

Minutes
LEGISLATIVE AUDIT COMMISSION
March 14, 2024

Members Present:

Representative Patti Anderson
Representative Emma Greenman
Representative Rick Hansen
Representative Steven Jacob
Representative Fue Lee
Representative Duane Quam

Senator Calvin K. Bahr
Senator D. Scott Dibble
Senator Mark W. Koran
Senator Ann H. Rest
Senator Tou Xiong

Member Absent:

Senator Steve S. Drazkowski

Representative Rick Hansen, Chair, called the Legislative Audit Commission to order at 9:30 a.m. The meeting's purpose was to hear the key findings and recommendations on the Office of the Legislative Auditor's (OLA's) evaluation report, *Worker Misclassification*.

Chair Hansen welcomed Jodi Munson Rodríguez, Deputy Legislative Auditor for OLA's Program Evaluation Division. Ms. Munson Rodríguez said OLA found that the state's approach to misclassification is both uncoordinated and inadequate, agencies share little information about their investigations, and employers face limited consequences for misclassifying workers. She introduced Caitlin Badger, Evaluation Coordinator, to present further information on the report.

Ms. Badger said the report focused on the departments of: (1) Labor and Industry (DLI), (2) Employment and Economic Development (DEED), and (3) Revenue (DOR), and the laws that guide each agency in determining if a worker is misclassified. Ms. Badger said that Minnesota's overall rate of misclassification is unknown, and OLA estimated several misclassification rates based on DEED's audit information of employers contributing to the unemployment insurance program. She said the most complete audit data for analysis was from 2018, due to the pandemic, and added that misclassification rates increased since OLA's last review of this topic in 2007.

Ms. Badger said state law assigns limited duties regarding worker misclassification to DLI, DEED, and DOR, and does not direct the agencies to investigate misclassification in and of itself, educate employers, or calculate misclassification rates, adding that misclassification is often identified as the result of the agencies administering or enforcing other state laws or programs. She said that authority in law is fragmented across agencies, and they have only the authority to address issues within their own programs. While agencies' investigations may involve the same activities, they do not coordinate or share their findings, leading to inefficient and ineffective enforcement actions against employers. She said it can take years to address misclassifications, and there are no timeframes in law to conduct investigations, as well as limited penalties. Finally, she said that state law limits which workers can pursue civil action in court to rectify their misclassification; only workers in the construction industry can do so, and recommended that the state allow civil action by misclassified workers in all industries.

Chair Hansen then welcomed Nicole Blissenbach, Commissioner, DLI; Evan Rowe, Deputy Commissioner of Workforce Services and Transformation, DEED; and Sarah Bronson, Assistant Commissioner, DOR, to the testifying table.

Commissioner Blissenbach, DLI, thanked members for the opportunity to provide remarks in response to the report. She said the report brings much needed attention to the issue of worker

misclassification, current deficiencies in law, and the challenges DLI encounters. Commissioner Blissenbach listed steps DLI has taken internally and said the department is working with legislators on current legislation, House File 4444 and Senate File 4483, which respond to the challenges DLI has encountered in enforcing misclassification statutes.

Deputy Commissioner Rowe, DEED, next addressed the commission, saying that worker misclassification impacts ensuring a level playing field for employers and employees, and DEED takes misclassification very seriously. He then further explained why the most ideal data for analysis had been from 2018.

Assistant Commissioner Bronson, DOR, spoke next, saying the report was a professional and thorough review of the statutes and processes the agencies use to enforce worker misclassification. She said DOR appreciated the report's identification of challenges and impacts worker misclassification has on the state. She said DOR agreed with the value of agencies coordinating their work, saying it was critical for achieving a fair and equitable revenue system.

Commission members asked how the departments could better coordinate their investigations and findings and also if they are coordinating while legislation is moving through. Commissioner Blissenbach said the departments are discussing how they could make the relationship easier with regard to data sharing, assigning specific duties, requiring the partnership to meet, and determining what can make them more effective, and then on coming back to the Legislature to share what will make them more effective going forward.

With no further discussion, Chair Hansen adjourned the meeting at 10:38 a.m.

Representative Rick Hansen, Chair

Maureen Garrahy, Recording Secretary