



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

Meeting Date and Time: June 24<sup>th</sup>, 2024, 9:00 am – 11:00 am

Minutes Prepared By: Abdulaziz Mohamed

Location: Minnesota State Capitol Room 120, and Microsoft Teams

### **Attendance**

#### **Members Present**

Representative Emma Greenman  
Rod Adams  
Commissioner Nicole Blissenbach  
Octavio Chung Bustamante  
Daniel Getschel  
Commissioner Paul Marquart  
Burt Johnson  
Senator Clare Oumou Verbeten  
Brad Letto (Proxy for Melissa Hysing)  
Briana Kemp  
Amir Malik  
Aaron Sojourner  
Karen Kroll (Proxy for Brittany VanDerBill)  
Kim Vu-Dinh  
Deputy Commissioner Evan Rowe  
Brian Elliot (Ex-Officio)  
Lindsey Lee (Ex-Officio)  
Lee Atakpu (Ex-Officio)

#### **Members Absent**

Jonathan Weinhagen

#### **Attorney General’s Office (AGO) Staff Members Present**

Carin Mrotz  
Abdulaziz Mohamed



## **Agenda Items**

### **1. Call to order and roll call**

Representative Emma Greenman calls the meeting to order at 9:00 am. A quorum was present.

### **2. Approval of meeting agenda**

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

### **3. Approval of May 29<sup>th</sup> minutes**

A motion was made and seconded to approve the May 29<sup>th</sup> minutes. A vote was taken, and the motion passed unanimously.

### **4. Task Force Business**

Updates on task force business were given as follows:

- Representative Emma Greenman provided an update on the meeting schedule, indicating that discussions had been held regarding whether to complete remaining work over the summer or extend into the fall. It was decided to explore extending into the fall, with specific meeting dates set for July and August.
- Carin Mrotz also mentioned submitting paperwork to extend everyone's appointment and confirmed that no additional actions were required from attendees regarding paperwork submission. She plans to send a confirmation email once things are processed.
- The current task force meeting will include presentations from Terri Gerstein, Lee Atakpu, and Commissioner Nicole Blissenbach on Determining Classification: Presumptions of Employment

### **5. Presentation: Exploring Employment Presumptions**

A presentation on Exploring Employment Presumptions was given by Terri Gerstein and Lee Atakpu as follows:

- Lee Atakpu, Managing Attorney of the AGO's Wage Theft Division, introduced Terri Gerstein as an expert in employment law, and invited her to provide background and insights into employment presumptions, setting the stage for a task force discussion.



- Terri Gerstein began by explaining the significant of the employment relationship in our economic system, emphasizing the preference for employment over independent contractor status. She highlighted how workplace laws protect employees, including minimum wage, overtime, and safety regulations, whereas independent contractors lack these protections. Terri Gerstein illustrated the difference using examples such as plumbers working independently versus as employees of a plumbing company. She underscored the power disparity between employers and workers and emphasize the importance of legal protections for employees. Terri Gerstein concluded by lining these issues to broader economic implications and societal benefits of maintaining clear distinctions between employees and independent business.
- Lee Atakpu continued from Terri Gerstein’s statement, emphasizing the concept of presumption of employment in the context of worker classification. He discussed how this presumption operates as a default assumption that a worker is an employee unless proven otherwise. Lee Atakpu highlighted the practical applications of rebuttable presumptions in various legal contexts, illustrating how they provide initial clarity while allowing for flexibility based on evidence presented. He emphasized the importance of this concept in address misclassification issues.
- Terri Gerstein discussed the concept of presumption in legal contexts, highlighting its application in workers’ compensation and anti-retaliation laws. She explained how presumptions help shift the burden of proof to favor workers in certain situations, such as proving a causal connection between illness and occupational hazards in workers’ comp cases or demonstrating retaliatory motives in employment disputes. Terri Gerstein emphasized the importance of these presumptions in upholding worker protections and ensuring fair treatment within the legal framework. She underscored that while rebuttable, these presumptions serve to support workers in navigating complex legal challenges related to employment rights.
- Lee Atakpu emphasized the benefits of adopting a presumption of employment standard, arguing that it provides clarity and fairness form the outset of employer-employee relationships. He highlighted that such a default rule would streamline enforcement efforts, reduce costs for employers, and ensure equitable treatment of workers, thereby strengthening social safety nets and protection taxpayers. Lee Atakpu acknowledged potential criticisms regarding flexibility but argued that the clarity and reduced ambiguity would ultimately benefit both employers and employees. He encouraged further exploration and discussion on implementing this approach to address employment classification issues effectively.

## **6. Discussion: Exploring Employment Presumptions**

Based on the presentation given, the task force members asked questions and engaged in a discussion as follows:



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- Brad Letto acknowledged the utility of a presumption as a starting point in employment classification but cautioned that it might not always be effective, noting the complexities involved and if employers dispute it.
- Representative Emma Greenman questioned how to ensure that presumptions are optimally implemented and impactful in addressing misclassification issues, emphasizing the importance of clarity and practical application in enforcement to combat potential non-compliance. Terri Gerstein emphasized that while a presumption is valuable, it cannot replace well-funded and strategic enforcement efforts. She highlighted that presumptions streamline enforcement by providing clarity and reducing the complexity of determining employment status, thereby making enforcement more effective and efficient. Terri also underscored the ongoing need for robust enforcement practices alongside the implementation of presumptions to address compliance challenges comprehensively.
- Lee Atakpu reiterated the importance of a presumption as a foundational starting point for businesses to understand the default nature of employment relationships. He acknowledged that while intentional misclassification may still occur, having a clear default reduces confusion for both employers and employees. Lee Atakpu emphasized that enforcement agencies play a crucial role in ensuring compliance and investigating misclassification complaints, thereby reinforcing the necessity for businesses to justify any classification deviating from the presumed employee status.
- Representative Emma Greenman also highlighted that presumptions are essential because they recognize that employers or contractors are often in the best position to understand and define the nature of their relationships. This approach shifts the burden from enforcement agencies to those directly involved, emphasizing both evidentiary support and policy alignment in determining employment status.
- Deputy Commissioner Evan Rowe inquired about whether any states have implemented such standards and how they fit into the broader landscape of employment law across the country. Terri Gerstein explained that while she didn't have a comprehensive overview of all states, she noted several states, including New York, New Jersey, Massachusetts, and California, that have implemented presumptions of employment in various contexts such as the construction industry or through tests like the ABC test. She emphasized the diverse applications of these presumptions across different states and industries.
- Burt Johnson inquired about best practices in implementing presumptions of employment, particularly reflecting on experiences in Minnesota where initial rollouts faced challenges in communication and stakeholder understanding, especially within segments of the construction industry prone to misclassification. He sought insights on effective strategies for shifting understanding among stakeholders and improving compliance, considering the complexities faced by state enforcement agencies. Terri Gerstein acknowledged not having detailed information on specific state rollouts of presumptions but highlighted the long-standing use of such measures in Massachusetts, New Jersey, and California. She



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emphasized the importance of learning from past rollouts, particularly in industries like construction, and underscored the need for robust communication strategies to ensure stakeholders understand their rights under new policies. Terri Gerstein also pointed out broader challenges in worker education about rights, suggesting that lessons from implementations could benefit future policy considerations.

## **7. Presentation: Presumption in Minnesota Law**

A presentation on Presumption in Minnesota Law was given by Commissioner Nicole Blissenbach as follows:

- Commissioner Nicole Blissenbach’s presentation was comprehensive, touching on various aspects of policy implementation and enforcement in Minnesota. She noted the critical role of outreach and education in policy adoption, emphasizing that no single method suits everyone. Commissioner Nicole Blissenbach highlighted recent efforts within the labor standards department to enhance outreach effectiveness, including new hiring and strategic community engagement. She cited Minnesota’s distinct overtime laws for agricultural workers and used recent cases to illustrate education opportunities and state-specific protections. Commissioner Nicole Blissenbach underscored the complexity of wage and hour laws and the department’s proactive approach to publicizing their efforts. She also discussed recent legislative changes in misclassification laws, noting improvement in enforcement mechanisms and the significance of legislation updates. Her presentation combined legislative reform, robust education, and effective enforcement to protect workers’ rights in Minnesota effectively.

## **8. Discussion: Presumption in Minnesota Law**

Based on the presentation given, the task force members asked questions and engaged in a discussion as follows:

- Representative Emma Greenman sought clarification on who ultimately decides or assesses the factors involved in the employment classification tests. Deputy Commissioner Evan Rowe explained that on the unemployment insurance side, a field audit unit conducts retrospective eligibility reviews using random and statistical sampling methods. These reviews aim to ensure compliance and resolve disputes between employers and claimants over benefit claims through adjudication processes throughout the year.
- Representative Emma Greenman followed up and asked for clarification on how employers would navigate a situation under a presumption. She sought guidance on where employers should start if they were uncertain about compliance and needed clarification from an agency, particularly in scenarios that don’t involve enforcement actions but rather setting standards. Deputy Commissioner Evan



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Rowe emphasized the need for caution when providing guidance to employers, particularly in tax and compliance matters, without delving into specifics of individual cases. He highlighted that state staff are eager to assist employers in finding the correct answers, recognizing that each employer's situation may vary, and that clear rules and straightforward approaches to ensure that employers can make informed decisions and comply appropriately.

- Representative Emma Greenman asked how the existence of a presumption in law, such as the construction test versus the point 72 test, impact the initial guidance provided when someone calls seeking clarification. In response to the line of questioning, Commissioner Nicole Blissenbach's explained that in investigations where factors need balancing to determine employment status, the ultimate decision typically lies with judges in court or administrative hearings. She emphasized the uncertainty due to the subjective nature of these factors. Regarding the construction test versus the general industry test, Commissioner Nicole Blissenbach highlighted that the construction test offers clearer criteria, such as specific requirements for insurance and contractual terms, making it less ambiguous than the general industry test. This approach provides more clarity for employers legitimately using independent contractors, guiding them on how to establish contractor status effectively.
- Amir Malik highlighted the importance of enforcement in policies, particularly referencing the sick and safe time law. He noted that the state law's improved enforcement outcomes compared to previous city ordinances he worked with, such as those in Minneapolis and Bloomington. Amir Malik pointed out that the state law's rebuttable presumptions simplified enforcement by establishing clear guidelines for sick leave, reducing ambiguity about employee eligibility. He emphasized that these changes minimized conflicts between employers and employees, providing a smoother regulatory framework.
- Commissioner Nicole Blissenbach highlighted the benefits of learning from local sick and safe time ordinances in cities when drafting state laws. She acknowledged the insights gained from local enforcement challenges and credit them for creating a more enforceable state law. Commissioner Nicole Blissenbach also discussed the importance of presumptions, citing the example of a COVID presumption in workers' compensation laws during the pandemic. This presumption facilitated easier claims processing for certain occupations that likely contracted COVID at work, demonstrating its effectiveness in supporting workers in high-risk environments.

## 9. General Discussion

A general discussion, building on the presentations given, took place as follows:

- Representative Emma Greenman expressed a desire to focus on the implication of presumptions. She emphasized the importance of considering how these policies



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would impact various stakeholders, including workers, independent contractors, and the public's understanding of social safety nets.

- Karen Kroll, drawing from her experience in freelance, expressed concerns about potential consequences of misclassification laws on legitimate independent contractors, referencing California's experience with stringent ABC test legislation and the subsequent flood of exemption as a cautionary example. She acknowledged the benefits and empowerment of independent contracting, noting it's not suitable for everyone but crucial for individuals with disabilities or caregiving responsibilities. Karen Kroll emphasized the need for nuanced consideration, advocating for policies that support diverse employment arrangements while ensuring protections for workers and clarity for employers.
- Senator Clare Oumou Verbaten emphasized the importance of adhering to the law to determine whether someone is classified as an employee or an independent contractor. She highlighted that the real choice lies in whether individuals want to operate their own business or be an employee. Senator Clare Oumou Verbaten underscored the significance of clarity in employment classification to ensure fair and legal engagement in the workforce, advocating for compliance with existing laws to guide these distinctions effectively.
- Representative Emma Greenman highlighted the complexity of stakeholders involved in the policy question of employment classification. She pointed out the historical policy choices favoring employer-employee relationships and the emergence of solo businesses. Representative Emma Greenman discussed how presumptions codify these policy realities and raised questions about how shifting the balance between employees and independent contractors might impact systems like unemployment insurance and the broader economy's stability.
- Deputy Commissioner Evan Rowe emphasized the value of the detailed discussion on presumption and classification tests, noting its educational benefit for everyone involved. He highlighted the ongoing evolution of our social safety net, shaped by historical contexts like the New Deal, and underscored the need to adapt these frameworks as the labor market and societal needs change over time.
- Representative Emma Greenman noted that while our social safety net and employment relationships continue to evolve, the current model in Minnesota remains centered on employment, acknowledging that while there are alternative models such as universal benefits not tied to employment, that discussion is beyond the current scope of the task at hand.
- Burt Johnson discussed the value of presumption versus changing the test in employment classification. He emphasized that existing tests across different contexts can be confusing, and a presumption clarifies the policy choice favoring employment relationships. Burt Johnson highlighted the need for careful consideration of unintended consequences in policy discussions, advocating for a presumption that aligns with the social safety net being tied to employment, while also aiming for simplicity and clarity in any new tests.



- Amir Malik highlighted two approaches businesses might take regarding incentives: one could involve lowering standards for certain groups like minorities or people with disabilities to fit them into independent contractor roles, while the other approach, exemplified by Saudi Arabia's policies, provides incentives to hire diverse groups without compromising standards. He emphasized that a presumption in employment classification reinforces the value of every individual without diminishing their worth based on characteristics like minority status or disability.
- Representative Emma Greenman seeks to reach recommendations from the discussions on presumption and tests, similar to previous preliminary recommendations.
- Octavio Chung Bustamante found the conversation highly educational, particularly noting Commissioner Nicole Blissenbach's point about how presumption could potentially bring clarity to the relationship between independent contractors and employers. He expressed eagerness for further developments in this work.

## 10. Public Comment Period

Public testimony was given by members of the public as follows:

- Colin Stevenson, representing Minnesota contractors in the construction industry, emphasized the challenges faced due to widespread misclassification, particularly with undocumented workers. He highlighted the desire of many workers to be classified as employees to receive rightful benefits and pay, which is hindered by current practices such as cash payments and labor brokerage. Colin Stevenson urged the task force to provide clear steps for compliant practices, expressing concern that law-abiding contractors could be priced out of the market without effective solutions, potentially exacerbating workforce shortages and exploitation.
- Courtney Ernstein, a construction attorney formerly specializing in immigration law, expressed concerns on behalf of small business contractors in the construction industry, particularly in exterior storm restoration. She highlighted the challenges faced by compliant employers due to stringent requirements to provide independent contractor status, which she argued contradicts the essence of true independence and poses significant burdens on small businesses.

## 11. Adjournment

Representative Emma Greenman adjourned the meeting at 11:02 am.