

**UNAPPROVED Minutes of the**  
 Worker Classification Coordinated Enforcement Council  
 January 11, 2012  
 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  
 Dolores Furniss Disclosure Officer, 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 ITEM                        | DISCUSSION   |
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| 1. Welcome and approval of minutes | <p>Chair Hennebold called the meeting to order at 9:00 a.m.</p> <p>Chair Hennebold stated notice of today’s meeting 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. He noted a quorum is present.</p> <p><b>MOTION:</b> Chair Hennebold made a motion to approve the November 21, 2011 Meeting Minutes. Mr. Starks seconded the motion and the Minutes were approved unanimously.</p>  |
| 2. Public Comment                  | <p>Chair Hennebold introduced John Monson, member of the public, who requested time on today’s agenda to address the Council. He distributed a written document (Attachment 1), asked the group to review and requested time on the next meeting agenda to discuss the contents. Mr. Starks stated he has already received a copy of this letter. Mr. Monson stated he has been a contractor for many years and understands the issues with misclassification. He added Workers’ Compensation sells waivers to employees because they don’t understand the difference between an employee and a contractor. He doesn’t feel DOPL understands either. Obtaining a contractor’s license does not make one independent. Mr. Levar stated these are statutory issues and would need to be addressed by the Legislature. This isn’t a matter of opinion but how the laws are written. Mr. Monson wants to see a committee</p> |

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| <p>3. Open Meeting Training</p> | <p>address the concerns in his letter. Chair Hennebold suggested the members read the document at a more convenient time and he will contact Mr. Monson if further discussion is needed.</p> <p>Mr. Lott distributed a packet of information on the Utah Open and Public Meetings Act. (Attachment 2). The Legislature requires that annual trainings take place to review the requirements. The group discussed in detail.</p> <ul style="list-style-type: none"> <li>• Chair Hennebold wants to ensure he is within the scope of the Act when he sends emails back and forth to the members and other interested parties of this Council. This is within the boundaries and including other interested parties for information purposes is encouraged;</li> <li>• Minutes - Mr. Lott believes it is good practice to add comments from the members in the Minutes;</li> <li>• Any person attending the meeting may record the meeting, either audio or video, as long as it is not disruptive of the meeting;</li> <li>• Closing a Meeting - Mr. Lott added there are procedural requirements to close a meeting such as: a quorum is present, the meeting begins as an open meeting with proper notice, and the majority of the members of the public body must vote to approve closing the meeting. In this body, 3 out of 4 would constitute the majority, or if 3 members were present, 2 out of 3. Closed meetings are only allowed for a permissible reason and no votes will be taken during that time. Mr. Starks asked if more than one subject can be discussed during the closed meeting. Yes, but each subject of discussion during the meeting has to be for an allowed purpose. Mr. Lott clarified if there were a decision to take a certain action or make a recommendation to the legislature, it would need to be done during the open portion of the meeting. The Minutes need to include why the meeting was closed and the names of those who voted to close. An unedited recording will be made from commencement through the adjournment. This body decided to record during closed meetings but not retain written details. The recording needs to include date, time, members, and any staff or public present. The Minutes recorded during the open portion of the meeting are public, those in the closed meeting are private</li> <li>• Chair Hennebold asked the group if this Council can function adequately under the general provisions of the Open and Public Meetings Act. Or do we need specific treatment? Ms. Furniss likes the ability to be able to close the meeting when discussing specific individuals. Mr. Levar is comfortable with this structure;</li> <li>• Mr. Starks asked if there are penalties associated with non-compliance issues during the open meeting such as not posting the meeting or identifying agenda items. Mr. Lott stated it is hard to contemplate how this would be handled. In a court challenge, the action taken would probably be reversed. Criminal charges would not apply.</li> </ul> |
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| <p>4. Follow-up on E-verify/driver's license verification presentation</p>  | <p>Mr. Levar stated he has not yet received an answer from Mr. Pittman regarding his request for clarification on whether LLCs using Worker/Owners could use e verify. The Council agreed to table this. Mr. Levar will forward any information received.</p>  |
| <p>5. Discussion of Legislative matters affecting worker classification</p> | <p>Mr. Levar reported there will be a statutory change to legislation sponsored by Senator Hillyard from last year. Starting in July, LLCs do not have to report principals and owners to the Division of Corporations or commercial code. That requirement for corporate filings ends in July.</p> <p>Tonya Gallegos reported without having the disclosure of the members through the DOC, it would not have been possible to identify LLC members in the construction industry. Ms. Gallegos added they use the information to identify alternate addresses, etc., therefore, this decision means losing pertinent data. Mr. Starks asked whether this may move to other industries other than construction. Mr. Levar clarified there is a requirement that construction must report to DOPL within a certain number of days. He added they have been obtaining this information from the Division of Corporations as it was public and available to all. Chair Hennebold stated this Council can discuss workarounds or tracking problems this may cause. Mr. Levar will find out if this change is for both LLCs and Corporations.</p> <p>Mr. Levar reported S.B. 92, a license related amendment which applies to the owner/worker model, is being run by Senator Mayne at the request of the Department of Commerce (DOC). DOC tries to stay neutral, however they support this bill. Highlights of the bill include clarification on the authority DOC believes they have, financial responsibilities requirements which can include history of the owners and former entities they have owned, and clarification on financial responsibility including failure to pay taxes. It also asks for a rule making authority to require additional information on applications, asked for one clarification on companies with fewer than five owners, who own less than 8%, and are asking for a change so their status change only be updated annually instead of quarterly. Mr. Levar hopes it is a non-controversial bill.</p> <p>Chair Hennebold reported H.B. 215 has been filed by Representative Morley. This goes back to some of the ground plowed by S.B. 35, the bill that created a presumption that workers of incorporated entities that are construction licensees are employees, for purposes of workers' compensation, anti- discrimination, payment of wages, and occupational safety and health. The net effect of H.B. 215 was to create that presumption and allow rebuttal by clear and convincing evidence that licensing could come in and show these workers were not employees. This new bill merely changes the standard of proof from clear and convincing to a preponderance of the evidence. It technically lowers the standard of proof. Chair Hennebold stated there is no real change and his agency will remain neutral. This bill will also provide education that the Labor Commission is issuing waivers instead of the insurance companies. Ron</p> |

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| <p>6. Labor Commission Complaint Hotline</p> <p>7. Other</p> | <p>Dressler reported this process has gone better than expected. They predicted 12,000 applications but have exceeded this amount. He added an online application process has been implemented.</p> <p>The above referenced bills have been numbered and, are therefore public.</p> <p>Chair Hennebold distributed a screen shot of the Labor Commission’s complaint page (Attachment 3). They have established a dedicated telephone line. Complaints will be shared with the Council and constituent agencies. Comments should be sent to Chair Hennebold.</p> <p>Mr. Levar reported all CSG contractor licenses have expired. There is no evidence they are working unlicensed. As they did not contest their license, the matter is moot. ITY has let their license go, as well. New license applications are being reviewed to determine if these could be the same individuals.</p> <p>Ms. Furniss reported the Tax Commission has pulled samples of LLCs that issued K1s for 2010, and have wrapped up the report. She will have numbers by the next meeting. Their summary will show information on what was sampled and what was found.</p> <p>Ms. Furniss stated the IRS has a new program to bring back employers who have misclassified workers. They have stated they won’t be sharing this information with any states. The Tax Commission has an exchange agreement with the IRS. The IRS contacted employers and said if they have employees who are currently being treated as self-employment and issuing 1099s, they will be allowed to obtain the proper classification and will only be required to pay 10% of the SSA tax that they should have been remitting. No penalties or interest and going forward will be treated as employees. This will go back one year. She feels this is disconcerting as the TC has had a good exchange of information sharing with the IRS. Mr. Lott asked if the TC has a proposal to piggyback. The TC doesn’t have employer-based additional taxes like SSA or Medicare. Currently, the TC can share withholding files with DWS. Mr. Starks asked if the employers will be required to file a 1099 with the IRS as a condition. Eileen Rivera added they had to file the 1099s as long as they were not under a State audit. Mr. Starks added when they sign up with the IRS, there is a certification process between IRS and DWS on FUTA tax. He clarified if an employer comes in and says they have been non-compliant, they will have to pay their back SSA and FUTA tax, and will report all their workers and pay. There is an incentive for them to file their State.</p> <p>Chair Hennebold reported he received a call from an individual with information on a worksite which may be violating various labor reporting laws. He wants to disclose these allegations and if they are correct, wants to implement</p> |
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| <p>8. Future meeting schedule/adjourn</p> | <p>investigative action. To discuss in an open meeting would reveal the target of the investigation.</p> <p><b>Motion:</b> Chair Hennebold made a motion based on information; he wants to close the meeting. The reason, pursuant to 52-4-205, 1(c) <i>strategy sessions to discuss pending or reasonably imminent litigation</i>; and 1(g) <i>investigative proceedings regarding allegations of criminal misconduct</i> . Only the Council members and Support Staff, Mary Gehman-Smith will remain. The members voted individually and unanimously to close the meeting. There will be no written minutes of the closed meeting. Handouts from the closed meeting will be kept in a separate file. The location of the meeting was not changed.</p> <p>The closed session began at 10:13 a.m.</p> <p><b>Motion:</b> Chair Hennebold made a motion to reopen the meeting at 10:26 a.m. The vote was unanimous and all were in favor.</p> <p>Chair Hennebold stated he doesn't believe this group needs to meet monthly but every two months will be sufficient. Investigations will continue to be coordinated and if there is a need to meet, we will. The next meeting is scheduled for Thursday, March 15, 2012 at 9:00 a.m. We will meet in this same room.</p> <p>Chair Hennebold motioned to adjourn the meeting at 10:29 a.m., Ms. Furniss seconded the motion and the motion was unanimous.</p> |
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**Visitors:** Mike Miller, Chief of Contributions, Department of Workforce Services  
Eileen Rivera, Field Audit Manager, Department of Workforce Services  
Ron Dressler, Director, Industrial Accidents Division, Labor Commission  
Tonya Gallegos, Deputy Director, Industrial Accidents Division, Labor Commission  
Dennis Lloyd, Sr. V.P., Workers' Compensation Fund  
Tricia McDonald, Workers' Compensation Fund Administration  
John Monson, Member of the Public



















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Home > Employee Misclassification

## Misclassification of Workers

### What is worker misclassification?

Worker misclassification occurs when an employer improperly classifies an employee as an "independent contractor" or "member" of a Limited Liability Company (LLC) in order to avoid legal obligations that arise from the employer/employee relationship.

### Who suffers when workers are misclassified?

- **Workers:** Workers improperly classified as "independent contractors" or "members" of LLCs may lose protections of federal and state laws such as workers' compensation, unemployment insurance, payment of wages (including minimum wage and overtime), occupational safety and health, employment discrimination.
- **Employers:** By misclassifying workers in order to avoid their legal obligations, unscrupulous employers undercut their responsible, law-abiding competitors. In other words, employers who misclassify obtain an unfair competitive advantage against honest employers.
- **The General Public:** Worker misclassification leads to "cost shifting"—costs of workplace injuries or unemployment that should be paid by an employer are shifted to the government, insurance companies, and others. This results in higher health care costs, and insurance premiums, a drain on public assistance and charity, and loss of tax revenues.

### How to report worker misclassification.

If you think an employer is misclassifying workers, please notify the Utah Labor Commission by calling 801-530-6112. Commission staff will discuss your complaint with you and then take appropriate action to investigate the complaint.

The Labor Commission will also share your complaint with the Utah Worker Classification Coordinated Enforcement Council, a multi-agency taskforce composed of the Labor Commission, the Departments of Commerce and Workforce Services, the Tax Commission and Attorney General's Office.

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