



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

Meeting Date and Time: November 19th, 2024, 10:00 am – 12:00 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: Mitchell Hamline School of Law, 875 Summit Ave, St. Paul, MN, 55105, and
Microsoft Teams

Attendance

Members Present

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

Members Absent

Commissioner Paul Marquart
Daniel Getschel
Senator Clare Oumou Verbaten

Attorney General’s Office (AGO) Staff Members Present

Carin Mrotz
Abdulaziz Mohamed



Agenda Items

1. Call to order and roll call

Emma Greenman calls the meeting to order at 10:07 am. A quorum was present.

2. Approval of meeting agenda

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

3. Approval of October 21st minutes

A motion was made and seconded to approve the October 21st minutes. A vote was taken, and the motion passed unanimously.

4. Task Force Business

Discussion of task force business was had as follows:

- Representative Emma Greenman opened task force business by sharing that the recommendations should have been received by the attendees the previous day. These recommendations were compiled from input gathered from various sources, including the OLA report and previously task force meetings. The meeting will focus on discussion, with the possibility of changes to the recommendations, but no voting or testimony until a future meeting.
- Carin Mrotz emphasized the task force's role in generating advisory recommendations, not legislative ones, that could guide agencies and systems. She noted the importance of collaboration, referencing successful initiatives like the new education enforcement partnership. Moving forward, the task force will refine and share draft recommendations, gather feedback, and vote on the final recommendations for the report.
- Representative Emma Greenman suggested starting with the less contentious recommendations first, as they are more intuitive and likely to require less discussion. She proposed saving the more complex discussion on test components for the last hour of the meeting. For a future meeting, Representative Emma Greenman mentioned the possibility of breaking up the voting into smaller sections to streamline the process, especially if not all participants are present in person, maximizing the time for discussion and testimony.

5. Draft Recommendations Discussion: Education, Outreach, and Notice



The Office of
Minnesota Attorney General Keith Ellison

helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

A discussion on the education, outreach, and notice recommendations took place as follows. **Please note that parts of the audio were inaudible during the meeting, which may impact the completeness of these minutes. While every effort was made to capture key points, some details may be missing:**

- Representative Emma Greenman introduced the topic of education, outreach, and notice, identifying the importance of providing information about current laws, penalties, and enforcement. She noted that discussions with stakeholders, including DLI, emphasized the need for more targeted outreach. Representative Emma Greenman suggested that the task force should focus on improving the accessibility and effectiveness of the information already being shared through various government channels, ensuring it's clear and usable for the intended audience.
- Commissioner Nicole Blissenbach clarified the distinction between recommendations and policy proposals, emphasizing that while the task force's recommendations on educating stakeholders about employee misclassification are valuable, they shouldn't be mistaken for binding policy, rather they're guidance. She noted that the Partnership established by the legislation last session already has a statutory mandate to inform and educate stakeholders. Representative Emma Greenman agreed with the distinction and suggested refining the language to clarify where legal changes are needed and where the task force's recommendations should guide actions.
- Regarding a point that Aaron Sojourner has raised, and Commissioner Nicole Blissenbach responded to, Representative Emma Greenman suggested consulting the Department of Commerce to explore potential recommendations, particularly regarding the involvement of financial institutions in monitoring and addressing the issue raised by Aaron Sojourner.
- In response to a comment from Kim Vu-Dinh, Representative Emma Greenman clarified that the recommendations are advisory, but the goal is for them to be dynamic and adaptable. She noted that the task force aims to vote on these recommendations in December, with the possibility of including statutory work, educational initiatives, and agency collaboration as part of the final report.
- Representative Emma Greenman highlighted that the Office of the Secretary of State, while not an enforcement agency, could serve as a valuable resource for initial business information. She also suggested supporting local small business counseling programs. Evan Rowe mentioned that there is various small business programs funded by the SBA across the state, which provide valuable resources and services. Representative Emma Greenman noted that many small business owners are unsure where to find information about compliance and that it would be valuable to discuss how to ensure these programs are effectively reaching and being utilized by business owners.
- With respect to the legal notice recommendations, Representative Emma Greenman shared that the intent is to make statutory changes to address the existing gaps in notification processes. Melissa Hysing added that the goal of the



legal notice recommendations is to ensure that crucial information about worker classification and its consequences reaches business owners who might otherwise be missed.

- Regarding the sub sub-bullet point discussing the factors used to determine classification under Minnesota law, Brittany VanDerBill suggested keeping “the fact that classification is a legal decision based on the facts of the relationship” and striking the rest of the sentence.
- To bridge the conversation regarding classification, Representative Emma Greenman stated that employers and workers can’t just agree to a different status for the sake of payment arrangements, rather the classification must reflect the true nature of the working relationship.
- Melissa Hysing pointed out that the sentence referenced by Brittany VanDerBill could be worded differently, but that the current sentence structure seeks to address the misunderstanding that arises out of classification decisions, pointing out the confusion among workers about whether they could agree to be classified in a certain way, regardless of the facts of their employment.
- Representative Emma Greenman acknowledged that Melissa Hysing, Kim Vu-Dinh, and Brittany VanDerBill have given this issue significant thought during the meeting, sharing that it might be best to move on from the current discussion and focus on changing the sentence structure later.
- In response to a statement Deputy Commissioner Evan Rowe made regarding the legal notice requirements, Representative Emma Greenman emphasized creating standardized legal notices across different agencies, rather than each agency creating its own separate requirements, avoiding siloed efforts.
- To summarize the discussion had so far, Representative Emma Greenman mentioned ensuring agencies have the necessary resources to implement The Partnership legal notice standard. She also suggested coordinating with the Office of the Secretary of State’s business division to ensure proper acknowledgment and signatures of new business registration.

6. Draft Recommendations Discussion: Co-Enforcement & Government Enforcement Reforms

A discussion on the co-enforcement and government enforcement reforms recommendations took place as follows. **Please note that parts of the audio were inaudible during the meeting, which may impact the completeness of these minutes. While every effort was made to capture key points, some details may be missing:**

- Representative Emma Greenman reminded the group of a previous in-person meeting, where presentations were given by folks who worked on co-enforcement both at the city level and with stakeholders.
- Briana Kemp stressed direct, intentional outreach and education for workers, particularly in low-wage industries, to ensure effective enforcement of ordinances like the minimum wage law. She explained that simply posting notices or sending



The Office of
Minnesota Attorney General Keith Ellison

helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

mailings is insufficient. Successful outreach involves trusted community organizations that already have strong relationships with workers. She highlighted the success of Minneapolis' community-based efforts in raising worker awareness and fostering advocacy.

- Rod Adams emphasized co-enforcement in identifying bad actors and addressing violations, both in high-reporting industries and those with less visibility. He stressed that the goal is not only to uncover violations but also to prevent them through worker education and training, empowering workers to organize and speak up about issues in the workplace. Rod Adams also mentioned the need to provide workers with the necessary tools and resources. He also pointed out the challenges small organizations face with reporting requirements, suggesting that having an administrative infrastructure is essential for proper enforcement.
- Commissioner Nicole Blissenbach pointed out the value of partnerships, particularly with community-based organizations, which many already have in place to serve workers. She highlighted the importance of strengthening these partnerships as a key goal.
- Rod Adams clarified that the language used in the first recommendation of the co-enforcement section was a placeholder, sharing that all relevant agencies and stakeholders involved in co-enforcement should be included in the conversation and at the table. Representative Emma Greenman suggested moving on and workshopping that piece following the meeting.
- Representative Emma Greenman says she sees the recommendations broken into three main components: first, the relationships; second, tracking and addressing misclassification cases and preventing violations; and third, funding and supporting these efforts. She expressed concern about including specific funding mechanisms in the recommendations, as it's a complex policy issue. She recommended separating the funding discussion from the main policy recommendations, as it involves broader considerations.
- Briana Kemp noted that, in Minneapolis, the partnership between workers' organizations and government agencies have allowed frontline organizations to provide valuable insights to the city about where violations are occurring and to strategize together for more effective enforcement. Representative Emma Greenman added that work is needed to help refine the language to get at this more collaborative approach.
- Commissioner Nicole Blissenbach suggested the possibility of creating a program that provides legal counseling to workers who may not have access to enforcement entities.
- Representative Emma Greenman discussed the need for stronger enforcement mechanisms, suggesting that penalties for violations should be high enough to deter businesses from non-compliance. She also highlighted the idea of incorporating private actors, referencing the private attorney general statute, to help enforce laws, like models used in other states. This would involve



incentivizing private entities to take part in enforcement efforts, alongside public entities.

- Briana Kemp noted the significant effort that goes into bringing forward and resolving claims, highlighting the work involved in gathering evidence and filing complaints. She stressed that co-enforcement should not only focus on the number of cases resolved but also prioritize prevention, with the goal of resolving issues in the field. She underscored the need for robust funding for both on-the-ground enforcement and support for organizations helping workers navigate the process.
- Amir Malik proposed providing financial incentives to business competitors could encourage them to report more violations, which could help address the issue. Representative Emma Greenman equated Amir Malik's suggestion to antitrust laws, noting that some businesses violate the law with minimal consequences. She suggested that higher penalties could deter this behavior.
- Lee Atakpu raised concerns about situations where workers may still not be made whole, even with successful enforcement. He suggested considering additional incentives, separate from those for reporting violations.
- Speaking to the government enforcement-specific recommendations, Representative Emma Greenman emphasized the need for stronger deterrence measures, such as increasing penalties to disrupt bad business practices. She also discussed updating statutes and making legislative changes to incentivize enforcement. Additionally, she highlighted improving partnerships to support education and outreach, especially for workers and agencies that lack awareness, and noted the need for ensuring resources for both education and enforcement infrastructure.
- Commissioner Nicole Blissenbach emphasized that the Partnership and the members involved should align their efforts, especially regarding the outreach and education initiatives. She pointed out the need for consistent and organized resources to assist in these efforts. Brittany VanDerBill noted that agencies have already expressed a lack of resources for the tasks they currently handle. She believes the focus should be on raising awareness and improving enforcement actions with the resources that are already available.

7. Draft Recommendations Discussion: Classification Tests

A discussion on the classification tests took place as follows. **Please note that parts of the audio were inaudible during the meeting, which may impact the completeness of these minutes. While every effort was made to capture key points, some details may be missing:**

- Representative Emma Greenman opened the discussion by mentioning the importance of measuring the effectiveness of proposed classification tests and streamlining recommendations to make the process clearer and more effective.



The Office of
Minnesota Attorney General Keith Ellison

helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

She acknowledged the complexity of the issue, referencing the contributions of various stakeholders, including Aaron Rosenthal's estimates and feedback from agencies. She also expressed the need for clarity in the classification tests, mentioning prior discussions on multi-factor balancing tests and the ABC test.

- Melissa Hysing supported having a rebuttable presumption, stating that it would make the classification test more understandable for both workers and employers, while also being more efficient to administer.
- Representative Emma Greenman noted the complexity of creating a unified classification test, noting that many factors overlap between different tests. She emphasized the importance of ensuring that the test helps distinguish between contracting and employment relationships.
- Burt Johnson expressed concerns about the inconsistency of applying different tests for specific agency contexts, which can create confusion for employers using employees in one context and independent contractors in another. He mentioned the need for clarity at the state level, particularly noting the DEED test feels siloed and less universally applicable.
- Representative Emma Greenman discussed the importance of having a clear evaluation criteria that helps classify workers accurately, ensuring predictability and consistency for enforcement. She also asked the task force, given the placeholder in the classification test recommendations, whether there are additional goals that should be considered.
- Brittany VanDerBill asked if the evaluation criteria and test options are leading towards an ABC test. Carin Mrotz shared that the task force is still in the phase of discussing the criteria broadly, noting that she hasn't seen a descriptive criteria come in as she's collected recommendations from task force members.
- Amir Malik suggested that the task force consider whether to focus on creating clear and understandable criteria or on establishing a principle (like "innocent until proven guilty"). He shared that principles are easier for people to grasp, and this approach might be more effective when communicating with workers or employers.
- Burt Johnson discussed focusing on control when determining employment status, noting that control should be viewed from a broader perspective (the employer's ability to control the work and the power dynamic in the relationship). He shared that many misclassification issues arise from this control factor. While not wedded to the idea of an ABC test, he suggested that a modified approach could be beneficial, particularly for independent contractors like freelance writers, who may struggle under the current test despite demonstrating independence. Burt Johnson stressed the need for a clear recommendation that favors employment but allows for exceptions where clear independence exists, avoiding confusion or reclassification of contractors as employees.
- Lee Atakpu cautioned that the criteria might lead to legal ambiguity, with judges and lawyers introducing nuance interpretations. He shared that explicit language



could help avoid confusion and ensure both workers and employers understand the rules.

8. Task Force Announcement

Discussion of task force announcements were had as follows:

- Representative Emma Greenman shared that in the next meeting, the group should focus less on wordsmithing and more on gathering testimony and discussing and debating the key points, with the goal of being ready to vote. Work will need to be done prior to the next meeting to address tasks on co-enforcement, stronger enforcement mechanisms, and the test questions, in addition to recommendations on measuring the problem and impact, which wasn't discussed in the meeting due to time constraints. She also mentioned reviewing additional recommendations on new economy issues like technology, transparency, price and wage-setting, and worker compensation.

9. Adjournment

Representative Emma Greenman adjourned the meeting at 12:18 pm.