



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

Meeting Date and Time: November 20th, 2023, 1 pm – 4 pm

Minutes Prepared By: Abdulaziz Mohamed

Location: LIUNA, 81 Little Canada Rd E, St Paul, MN 55117, and Microsoft Teams

### **Attendance**

#### **Members Present**

Representative Emma Greenman  
Rod Adams  
Commissioner Nicole Blissenbach  
Octavio Chung Bustamante  
Daniel Getschel  
Melissa Hysing  
Burt Johnson  
Briana Kemp  
Senator Clare Omou Verbaten  
Deputy Commissioner Evan Rowe  
Aaron Sojourner  
Brittany VanDerBill  
Kim Vu-Dinh  
Brian Elliot (Ex-Officio)  
Jonathan Moller (Ex-Officio)  
Amir Malik

#### **Members Absent**

Jonathan Weinhagen

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

Carin Mrotz  
Abdulaziz Mohamed  
Laura Sayles  
Jerome Rankine  
David Pegg



## **Agenda Items**

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

Co-chair Emma Greeman calls the meeting to order at 1:07 pm. 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 October 25<sup>th</sup> minutes**

A motion was made and seconded to approve the October 25<sup>th</sup> minutes. A vote was taken, and the motion passed unanimously.

### **4. Testimony by Construction Workers**

Public testimony was given by construction workers as follows:

- BJ Mariotti, Executive Vice President of Frana Companies, highlighted the company's significant contribution to building over 40,000 housing units in Minnesota. Mariotti expressed concerns about unfair competition in the multifamily construction industry, where some subcontractors exploit workers through misclassification and cash payments. He emphasized the need for labor protections, such as prevailing wage requirements, to be attached to public funding like tax increment financing. Mariotti urged the task force to adopt changes to level the playing field and prevent the growth of labor exploitation.
- Enrique Lopez, an immigrant from Mexico, testified about his experience as an independent contractor working for Environmental Stone Works. Lopez highlighted the challenges faced by immigrants in the construction industry, emphasizing the exploitation caused by the difference between independent contractors and employees. He described working long hours without overtime pay, high taxes, and the inability to negotiate better conditions. Lopez urged companies like Environmental Stone Works to stop classifying workers as independent contractors and to treat them as employees, ensuring fair wages and benefits.
- Jose Alfredo Gomez Rosales, a construction worker and a member of CTUL, shared a harrowing testimony about his experience working for a nonunion roofing project. Despite being promised \$200 a day in cash, received less and was denied overtime pay for 12-hour workdays. After a serious fall resulting in severe injuries, his employer initially promised insurance coverage but later revealed there was a mistake and offered only \$200 a week. Facing economic challenges, Jose pursued legal action and uncovered insurance fraud. He now advocates for workers' rights,



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highlighting issues such as misclassification, wage theft, and the need for developers to prioritize worker protection through joining CTUL's building dignity and respect program.

- Javier Mendez Velasco discussed his employment at PMC Advantage Construction on various projects, citing instances of being paid \$25 per hour in cash without compensation for breaks or overtime. When he sought help from the Minnesota Department of Labor and Industry to address these issues, management reacted negatively. Following a meeting where workers were informed about their cooperation with the Department, Javier was laid off. Fearing for his safety, he had his wife collect his final paycheck. Javier emphasized the importance of workers not facing retaliation for reporting unethical practices and hopes that sharing his experiences would contribute to the advocacy for fair treatment and ethical business practices.
- Gerardo worked for Absolute Drywall until March 2022, starting at \$15 an hour and later earning \$20 an hour, while the Carpenters Union paid \$45 an hour for the same work. He experienced no overtime pay, lack of breaks, and a \$100 bi-weekly deduction, supposedly for potential hospital fees in case of injury. When he fell and got injured, colleagues discouraged seeking medical help, and supervisors suggested taking painkillers or face layoffs. Seeking fairness, Gerardo contacted the Carpenters Union, expressing concern about potential retaliation, and since joining the union, he no longer worries about missing payments or benefits.
- Jonathan Ferris, a Supervisory Special Agent with the Minnesota Department of Commerce's Commerce Fraud Bureau, shared insights on the issue of worker misclassification, acknowledging its pervasiveness and the challenges faced in investigating every case. Over the past six years, Ferris has heard numerous stories from workers, emphasizing the seriousness of the problem across Minnesota. He highlighted the dangers faced by workers, including threats, immigration concerns, and the reluctance to seek medical care due to fear. Ferris also noted the severity of associated crimes, such as forgery and labor trafficking, underscoring the need for address this issue seriously.

## 5. Questions and Discussion on Construction Workers' Testimony

The task force members asked questions and engaged in a discussion as follows:

- Brittany VanderBill noted the powerful impact of the testimonies, calling for task force to concentrate on supporting agencies in enforcing existing laws and raising awareness among workers and employers regarding compliance with those laws.
- Burt Johnson asked about the differences experienced when bidding and working on projects with public subsidies and attached labor standards. BJ Mariotti explained that in instances where there are prevailing wages and labor standards attached to projects, those engaging in misclassification and wage theft tend to avoid bidding on such projects. This avoidance is due to the scrutiny and enforcement involved. On the other hand, in cases where there is no enforcement



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of prevailing wages, he noted that he often receives feedback that his pricing is 10% off the quoted numbers, highlighting potential issues in those situations.

- Melissa Hysing appreciated the breakdown of actuals costs and hours associated with construction projects and question whether developers are aware of the cost structure differences related to misclassification. She inquired if developers understand the reasons behind lower numbers on projects and if they are cognizant of where the cuts are happening in terms of labor costs. BJ Mariotti acknowledged that he became aware of the issue only in the last three years when he received feedback about being 10% higher in pricing. He began to understand the implications by applying production rates and analyzing whether the lower numbers were realistically possible. He highlighted that he can now show clients the mathematical differences, explaining how various rates of production translate to differences in wages, particularly between those paid \$20 an hour versus the standard \$80 an hour.
- Representative Emma Greenman inquired about the specifics of how companies' approach and fulfill the requirement of workers' compensation policies, seeking insight into the practical details of the process and the nuances of fraud in this context. Jonathan Ferris explained that the companies involved in worker misclassification often instruct workers to open LLCs and obtain minimum workers' compensation insurance policies, which are relatively inexpensive. The system requires businesses to estimate their workforce for the year, but workers with basic policies often fail to respond to audits. Jonathan Ferris noted that contractors might choose this route to save significant costs. Workers often face issues when they receive large tax bills as 1099 contractors and are left responsible for significant amounts of money they passed on to others, resulting in multiple victimizations.
- Rod Adams asked about the challenges the Commerce Fraud Bureau faces due to a resource gap in investigating and enforcing worker misclassification. He also inquired about the bureau's collaboration with other agencies in addressing this problem. Jonathan Ferris mentioned that the bureau has 21 law enforcement officers and six analysts covering insurance fraud and financial crimes. He highlighted the broad jurisdiction of the bureau and mentioned an increase in cases related to worker misclassification, including significant referrals from a financial situation.

## **6. Break**

## **7. Testimony by Freelance Workers**

Public testimony was given by freelance workers as follows:

- Doug McNair, a freelance writer and editor, emphasized the importance of preserving the right for individuals like him, who operate as independent contractors, to choose their work arrangements. He highlighted the benefits of



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freelancing, such as being one's own boss and avoiding age discrimination prevalent in traditional employment. McNair shared his family's experience as freelancers for decades, emphasizing the need to distinguish between situations like his and those of misclassified construction workers.

- Amy Rea, a freelance writer and editor, shared her positive experience with freelancing, emphasizing the flexibility it provides. She chose freelancing over traditional employment for nearly 25 years, even when offered a W-2 job. Amy Rea highlighted her husband's successful transition to contracting after facing ageism in traditional employment. She stressed the importance of solutions that address specific worker challenges without adversely affecting freelancers who value their independent status.
- Matt Case, co-owner of Case LLC, described his and his wife's journey as small business owners in content creation. They transitioned from traditional employment to freelancing for flexibility and autonomy. He emphasized the diversity of structures in content creation and warned against a one-size-fits-all approach, urging consideration for the impact on local economies and small businesses.
- Carrie Kroll, a self-employed freelance writer, highlighted the satisfaction of independent contractors and emphasized the benefits of schedule control, diverse projects, and financial stability during economic downturns. She stressed the importance of enforcing against misclassification and expressed concerns about potential unintended consequences, urging policymakers to consider the impact on self-employed individuals.
- Ingrid Christensen, owner of a language services company, advocated for preserving the professional freedom of independent contractors in the language services industry. She emphasized the diverse skills of language practitioners and opposed adoption of an ABC test, urging Minnesota to protect the rights of independent contractors.
- Karen Anderson from Freelancers Against AB5 highlighted the impact of California's ABC law on independent contractors, entrepreneurs, and various professions. She emphasized the extensive negative consequences, urging Minnesota to avoid a one-size-fits-all approach and learn from California's experience.

## **8. Questions and Discussion on Freelance Workers' Testimonies**

The task force members asked questions and engaged in a discussion as follows:

- Burt Johnson raised the importance of understanding different perspectives, particularly in the context of potential misclassification. He questioned if there are instances where freelancers feel unfairly misclassified under existing state laws. Doug McNair, Amy Rea, and Ingrid Christensen said no.
- Kim Vu-Dinh asked the panel if they had anecdotes about misclassification in their industries, seeking examples that highlight the challenges of distinguishing



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between freelancers who are content with their independent status and those who may feel compelled to work as freelancers. Matt Case emphasized that dissatisfaction could occur in both employee and freelancer roles, often stemming from individual choices like job selection or client engagement rather than the classification itself.

- Kim Vu-Dinh sought clarification on the distinction between employees and independent contractor status, specifically addressing situations where individuals fit the employee description but are misclassified as independent contractors. Matt Case stated that, in his experience, there have been no cases of misclassification, as individuals working as freelancers or independent contractors have actively chosen that status. He noted that those facing challenges typically made decisions within their chosen classification rather than being compelled into a specified category.
- Representative Emma Greenman followed up and inquired about the specifics of the relationship when individuals are working as independent contractors. She sought details on the legal setup, contract structure, and the key components involved in such arrangements. Matt Case described his consulting contracts as project-based, preferring this approach. The contracts include project details, specifications, deadlines, payment conditions, and jurisdiction in case of disputes, highlighting the business-to-business nature of the agreements. Carrie Kroll mentioned that she has an incorporated business, pays payroll taxes, and uses a payroll company for handling these matters. She emphasized being set up as a small business, occasionally hiring independent contractors for assistance. Carrie acknowledged the heartbreaking stories and recognized her privilege in being able to turn down projects they don't align with her needs.
- Melissa Hysing asked the freelancers how they view situations where workers are labeled as independent contractors but lack the business-related decision-making freedom that freelancers enjoy. Doug McNair answered that, if someone fits that description, they're being misclassified.
- Brian Elliot inquired about aspects that distinguish independent contractors from employees beyond flexible schedules. Doug McNair stressed the importance of setting his own rates, choosing clients, and avoiding toxic work environments as crucial aspects of freelancing.
- Ingrid Christensen highlighted the significant benefit of upskilling for interpreters working as independent contractors. She noted that freelancers can engage in diverse projects, providing them with opportunities for continuous improvement and skill development compared to full-time employees with more limited roles.
- Jonathan Moller inquired about the specific aspects of their businesses that freelancers value and would like to protect in the event of a law change. Matt Case discussed the distinct risk dynamic freelancers face, where the absence of work directly impacts their income, contrasting it with the traditional employee-employer relationship.





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- Amy Rea highlighted the significance of flexibility for freelancers, enabling them to pursue personal passions and selectively choose projects aligned with their interests, a luxury often unavailable in traditional employment.
- Ingrid Christensen discussed how maintaining independent contractor status allows interpreters in languages of lesser diffusion, such as those of recent immigrants and refugees, to work full-time jobs while providing crucial freelance services to their communities.
- Doug McNair emphasized the importance of preserving 1099 status to avoid facing age discrimination and protect freelancers.

## 9. Testimony by Gig Economy Platforms

Lucas Munoz, Director of Driver Policy, presented on behalf of Uber. The presentation featured the following slides:

- An Introduction to Uber
- Access to the platform
- Home screen
- Offer experience
- Earning reports
- Trip receipts
- Where do rider payments go?
- Drivers
- Driver classification by statute
- Driver classification test
- IC+ Benefits
- The Path forward

## 10. Questions and Discussion on Gig Workers' and Gig Economy Platforms' Testimonies

The task force members asked questions to Lucas Munoz and engaged in a discussion as follows:

- Daniel Getschel inquired about incentives or mechanisms that prevent Uber drivers from skipping rides. Lucas Munoz explained there is nothing to prevent a driver from declining a ride on the Uber platform, and the system is designed to manage the marketplace in real time. While there might be incentives such as bonuses or to encourage drivers to accept rides, there is no obligation for a driver to take any specific ride. The incentives may be based on factors like the number of rides and maintaining a high star rating on the platform.
- Burt Johnson asked whether the 3% in taxes and fees mentioned earlier by Lucas only applies to the portion of expenses associated with that specific ride. Lucas Munoz clarified that the 3% average in taxes and fees are for rides across the state of Minnesota. The fees for specific rides, like airport fees, can vary and may be



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relatively substantial, but they represent a smaller par of the overall total volume of rides, He also clarified that the 3% average in taxes and fees doesn't include any taxes paid by the driver, and those would come out of the approximately 70% that the individual driver receives.

- Burt Johnson's follow up question inquired about whether Uber provides information and documentation to assist drivers in claiming deductions, exemptions, or minimizing their tax burden. He also asked if there is documentation regarding how much taxes are actually paid relative to the arrangement. Lucas Munoz explains that Uber drivers receive a year-end summary that includes earnings, fees paid to Uber, hours, and miles driven. Some drivers get a 1099 form. Uber partners with tax preparers for support, facilitating deductions like the standard mileage deduction. Drivers can use these services for streamlined tax filing.
- Briana Kemp asked if drivers, as independent contractors, can negotiate their compensation. Lucas Munoz answered that Uber drivers negotiate their compensation indirectly by choosing which rides to accept based on offered compensation, route, and distance. While there isn't a direct two-way negotiation, drivers exercise control by selecting rides that align with their preferences and earnings goals. The upfront information provided allows drivers to make informed decisions about the rides they accept.
- Brian Elliot questioned whether Uber drivers can negotiate the terms of their agreement when initially becoming Uber drivers. Lucas Munoz answered that drivers agree to the terms of service when signing up for the Uber platform, akin to the agreements users make when joining a website.
- Brian Elliot followed up and asked if there are ways for drivers to increase their earnings aside from increasing the number of rides. Lucas Munoz explained that drivers can impact their earnings by selectively choosing rides based on compensation differentials, allowing some drivers to make more money than others for similar efforts.
- Brian Elliot inquired about how the responsibilities and risks of independent contractors, such as marketing services, compared to those of Uber drivers. Lucas Munoz answered that the platform economy doesn't precisely align with traditional independent contractors or employee categories. He noted that over two-thirds of drivers engage in multi-app usage, bounding between different rideshare and delivery platforms, and there's no restriction on such practices. Drivers have the flexibility to move between platforms based on better compensation or opportunities, reflecting a competitive marketplace for drivers' time and effort.
- Representative Emma Greenman clarified if there is or isn't a contract. Lucas answers that Uber drivers agree to a terms-of-service contract, which outlines how the platform works and the terms for accessing the app.
- Representative Emma Greenman further inquires whether the Uber contract is akin to an adhesion contract, where individuals either accept or decline its terms. Lucas Munoz answers in the affirmative.





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- Representative Emma Greenman is interested in obtaining a copy of the Uber contract to ensure workers understand their obligations and factors influencing the 70%. She questions if Uber outlines independent contractor obligations similar to negotiating a scope of work in other independent contracts. Lucas Munoz answers that Uber's terms of service states that drivers are independent contractors responsible for their taxes and costs, but Uber doesn't provide a detailed walkthrough due to individual variations in drivers' tax situations.
- Representative Emma Greenman asked if Uber provides language assistance in the terms of service, particularly in different languages reflecting the markets they operate in. Lucas Munoz says he's unsure of the answer to that question.
- Kim Vu-Dinh clarified if there's driver insurance. Lucas Munoz states that Uber provides commercial insurance mandated by state regulations, including \$1 million in underinsured/uninsured motorist coverage and a million and a half dollars in liability policy for each ride. This coverage extends to injuries, ensuring comprehensive protection in case of an accident, regardless of fault.
- Kim Vu-Dinh asked if Uber employs an algorithm. Lucas Munoz explains that Uber employs a pricing algorithm that accounts for the variability in demand over time. Rides to specific locations or during high demand periods may be more profitable, allowing the platform to subsidize rides with lower profitability, ensuring reasonable pricing for all rides and fair compensation for drivers.
- Jonathan Moller inquired about the potential change in the distribution of the pie chart, specifically the 3.3% for taxes and fees and 12% for Uber if drivers were classified as employees instead of independent contractors. Lucas Munoz indicated that transitioning drivers to W-2 employees could significantly alter the nature of the platform and the associated pie chart. He mentioned that other companies attempting a similar model with employees faced challenges, and the demand for rides, pricing, and work availability could undergo substantial changes. The specific impact on the pie chart was not outlined due to the complexities involved.
- Jonathan Moller followed up and asked why transitioning drivers to W-2 employees would necessarily change the amount of work. Lucas Munoz explained that a significant portion of drivers use the platform for fewer than 40 hours and converting them to full-time employees could result in the disappearance of many part-time opportunities, potentially reducing the number of workers and making the remaining work more expensive.
- Jonathan Moller followed up and inquired if Lucas Munoz's response was based on studies or any specified references that could be shared. Lucas Munoz stated that he would follow up with specific studies, mentioning that the Berkeley Research Group in California and Mass Insights in Massachusetts have conducted studies on the impacts of reclassification across the broader gig economy, encompassing companies like Uber, Lyft, and DoorDash.
- Kim Vu-Dinh asked whether an employee must be full-time and requested consideration for individuals who prefer part-time employment. She expressed interest in studies that delve into this aspect. Lucas Munoz mentioned that he would



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look for relevant studies. He explained that businesses generally prefer full-time or highly part-time workers due to the per-head cost associated with employing individuals.

- Octavio Chung Bustamante seeks information about the average duration Uber drivers stay on the platform since its founding in 2009. Lucas Munoz said he'll need to follow up with the task force on that statistic for Minnesota. While some individuals use Uber as a source of long-term to near-full-time employment, they constitute a small minority, with most drivers joining the platform for a short period and then leaving.
- Amir Malik raises concerns about enforcing compliance and determining fairness in the gig economy. He questions how regulations can be implemented in a manageable way, considering factors like individual choice and the subjective nature of exploitation claims. He emphasizes the challenges of applying regulations on a person-by-person or demographic basis and seeks guidance on creating effective changes in Minnesota without relying solely on individual' assertions of choice or non-exploitation. Lucas Munzo acknowledges the limitations of a single test for multiple industries and emphasizes the uniqueness of gig work. He shared Uber's efforts to improve conditions for drivers, highlighting their collaboration with labor, such as the partnership with Teamsters Local 117 in Seattle to pass statewide legislation on benefits. Munoz expresses a commitment to working collaboratively with stakeholders and being open to improvement while urging against measures that could impact flexibility.
- Melissa Hysing asks about the scope of Uber's operation beyond rideshare services, and if Uber has plans to expand into additional industries. Lucas Munoz responded that Uber offers a delivery system for hot food or groceries like DoorDash and Instacart. He mentioned that once a driver is approved for rideshare, they can usually switch to delivering without going through another background check. He also mentions a nascent application for tasks like TaskRabbit, but it's in a limited testing phase. Lucas clarified that Uver does not transport school children but has a teams mode for parents and additional compensation for drivers for rides involving individuals aged 15 and over.

## 11. Public Comment Period

Public testimony was given by a member of the public as follows:

- Kim Kavin, co-founder of Fight for Freelancers, emphasized that Minnesota should learn from California and New Jersey's experiences with restrictive independent contractor laws. She highlighted public resistance and small business owners' livelihoods being affected. Kim Kavin urged legislators to consider the submitted data and statistics, cautioning against overly restricting the right to choose self-employment.



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## 12. Adjournment

Co-chair Emma Greenman adjourned the meeting at 4:04 pm