

SENATE RESOLUTION 22 MISCLASSIFICATION OF EMPLOYEES TASK FORCE

Minutes of January 7, 2021 Meeting

The Misclassification of Employees Task Force was established by Senate Resolution of the 2020 Second Extraordinary Legislative Session, within the Louisiana Department of Revenue (LDR), to study and make recommendations for changes to state laws in an effort to provide the necessary investigatory and enforcement tools to detect, investigate, and minimize employee misclassification in Louisiana.

- I. **Meeting Call to Order** - The meeting of the Misclassification of Employees Task Force was called to order at 10:33 AM by Chairman, Luke Morris.

- II. **Roll Call** - A quorum was established with eleven of the thirteen members in attendance. Members present were:
 1. Luke Morris, Chairman (LDR)
 2. Brandon Lagarde, Vice-Chairman (LCPA)
 3. Danell Gerchow (LDR); designee for Secretary Robinson
 4. Robert Wooley (LWC)
 5. Darrick Lee (LWC); designee for Sheral Kellar
 6. Dawn Starns (NFIB)
 7. Caroline Lafourcade (LSBA)
 8. Martha Pennington (APA)
 9. Tom Crowley (NPRC)
 10. Jim Patterson (LABI)
 11. Gary Warren (LA AFL-CIO)

- III. **Approval of Meeting Minutes from January 7, 2021 Meeting**
 - After review of the minutes, a motion was made by Mr. Patterson to approve the meeting minutes from the November 13, 2020 meeting, and was seconded by Ms. Gerchow. The minutes were unanimously approved without corrections.

- IV. **Informational Presentations on Addressing Misclassification in Louisiana**
 - A. **Louisiana Association of Business and Industry**
 - Mr. Jim Patterson gave a presentation on the business and industry perspective of misclassification efforts and suggestions for enforcement supported by the business and industry community. A copy of the presentation will be available for viewing on the task force webpage at <https://revenue.louisiana.gov/LawsAndPolicies/MisclassificationEmployeesTaskForceMaterials> following the meeting.

- The presentation covered state comparisons of misclassification laws in place, of which 26 currently have. Of neighboring states, only three currently have misclassification statutes in place, Florida, North Carolina, and Texas. Also covered were tests of the employee v. independent contractor status and the states of which 35 use either the IRS test, the Common Law test or the ABC test. Another four have created a hybrid of their own.
- The business community believes definitions must be clear and consistent across agencies, compliance should be simple, and the emphasis must remain on helping and encouraging employers to comply. Also suggested was a safe harbor provision be established for self-reporting and that penalties be reasonable but effective considering those already imposed.
- Also discussed were the industries and “gig economy” must be accommodated and those using independent contractors be allowed to continue to do so.
- During discussion the task force members representing business and industry provided comments as it relates to their specific industries.
 1. Caroline Lafourcade representing the Louisiana State Bar Association (LSBA) inquired about having a Voluntary Disclosure Agreement (VDA) option and that reduced penalties and interest be considered.
 2. Brandon Lagarde representing the Louisiana Society of Certified Public Accountants spoke about having interagency agreements in place (IAT) and also of safe harbor provisions.
 3. Dawn Starns of the NFIB agreed with the suggestions of Mr. Patterson’s presentation.
 4. Ken Naquin with the Louisiana Association of General Contractors gave comments relative to misclassification in the construction arena. Believes the problem is not widespread and that the issue is not independent contractors but more so with misclassification. Mr. Patterson added that it’s not intentional or deliberate but mostly confusion and agrees that repeat offenders should be penalized.
- Chairman Morris opened the discussion up for questions from members to the presenters. There was further discussion of simplified definitions, a possible VDA program and test.

V. Tentative Schedule of Upcoming Task Force Meetings – Ms. Thomas will poll members for availability.

- A. Week of January 18 – Presentations by policy organizations and other states
- Chairman Morris discussed future meetings of the task force. After the January 18th meeting, meetings will likely be held weekly where recommendations as well as any legislative changes will be discussed. Mr. Morris requested that at the meeting in the final week of January he would like members to offer recommendations and those will be grouped into topics for discussion and be addressed at other meetings. Subcommittees may also be an option for certain topics to address.

- In brief discussion of future recommendations Ms. Pennington offered that the task force inquire about new hire reporting laws and that it may also be beneficial to see which states require reporting independent consultants on new hire reporting for wage assignments for child support and other garnishments.

VI. Other Business - Tasks

- No other business was discussed.

VII. Public Comment

- Linda Babin with the LCPAs commented regarding the W9 and it already being in existence and the option of the worker/employee signing off and putting the responsibility on the worker.
- Another comment and suggestion was offered in the chat feature from “Citizen”. Chairman Morris will address the topic at a later meeting.

VIII. Adjournment

- A motion to adjourn the meeting made by Mr. Patterson and seconded by Ms. LaFourcade. The meeting was adjourned at approximately 11:51 AM.