesota was given by Aaron Rosenthal, Research Director, North Star Policy Action. The presentation featured the following:

- Main Takeaways
 - The estimates suggest payroll fraud is a large problem in MN.
 - Impacts: 9.4% of all private-sector workers and costs the state up to \$1.3 billion in revenue.
 - Payroll fraud is greater in scale and cost than other forms of fraud and theft that receive greater attention and state investment.
 - Our analysis underestimates the true extent of payroll fraud. A more comprehensive estimate will require analysis from state agencies.

5. Presentation Discussion and General Task Force Discussion

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

- Carin Mrotz asked for clarification on the term “rental leasing.” Aaron Rosenthal explained that real estate and rental leasing is an industry category that includes various roles.
- Carin Mrotz asked if the research considers misclassified workers, like those in the ongoing gig worker discussion, noting that if their paperwork is correct, they won’t be captured in the data. Aaron Rosenthal confirmed that the estimate is conservative, based on the assumption that individuals are correctly classified and not experiencing payroll fraud.



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- Brittany VanderBill asked how the misclassification of independent contractors is determined if they're filing their taxes and fulfilling their responsibilities as independent contractors. Aaron Rosenthal clarified that they don't count tax filers as experiencing payroll fraud, as it's hard to identify misclassification. His analysis focuses on individuals who did not report self-employment earning but are self-employed, so only non-filers are included in the payroll fraud estimates.
- Brittany VanderBill followed up by asking why many approximates and assumptions are needed, inquiring if this indicates that data is missing or not being properly collected. Aaron Rosenthal explained that approximations are necessary due to difficulties in capturing off-the-books cash workers, who leave no paper trail. He noted the lack of access to state data, like tax filings, which leads to reliance on estimates. Aaron Rosenthal suggested that random audits by the Department of Revenue could improve accuracy in accounting for non-cash workers, though he acknowledged his limited knowledge of state data needs.
- Aaron Sojourner commended the report's efforts despite the challenges of data collection, noting that while exact figures may be unclear, misclassification and payroll fraud significantly impact the economy. He highlighted the need for a broader understanding of payroll fraud and suggested that random audits could effectively identify misclassifications. Aaron Sojourner referenced the Department of Revenue's risk analysis model and its high success rate in audits, questioning the potential for expanding resources for these efforts. Aaron Rosenthal stressed the importance of data analysis for identifying misclassification, noting that only the state has the necessary data. He proposed developing a method for automatic audits to improve efficiency and connect enforcement to misclassifications. Aaron Rosenthal highlighted the potential recovery of significant back pay and tax revenue from violators, emphasizing that the report addresses how misclassification undermines worker protections and state programs.
- Nicole Blissenbach noted that state data often helps identify compliant individuals but struggles to reveal non-compliance, especially with off-the-books work where records are lacking. He emphasized the need for cooperation from workers and witnesses to address complex cases. Additionally, he updated on efforts following recent legislation for better collaboration among agencies to improve data collection and targeting of violations, aiming to enhance predictions of non-compliance.
- Aaron Rosenthal acknowledged Nicole Blissenbach's comment and noted that better identifying and preventing misclassification could lead to increased cash payments. He stressed that new regulations need to be paired with strategies to address this type of fraud and suggested enhanced co-enforcement models to prevent simply shifting the problem elsewhere.
- Burt Johnson highlighted challenges from previous meetings in calculating the public costs of misclassification, noting that current data overlooks losses from the gig and cash economies, particularly in sectors like construction and



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agriculture. He emphasized the limited capacity of agencies to tackle the issue, with many unaudited employers remaining off the radar. Burt Johnson expressed hope for improved data collection through collaboration among state agencies.

- Aaron Rosenthal pointed out that when employees don't receive health insurance from their employers, they may turn to public options, like Minnesota Care, increasing public costs.
- Kim Vu-Dinh asked whether there's a way to calculate how many workers on Medicaid or other public assistance programs are affected by misclassification, suggesting that this could provide a concrete estimate of the public costs incurred when employers fail to provide health insurance. Aaron Rosenthal suggested agencies collaborate by sharing data to identify individuals facing payroll fraud and checking their enrollment in programs like Medicaid. He also proposed surveys in specific industries to gather information on misclassification and healthcare access but stressed that accurate analysis requires state data.
- Daniel Getschel raised points about the department's efforts to effectively allocate resources and identify non-compliant taxpayers. He noted the success rate in detecting worker misclassification and asked what percentage of entities should be audited to achieve reliable statistical analysis. Aaron Rosenthal explained that the sample size needed for estimating the extent of worker misclassification depends on the goal. For a general estimate, a relatively small, generalizable sample would suffice, possibly a couple of hundred. However, if the aim is enforcement and identifying bad actors, a larger sample would be necessary to effectively take action against noncompliant individuals.
- Daniel Getschel emphasized the challenge of allocating resources for audits on worker misclassification at the Department of Revenue. He highlighted the difficulty in identifying the right amount of resources needed, noting that many misclassifications go undetected due to cash payments. He questioned how to determine the optimal number of audits before diminishing returns set in.
- Representative Emma Greenman appreciated the analysis and connected it to concerns about the financial impact of worker misclassification on government services, estimating losses of over \$100 million. She warned that unresolved misclassification could burden other employers or cut essential programs. Representative Emma Greenman asked how shifting workers from employee status to independent contractors might further affect government resources and program sustainability. Aaron Rosenthal speculated that increasing independent contractors would greatly escalate revenue losses, citing a tripling of gig work in the U.S. from 2019 to 2021. While lacking specific Minnesota data, she mentioned that each worker contributes thousands in potential losses and proposed further analysis to quantify the impact.
- Representative Emma Greenman highlighted the complex worker-employer relationship and the historical lack of focus on choice due to systemic issues. She urged analysis of how growing industries classify workers and the implications for social safety nets like unemployment insurance. Representative Emma



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Greenman emphasized the need for informed policymaking to protect these vital systems and appreciated the research in this area. Aaron Rosenthal proposed analyzing fast-growing industries to identify the proportion of workers classifying themselves as wage/salary employees versus independent contractors.

- Carin Mrotz referenced a previous legislative action to replenish the unemployment insurance fund, questioning how much of the funding shortfall was due to increased unemployment from the pandemic versus ongoing underfunding, and asked if there's a breakdown of the reasons for the fund's debt. Evan Rowe shared that the primary cause was the pandemic and its unprecedented impact on the economy. Representative Emma Greenman added that pre-pandemic policy choices affected the unemployment insurance trust fund's health, arguing that a stronger fund, with more contributions, would have mitigated debt and improved the system's ability to handle crises.
- Burt Johnson pointed out that during the pandemic, federal unemployment benefits were provided to independent contractors and gig workers who normally wouldn't qualify, impacting the funding of the unemployment insurance program.
- Brittany VanDerBill shared the importance of not making assumptions about businesses and legitimate independent contractors, such as access to employer-sponsored healthcare and reliance on public assistance.
- Burt Johnson highlighted the need to rethink the stigma associated with independent contracting versus misclassification fraud, noting that using independent contractors may still incur public costs without being fraudulent. He also stressed defining the line between employees and independent contractors, as public costs are a crucial factor in this debate.
- Carin Mrotz acknowledged Brittany VanDerBill's point, noting that having many independent contractors doesn't imply misclassification. She emphasized that converting employees to independent contractors without job changes should trigger scrutiny about classifications.
- Melissa Hysing inquired about data from the federal pandemic unemployment program that included independent contractors and gig workers, suggesting that this data could help quantify the costs to government relayed to worker classification and provide deeper estimates on the issue. Evan Rowe mentioned that the Department of Labor likely has summary statistics on the federally funded pandemic unemployment program. He suggested that this data, potentially broken down by state, could serve as a useful starting point for understanding the total costs of the program.
- Kim Vu-Dinh expressed concern about large employers like Walmart and Amazon manipulating worker hours to avoid paying for health benefits. She questioned the tolerance of such practices, as they impose significant costs on the public. Aaron Rosenthal noted that some states track costs incurred by large companies on government programs. He was unsure if Minnesota does this and offered to look into it further.



- Aaron Rosenthal reported out, after doing a quick search, that the federal cost for unemployment insurance for independent contractors during the pandemic was \$130 billion, with Minnesota spending just over \$1 billion (the period measured was through May 31st, 2024). Evan Rowe shared a link in the chat providing an overview of pandemic-relayed response programs funded by CARES, noting that while the data offers useful insights, it should be interpreted with caution, as it reflects an unprecedented situation with varying eligibility for different types of workers, including sole proprietors and independent contractors.
- Aaron Sojourner highlighted Aaron Rosenthal's distinction between using an audit program to estimate the prevalence of workforce misclassification versus targeted enforcement strategies. He emphasized the need for a data-driven approach to understand the relationship between risk scores, recovery probabilities, and audit costs, suggesting that this information could help optimize audit efforts by aligning expected recovery values with associated costs. Aaron Rosenthal agreed, suggesting that a cost-benefit curve could identify the point at which audits become unprofitable. He emphasized that as long as the returns to the state and workers exceed the costs, continuing audits is worthwhile.
- Amir Malik inquired if there's state-level data on the return on investment for audits and enforcement, similar to the federal system that every dollar spent on the IRS generates two dollars back. Acknowledging Daniel Getschel's response in the chat, noting it's difficult to quantify the ROI for audits. He emphasized that the main purposes of random audits is quality control in program administration, rather than specific financial returns. Daniel Getschel confirmed a clear ROI for the Department of Revenue, citing past legislative funding increases tied to revenue returns. He emphasized that enforcement activities also promote long-term behavior changes, leading to greater future compliance and reinforcing the positive ROI. Commissioner Nicole Blissenbach acknowledged that quantifying ROI is challenging, noting that enforcement actions often lead to broader compliance impacts. She emphasized the importance of education and outreach, and states that the department prioritizes recovering money for workers over state penalties when resources are limited.

6. Task Force Business

Discussion of task force business was done as follows:

- Carin Mrotz outlined that the task force will meet twice in October: the first to hear from experts about tests in Minnesota and their impacts, and the second for public testimony from affected individuals, which has been extended by an hour. Additional meetings are planned for November and December, leading to a final report.

7. Adjournment



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Burt Johnson adjourned the meeting at 10:52 am.