

SENATE RESOLUTION 22 MISCLASSIFICATION OF EMPLOYEES TASK FORCE

Minutes of January 21, 2021 Meeting

The Misclassification of Employees Task Force was established by Senate Resolution of the 2020 Second Extraordinary Legislative Session, within the Louisiana Department of Revenue (LDR), to study and make recommendations for changes to state laws in an effort to provide the necessary investigatory and enforcement tools to detect, investigate, and minimize employee misclassification in Louisiana.

- I. **Meeting Call to Order** - The meeting of the Misclassification of Employees Task Force was called to order at 10:03 AM by Chairman, Luke Morris.

- II. **Roll Call** - A quorum was established with twelve of the thirteen members in attendance. Members present were:
 1. Luke Morris, Chairman (LDR)
 2. Brandon Lagarde, Vice-Chairman (LCPA)
 3. Danell Gerchow (LDR); designee for Secretary Robinson
 4. Robert Wooley (LWC)
 5. Darrick Lee (LWC); designee for Sheral Kellar
 6. Daryl Purpera (Legislative Auditor)
 7. Dawn Starns (NFIB)
 8. Caroline Lafourcade (LSBA)
 9. Martha Pennington (APA)
 10. Tom Crowley (NPRC)
 11. Jim Patterson (LABI)
 12. Gary Warren (LA AFL-CIO)

- III. **Approval of Meeting Minutes from January 7, 2021 Meeting**
 - After review of the minutes, a motion was made by Mr. Lagarde to approve the meeting minutes from the January 7, 2021 meeting, and was seconded by Ms. Gerchow. The minutes were unanimously approved without corrections.

- IV. **Informational Presentations on Addressing Misclassification in Louisiana**
 - A. **Maryland Department of Labor – James Tudor and Matt Helminiak**
 - Mr. Helminiak gave a brief overview of Maryland’s efforts at addressing misclassification and Mr. Tudor lead a presentation on Maryland’s Workplace Fraud Act. A copy of the presentation will be available for viewing on the task force’s webpage following the meeting.
 - The presentation covered the Workplace Fraud Act of 2009 (WFA), amended in 2012, and applies to the construction and landscaping industries. Under the WFA,

workers are presumed to be employees unless the employer can establish they are independent contractors or exempt persons. Maryland uses the ABC Test. Most challenges are with enforcement. There are four ways of overcoming the presumption of employment, 1. Exempt Person, 2. Independent Contractor, 3. Contractual Relationship with two Contractors, 4. Documented Independent Contractor. Also discussed were investigations which are conducted upon the Commissioner's initiative, receipt of a written complaint, or on referral from another unit of State government. If misclassification is found, penalties can range from \$1,000 (first offense) - \$20,000 (four or more offenses) per misclassified worker.

- During discussion Chairman Morris inquired about the written contract requirements and whether they are specific to the job. Mr. Tudor answered that samples are provided. Mr. Morris also asked whether compliance has increased since having the law in place. Mr. Tudor answered, no. The Chairman asked about outreach to new or existing employers. Mr. Helminiak answered that there are training opportunities at least twice a month and an informational booklet with information is also provided.
- Ms. Pennington asked about any documents required by the employer to be onsite. Mr. Tudor answered that only employees are spoken to onsite, and if any documents are needed they then will request them from the employer.
- Mr. Lagarde asked whether there is a push to expand to additional industries. Mr. Helminiak answered not legislatively at this time.

B. Montana Department of Labor – Tracy Gonzalez

- Ms. Gonzalez discussed Montana's efforts in tackling misclassification of employees. Montana requires that independent contractors have a certificate issued to them through an application process because enforcement is challenging. There are only 6 field investigators to enforce compliance for the State. Applicants must provide an occupation and must be doing that line of work on the job. The certificate is valid for two years and applicants must re-apply and verify any licenses and also be registered with the Secretary of State. Business related documents are also required. Sixty percent of those seeking certification are in the construction industry. Others include hunting and fishing and businesses. Ms. Gonzalez also stated that contractors must also be registered. There are currently about twelve thousand registered from a previous 30K before the law was passed.
- Jeff Garden, Inspection Section Manager, explained the enforcement procedures by his office. There is a documentation process. If a citation is issued, the employer is given up to 30 days to comply. If no response is received or is insufficient, suspension of the hiring agent is issued and the employer is then required to hire as an employee. Inspections include walking the job sites to inspect the jobs being done.

- During discussion Chairman Morris asked about compliance since the law change. Amber Carpenter, Bureau Chief, answered that they typically have one to one issues. If there is a holistic issue then the matter is turned over to the audit group to inspect other information. The Department also provides ABC clinics and works with other state agencies for compliance. Mr. Morris also asked whether their cases were a matter of compliance or lack of education. Ms. Carpenter replied, a little of both.
- Mr. Patterson inquired as to the number of inspectors and whether any state employees are used. Ms. Carpenter answered that they currently have five inspectors and they are considered state employees. Mr. Patterson also asked about funding for the program. Ms. Carpenter responded that fees collected through the program are used to fund it. The inspectors bill for the hours the work is done.
- Ms. Pennington inquired if a citation is issued and no response is received, does the hiring agent have to hire? It's a person to person relationship since each agent has their own certification. A link to the Montana statute was shared in the chat feature.

C. Louisiana AFL-CIO – Garry Warren

- Member Garry Warren gave a presentation on Construction Industry Tax Fraud and the need for greater accountability. A copy of the presentation will be available for viewing on the task force's webpage following the meeting.
- Mr. Warren's presentation states that construction industry tax fraud is the intentional misclassification of employees as independent contractors and the issuing of 1099 miscellaneous forms. These employees are paid unreported compensation by check or cash. Statistics shared show that the issue is a deep and severe problem and has costed states millions of dollars in unreported taxes. Also discussed in the presentation are the different structures of the construction industry and how they enable fraud. A national study of fraud in the construction industry reported that federal and state unreported taxes range from millions to billions of dollars. The presentation also covered that not all workers mind being misclassified and working off the books in cases where back child support is owed. In conclusion, there is a need for greater accountability in the construction industry and findings from a national voter survey show that there is majority support on this issue.

V. Tentative Schedule of Upcoming Task Force Meetings – Ms. Thomas will poll members for availability.

A. Week of January 25 – More presentations by policy organizations

- Chairman Morris stated that future meetings will focus on recommendations made from members. The month of February will used to vet those recommendations.

VI. Other Business - Tasks

- No other business was discussed.

VII. Public Comment

- None

VIII. Adjournment

- A motion to adjourn the meeting made by Ms. Gerchow and seconded by Mr. Patterson. The meeting was adjourned at approximately 11:23 AM.