

Misclassification Task Force

Meeting Minutes of 3/5/21

Present: Margaret Burke (Tax), Christopher Curtis (AGO/Chair), Bard Hill (AHS/DAIL), Chris McConnell (DHR), Stephen Monahan (DOL), Rosemary Raszka (DFR), Lori Valburn (AOT),

Absent: Cheryl Mowel (DLC), Deborah Damore (BGS)

Guests: David Mickenberg (Working Vermont); William Driscoll (Associated Industries of Vermont)

1) Welcome/Introductions

- a. The members of the Task Force introduced themselves to guests David Mickenberg and William Driscoll
- b. The members of the Task Force provided a brief overview of its purpose and procedure (communication and collaboration with respect to potential enforcement matters where appropriate; a report and/or recommendations to the Vermont Legislature by January of 2022; quarterly meetings (required) and likely public hearings at a later date.
- c. The AGO has established a webpage that articulates its mission and will include public meeting dates, agendas and meeting minutes, and information received by the Task Force. Link: <https://ago.vermont.gov/consumer/employment/misclassification/>

2) Agency Descriptions/Background and/or Impact on Classification/Misclassification on State Agencies

- a. Meg Burke (Tax) circulated a draft memorandum briefly and succinctly laying out – in very general terms – the Department’s interest in classification/misclassification issues.
- b. The Chair requested that all sister agencies participating in the task force follow suit so the task force itself and the public have a better understanding of how and why the issue presents and impacts those agencies (which will serve as context for the work of the task force); these memoranda to be posted on the webpage.
- c. General discussion ensued about whether/if notice of status from the employer to a worker could help clarify roles and status, especially as to matters of taxation (who pays), what documents are at issue (1099’s? W-2’s?) and applications to labor law (unemployment, worker’s compensation, etc.); Steve Monahan pointed out that similar proposals have been raised, but not effectuated, in the past.
 - i. Other reasons and/or implications associated with clarifying status:
 1. Wage garnishment
 2. Health insurance
 3. Overtime
 4. Travel time/mileage

3) Public Comment:

- a. David Mickenberg introduced himself (representing Working Vermont). He offered general comments to the effect of:
 - i. A significant number of Vermont workers (perhaps in the 10-15% range) are misclassified;
 - ii. The impacts can be profound:

1. In case of injury – no worker’s compensation
 2. In case of tax liability – failure to properly withhold
 3. In case of layoff – no unemployment insurance
- iii. Education and Outreach is vital
 - iv. Enforcement and Coordination among agencies is also important
 - v. Businesses who comply with the law are at a competitive disadvantage compared to those who do not (perhaps as much as a 30% difference in business expense)
 - vi. Recommends reviewing the debarment list and considering whether it offers insight into particular industries and practices (he cited construction, janitorial, and nail salons as common businesses where misclassification may be at issue in response to question of Lori Valburn)
 - vii. Recommends communication among agencies wherein if one becomes aware of a problem, it should alert the others.
 - viii. The Chair requested that Mr. Mickenberg provide or refer any other witnesses, experts or documents that may be of assistance to the Task Force.
- b. William Driscoll introduced himself (representing AIV).
 - i. Has years of experience with the misclassification issue;
 - ii. Thinks of three primary “buckets” surrounding misclassification:
 1. Statutory construction;
 2. Interpretation of the statutes (either agency/regulatory/common law); and
 3. Education and Outreach (building awareness and compliance)
 - iii. Will continue to monitor progress of the Task Force and stay engaged
 - iv. The Chair requested that Mr. Driscoll provide or refer any other witnesses, experts or documents that may be of assistance to the Task Force.
 - c. There was a brief general discussion of whether/if/how distinctions between unknowing/inadvertent and/or negligent misclassification differs in scale or scope from knowing/intentional/blatant misclassification of those who would take advantage. Should there be, or should there not be such distinctions? And, how does one know? How do we build a culture of compliance?
- 4) Scheduling
- a. The Task Force agreed to public hearings over the summer (possibly June dates)
 - i. Those hearings should be a hybrid (possible in-person with health and safety measures if permissible at that time – presumably post-vaccination of most adults; and online/remote access.
 - b. The Task Force will meet August 6th at Noon.
 - c. The Task Force will set a November meeting.
- 5) The Task Force adjourned on or about 1pm.