

Approved Minutes of the
Worker Classification Coordinated Enforcement Council
 April 25, 2011
 Labor Commission, 160 East 300 South, Salt Lake City

Council Members Present: Alan Hennebold, Chair Deputy Commissioner, Utah Labor Commission
 Thad Levar Deputy Director, Utah Department of Commerce
 D’Arcy Dixon Pignanelli Commissioner, Utah State Tax Commission
 Bill Starks Director, Unemployment Insurance, Department of Workforce Services
 Phil Lott Assistant Attorney General, Utah Attorney General’s Office, non-voting member

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

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

AGENDA	DISCUSSION	RECOMMENDATIONS/ACTION
1. Introduction and Procedural Issues	<p>Chair Hennebold called the meeting to order at 9:05 a.m.</p> <p>Chair Hennebold stated Labor Commissioner Sherrie Hayashi had asked him to Chair the Enforcement Council as authorized under S.B. 11 (2011) by Senator Karen Mayne. He recognized each member of the Council. He also introduced Ms. Mary Gehman-Smith with the Department of Workforce Services who will be preparing minutes on behalf of the Council. He thanked her and the Department.</p> <p>Procedural issues for the Council were discussed. The following items were agreed to by the council members.</p> <p>Meetings: The next two meetings will be Tuesday, May 17 at 9:00 a.m. and Thursday, June 16 at 9:00 a.m. at the Labor Commission for approximately 90 minutes. To better accommodate the public, the meetings may be moved to a different room. In addition, if it is anticipated there may be a vote to close the meeting as allowed under 52-4-204 <i>Closed meeting held upon vote of members</i>, other business will be conducted at the beginning of the meeting to accommodate the public.</p>	Attachment 1 S.B. 11 (2011) by Senator Karen Mayne

<p>2. Agency Reports</p>	<p>Voting: MOTION: Commissioner Dixon made a motion that if there was a tie vote among the four council members, the issue should be tabled and carried to the next meeting. The motion passed unanimously with all four council members voting and present.</p> <p>Minutes: The meeting will be recorded and DRAFT minutes distributed to members prior to approval.</p> <p>Reports: A report is due to the Governor and Legislative Business Labor Interim Committee no later than November 30 of each year.</p> <p>Mr. Lott, Assistant Attorney General provided copies of reports produced by other States with similar councils.</p> <p>Mr. Levar, Deputy Director, Department of Commerce, stated he felt the report would need to cover what the council had done with enforcement and any statute changes needed.</p> <p>Chair Hennebold suggested that coordination of enforcement be added to the next meeting agenda. He asked each member to look at what could be shared regarding their agency's enforcement efforts.</p> <p>Department of Commerce: Mark Steinagel, Division Director, Division of Occupational and Professional Licensing (DOPL) stated DOPL is required to gather information, perform audits and ensure renewal cycle compliance for contractors. The renewal cycle deadline is November 30 of each year. Mr. Steinagel introduced Dan Rodriguez, Investigator and Dan Jones, Bureau Manager.</p> <p>DOPL has met with both union and non-union groups and distributed information on who to contact when it is believed there is questionable contractor activity. Phone numbers are in place and online complaint forms are available; however, complaints are not always specific.</p>	<p>Chair Hennebold suggested each agency create a flyer asking the public to report potential problems. Include a contact email address and phone number.</p>
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<p>3. Cooperation with other agencies</p>	<p>Utah Labor Commission: Ron Dressler, Program Coordinator, Industrial Accidents, reported misclassification is triggered when 1) an injured worker files a workers' compensation claim and no coverage exists, or; 2) Complaints are received from workers or competitors; or, 3) A first report of injury report comes in from an employer or a physician.</p> <p>Tonya Gallegos, Program Manager, Labor Commission distributed a list of construction companies who have been investigated. Findings show many of these companies have W/C coverage though they are not reporting employees/wages to DWS.</p> <p>Brent Asay, Wage Unit, distributed a statistical report, broken down by industry, showing the number of claims where the classification issue was a factor. A total of 75 cases were reported. Wage claims arise when an employee has not been paid. The employer's response is usually the individual was not an employee but an independent contractor. Many times employers do this to avoid responsibility. Jurisdictionally, there has to be an employee/employer relationship. Licensing laws state individuals have to be treated as a subcontractor or be labeled as an employee. Misclassification delays the time employees can receive wages.</p> <p>Employees can elect to file a wage claim in Small Claims Court, who doesn't consider the classification issue. If it goes to a hearing, the evaluation of the status can be rigorous. All cases don't go to a hearing, some settle. The Labor Commission offers mediation as a service.</p> <p>Michael Yarman, Assistant District Director, U.S. Department of Labor (USDOL), reported their priorities include the Fair Labor Standards Act (FLSA) enforcement, government contracts, the Family Medical Leave Act (FMLA) and child labor laws. In Utah, priorities include FLSA, overtime and minimum wage issues. The national office is focused on misclassification issues. He added the U.S. Department of Labor is investigating at least one of the construction employers mentioned in today's report; however, information sharing isn't available for this review.</p>	<p>Brent Asay stated there is an MOU in place between the USDOL and the Utah Antidiscrimination and Labor Division.</p>
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<p>4. Existing Memoranda of Understanding Among Agencies</p>	<p>Bill Starks, Director, Unemployment Insurance Division, Department of Workforce Services, distributed the MOUs between DWS, the Tax Commission, the Department of Commerce and the Labor Commission. These MOUs allow DWS to share information with various agencies. Most of the information is similar, and the licensing information is public. Commerce and Tax Commission don't have one in place. Mr. Starks continued potentially information could be problematic. The Tax Commission follows IRS law and cannot share names or outcomes but can release non-named statistics. Most agencies have a re-disclosure clause. Mr. Starks added the 1984 Federal Deficit Act states when one enters into an agreement with DWS, similar value and volume needs to be exchanged. This has been the case in the past so reimbursement has not been an issue. Mr. Starks added DWS has an agreement with the IRS which allows sharing of audit information. The IRS has verbally expressed interest in this Council. They only have one person for the entire State of Utah.</p> <p>As this Council reports statistics, there is potential for a bigger enforcement action. Civil actions could be filed, with several agencies as joint plaintiffs. If a prior audit or investigation indicates contractors are repeat offenders, this could prove intent for criminal prosecution.</p> <p>The meeting adjourned at 10:58 a.m.</p>	<p>Mr. Starks will invite the IRS agent to the next meeting.</p> <p>Chair Hennebold will contact each member individually to get suggestions for future meetings.</p>
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Visitors:

- Francine Giani, Executive Director, Department of Commerce*
- Kris Springer, DWS*
- Mark Steinagel, DOPL*
- Dan S. Jones, DOPL*
- Dan Rodriguez, DOPL*
- Wayne Holman, DOPL*
- Ron Dressler, DOPL*
- Brent Asay, Labor Commission*
- Tonya Gallegos, Labor Commission*
- Michael Yarman, U.S. Dept. of Labor*

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WORKER CLASSIFICATION COORDINATED ENFORCEMENT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Todd E. Kiser

Cosponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies labor provisions to address worker classification and related issues of enforcement.

Highlighted Provisions:

This bill:

► changes the Independent Contractor Database Enforcement Council to the Worker Classification Coordinated Enforcement Council, including:

- addressing membership;
 - modifying the duties of the council; and
 - addressing the sharing of information; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-213, as last amended by Laws of Utah 2008, Chapter 273 and renumbered and amended by Laws of Utah 2008, Chapter 382

63I-1-234, as last amended by Laws of Utah 2010, Chapter 319

ENACTS:

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- 30 **34-47-101**, Utah Code Annotated 1953
- 31 **34-47-102**, Utah Code Annotated 1953
- 32 **34-47-201**, Utah Code Annotated 1953
- 33 **34-47-202**, Utah Code Annotated 1953

34 REPEALS:

- 35 **13-46-101**, as enacted by Laws of Utah 2008, Chapter 273
- 36 **13-46-102**, as enacted by Laws of Utah 2008, Chapter 273
- 37 **13-46-103**, as enacted by Laws of Utah 2008, Chapter 273
- 38 **13-46-201**, as enacted by Laws of Utah 2008, Chapter 273
- 39 **13-46-202**, as enacted by Laws of Utah 2008, Chapter 273
- 40 **13-46-301**, as enacted by Laws of Utah 2008, Chapter 273
- 41 **13-46-302**, as enacted by Laws of Utah 2008, Chapter 273
- 42 **13-46-303**, as enacted by Laws of Utah 2008, Chapter 273

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **34-47-101** is enacted to read:

46 **CHAPTER 47. WORKER CLASSIFICATION COORDINATED**

47 **ENFORCEMENT ACT**

48 **Part 1. General Provisions**

49 **34-47-101. Title.**

50 This chapter is known as the "Worker Classification Coordinated Enforcement Act."

51 Section 2. Section **34-47-102** is enacted to read:

52 **34-47-102. Definitions.**

53 As used in this chapter:

54 (1) "Commission" means the Labor Commission.

55 (2) "Commissioner" means the commissioner of the Labor Commission.

56 (3) "Council" means the Worker Classification Coordinated Enforcement Council

57 created in Section 34-47-201.

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58 (4) "Member agency" means an agency that is represented on the council.

59 (5) "Misclassification" means to classify an individual as something other than an
60 employee, if under the relevant law the individual is required to be classified as an employee.

61 Section 3. Section **34-47-201** is enacted to read:

62 **Part 2. Worker Classification Coordinated Enforcement Council**

63 **34-47-201. Creation.**

64 (1) (a) There is created within the commission the Worker Classification Coordinated
65 Enforcement Council consisting of the following four members:

66 (i) the commissioner, or the commissioner's designee;

67 (ii) the executive director of the Department of Commerce, or the executive director's
68 designee;

69 (iii) the executive director of the Department of Workforce Services, or the executive
70 director's designee; and

71 (iv) the chair of the State Tax Commission, or the chair's designee.

72 (b) The Office of the Attorney General shall work cooperatively with the council.

73 (2) The commissioner, or the commissioner's designee, is chair of the council.

74 (3) (a) A majority of the council members constitutes a quorum.

75 (b) A vote of the majority of the council members present when a quorum is present is
76 an action of the council.

77 (c) Subject to Section 34-47-202, the council shall meet at the call of the chair, except
78 that the chair shall call a meeting at least quarterly.

79 (d) The council may adopt additional procedures or requirements for:

80 (i) voting, when there is a tie of the council members;

81 (ii) how meetings are to be called; and

82 (iii) the frequency of meetings.

83 Section 4. Section **34-47-202** is enacted to read:

84 **34-47-202. Duties and powers of the council.**

85 (1) The council shall meet at least quarterly with the attorney general or a designee of

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86 the attorney general to coordinate regulatory and law enforcement efforts related to
87 misclassification.

88 (2) (a) The council shall report by no later than November 30 of each year to:

89 (i) the governor; and

90 (ii) the Business and Labor Interim Committee.

91 (b) The report required by this Subsection (2) shall include:

92 (i) the nature and extent of misclassification in this state;

93 (ii) the results of regulatory and law enforcement efforts related to the council;

94 (iii) the status of sharing information by member agencies; and

95 (iv) recommended legislative changes, if any.

96 (c) As part of the report required by this Subsection (2), the chairs of the Business and

97 Labor Interim Committee shall provide an opportunity to the following to report to the

98 Business and Labor Interim Committee on the effectiveness of the council:

99 (i) the attorney general; and

100 (ii) each member agency.

101 (3) The council may study:

102 (a) how to reduce costs to the state resulting from misclassification;

103 (b) how to extend outreach and education efforts regarding the nature and requirements
104 of classifying an individual;

105 (c) how to promote efficient and effective information sharing amongst the member
106 agencies; and

107 (d) the need, if any, to create by statute a database or other method to facilitate sharing
108 of information related to misclassification.

109 (4) A member agency shall cooperate with the commission and council to provide
110 information related to misclassification to the extent that:

111 (a) the information is public information; or

112 (b) providing the information is otherwise permitted by law other than this chapter.

113 (5) (a) A record provided to the commission or council under this chapter is a protected

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114 record under Title 63G, Chapter 2, Government Records Access and Management Act, unless
 115 otherwise classified as private or controlled under Title 63G, Chapter 2.

116 (b) Notwithstanding Subsection (5)(a), the commission or council may disclose the
 117 record to the extent:

118 (i) necessary to take an administrative action by a member agency;

119 (ii) necessary to prosecute a criminal act; or

120 (iii) that the record is:

121 (A) obtainable from a source other than the member agency that provides the record to
 122 the commission or council; or

123 (B) public information or permitted to be disclosed by a law other than this chapter.

124 Section 5. Section **63I-1-213** is amended to read:

125 **63I-1-213. Repeal dates, Title 13.**

126 ~~[(+)]~~ Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.

127 ~~[(2)]~~ ~~Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1,~~
 128 ~~2013.]~~

129 Section 6. Section **63I-1-234** is amended to read:

130 **63I-1-234. Repeal dates, Titles 34 and 34A.**

131 (1) Title 34, Chapter 47, Worker Classification Coordinated Enforcement Act, is
 132 repealed July 1, 2013.

133 ~~[(+)]~~ (2) Section 34A-2-202.5 is repealed December 31, 2020.

134 ~~[(2)]~~ (3) Section 34A-2-705 and Subsection 59-9-101(2)(c)(iv) are repealed July 1,
 135 2013.

136 ~~[(3)]~~ (4) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act, is repealed
 137 July 1, 2014.

138 Section 7. **Repealer.**

139 This bill repeals:

140 Section **13-46-101, Title.**

141 Section **13-46-102, Definitions.**

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142 Section **13-46-103, Scope.**

143 Section **13-46-201, Creation.**

144 Section **13-46-202, Duties of the council.**

145 Section **13-46-301, Creation.**

146 Section **13-46-302, Confidentiality of information in the database.**

147 Section **13-46-303, Liability.**

148 Section 8. **Effective date.**

149 If approved by two-thirds of all the members elected to each house, this bill takes effect
150 upon approval by the governor, or the day following the constitutional time limit of Utah
151 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
152 the date of veto override.