

Approved Minutes (Approved on June 13, 2013) of the
 Worker Classification Coordinated Enforcement Council
 Labor Commission, 160 East 300 South, Salt Lake City
April 11, 2013 – 9:00 a.m.

Council Members Present: Alan Hennebold, Chair Retiring Deputy Commissioner, Utah Labor Commission
 Bill Starks Director, Unemployment Insurance, Department of Workforce Services
 Thomas Brady Deputy Director, Utah Department of Commerce
 Phil Lott Assistant Attorney General, Utah Attorney General’s Office, non-voting member
 Delores Furniss Disclosure Officer, Utah State Tax Commission

Staff: Mary Gehman-Smith Supervisor, Support Staff, Department of Workforce Services

Visitors: A list of visitors is provided at the end of the minutes.

Topic	Discussion
Welcome and Approval of Minutes	<p>Chair Hennebold called the meeting to order at 9:00 a.m. He stated today’s agenda has been published on the Public Notice Meeting website as required by the Utah Public Meetings Act, and the local media has been notified in accordance with Utah law. All members are present.</p> <p>Chair Hennebold motioned to accept the January 17, 2013 meeting Minutes as written, all were in favor and the Minutes were approved unanimously. Chair Hennebold welcomed Jaceson Maughan, who will be replacing him as the Deputy Commissioner of the Utah Labor Commission and Chair of this Committee. Mr. Maughan currently works for DWS, representing the Workforce Appeals Board, writes general advice for H.R., approves and enforces contracts, and deals with GRAMA issues.</p>
Public Comment	<p>Chair Hennebold noted there were no members of the public wanting to address the Council. Lydia Tzagoloff, Department of Labor, Enforcement Council for Wage and Hour, reported the Department of Labor (DOL) has filed a complaint in Federal Court against Universal Contracting (UC). Several members, who are employees, are seeking back wages citing there is harm to these employees/members based on the Fair Labor Standards Act. The complaint named two of UC’s clients, Dec Enterprises and Mountain Builders. These clients are joint employers of the members. Ms. Furniss requested a copy of the complaint. Ms. Tzagoloff will send to Chair Hennebold, who will distribute. DOPL has been helpful with providing information such as member names. There is an MOU between the DOL and the IRS and there is good communication. We have asked for a hearing for the preliminary injunction.</p>

	<p>There is a good case on paper, but we are sure there will be a request for a hearing on the opposing side. Judge Sam is the assigned judge. The violation dates begin as early as August 2009. We are hoping to get good media coverage. Cory Atkinson was named in the complaint. Hopefully, this will put a damper on his future.</p>
<p>Open Meeting Training</p>	<p>Mr. Lott reported the following:</p> <ul style="list-style-type: none"> • The only major change to this year’s Utah Open and Public Meetings Act deals with Charter schools; • It is the intent of the Legislature that agencies hold their meetings and deliberate openly. The Worker Classification Coordinated Enforcement Council is covered under the Open and Public Meetings Act. It is housed within the Labor Commission, with voting members from the Department of Commerce, the Department of Workforce Services, the Utah State Tax Commission, and one non-member from the Attorney General’s office; • Exceptions are if the meeting has been voted closed. In Section 208, a change meeting may not be used to circumvent this chapter. Chair Hennebold proposed a hypothetical situation: <i>he received a call from an attorney, about a company, to see if they are converging their workers into employees, he stated he thought he would ask two of the members to stay later, that would make a total of three.</i> Would this qualify as a meeting without an open meeting? <ul style="list-style-type: none"> ○ Mr. Lott replied in the above scenario, the Open Meetings Act would apply; • Notice Requirements - if meetings are standing, an annual notice would work. But if the meetings are not at the same time, same place, you have to post each time. There is an exception to the Notice Requirement, if there is an emergency meeting called. If there is going to be a vote, this needs to be listed on the agenda; • Minutes Requirements, Written and Recorded – Written Minutes need to have a date, time, and place of the meeting, all votes and a complete recording of all open meetings; • Unapproved minutes are still public record. They shall be available to the public within a reasonable time after the end of the meeting. Once Minutes are approved, they need to be posted to the website within three days. • Recordings need to be available upon request, but there is no need to post them. Members of the public may record the meeting; • Reasons for closing the meeting - A closed meeting may occur if there is a quorum present; • Minutes requirements for a closed meeting. Recording of the entire closed meeting. Names of members present and absent. The recording and minutes of the open meeting are public record, the minutes of the closed meeting is protected and not public. <p>Chair Hennebold asked if any of these processes are a concern or should be revisited. Mr. Lott stated when this Council was established, there was going to be an open/closed meeting provision, but we only need to identify the reason for closing the meeting. During the closed meetings, subjects need to stay close;</p>

Report on Agency
Actions

Ms. Furniss reported the following:

- She manages the suspicious filer's group at the Utah State Tax Commission (TC). They examined 125,000 income tax returns. This last year, 550 employers were not withholding, not remitting or not registered at all. The TC also checks with DWS to see if these employers are registered with them. This made a difference in \$4.4M in employer tax;
- She met with Dave Spatafore, who provided her with a list of clients who are using the owner/worker model. At this point, there are no actions, so she can share information without the worry of breaching confidentiality;
- She explained taxes are kept in a trust fund but employers don't have a fund. There is a challenge of enforcing this. Employers are required to withhold taxes and file.

Mr. Starks reported the following:

- DWS continues to target employers who issue 1099s. This has been in effect for about ten years but it has been ramped up over the last couple of years. Since 2008, DWS has discovered \$39M in total unreported wages, the vast majority being unclassified workers. These are not open and shut cases, many are appealed. DWS shares these results with DOPL, the TC and the IRS. The IRS will then bill the employer the FUTA and SS match. This is a good way to leverage;
- In late 2010, DWS began an information exchange with DOPL. In 2012, UI Contributions jumped nearly \$1M.

Mr. Brady reported the following:

- He distributed a copy of the complaint against UC. The original owner filed an application for licensure, and credit report, which created a 90-day period. During this time, there was an addition of 725 new owners. This is what prompted the response from DOPL. UC has 45 days from March 12, 2013 to take care of this. At the end of the 45 days, DOPL will be taking a proactive approach;

Chair Hennebold shared the following:

- He received a call from an attorney about an employer who has *read* software, which finds references to words such as *coca cola*, and the software characterizes positive, neutral or negative in the social media. This software creates a spreadsheet of comments;
- The first group working for this employer sampled the comments and evaluated whether the software properly characterized the comments. These employees can do this anytime, anywhere with their own computer;
- There is a second individual who develops software on his own and sells it for an hourly wage;
- The third person is paid to put the data into a format to include what the recommendations and trends were;

- There are no complaints but they are being treated like individual contractors. Is there some system we should use to take hold of these;
- Mr. Starks stated DWS can ask for a discretionary ruling;
- Mr. Lott stated in looking at the rules, this Council doesn't have the authority to offer advice, or make a determination;
- When DWS makes a determination, it is involved. If DWS had received this call, they could do a determination but would need to talk to the employees. If they get the determination, they have somewhat of a safe haven;
- Ron Dressler added he gets calls like this, they are usually referred back to the statute, depending on how specific they are.

Mr. Starks motioned to close the meeting. The three potential grounds for closing a meeting are present pursuant to 52-4-205: (a) Character, professional competence, physical or mental health of the individual; (c) *strategy sessions to discuss pending or reasonably imminent litigation*; and, (g) *investigative proceedings regarding allegations of criminal misconduct*. There will be no written minutes of the closed meeting. There will be discussion only. No final action will be taken. The location of the meeting was not changed. All members voted individually and unanimously to close the meeting. A quorum is present. There are no other agenda items for an open meeting. Mr. Starks asked that Jody McMillan, Eileen Rivera and Ron Dressler stay for the closed portion of the meeting. The meeting closed at 10:20 a.m.

Chair Hennebold made a motion to return to an open meeting at 10:35 a.m. Mr. Starks seconded the motion and all were in favor.

Future Meeting
Schedule/Adjourn

The next meeting is scheduled for June 13 at 8:30 a.m. The meeting adjourned at 10:36 a.m.

Visitors: Jaceson Maughan, Deputy Commissioner, Utah Labor Commission
 Eileen Rivera, UI Field Audit Manager, Department of Workforce Services
 Jody McMillan, UI Chief of Tax, Department of Workforce Services
 Lydia Tzagoloff, U.S. Department of Labor
 Joe Doolin, District Director, U.S. Department of Labor
 Cynthia Daniels, Asst. General Counsel, Workers' Compensation Fund
 Ron Dressler, Industrial Accidents, Labor Commission
 Gordon Summers, Investigation Supervisor, Department of Occupational and Professional Licensing