

**Labor Standards Advisory Commission
Meeting Minutes**

Minutes prepared by: Megan Jackson

August 22nd, 2018

3:00-5:00pm

Central Building Conference Room- 810 3rd Ave Seattle, WA 98104

Attendees

Commissioners Present

Position No.	Name
3	Anna Boone
4	Nicole Grant
8	Artie Nosrati
10	Andrew Beane
11	Kellis Borek
12	Mona Smith
15	Janet Chung

Commissioners Absent

Position No.	Name
2	Anthony Burnett
5	I-Miun Liu
9	Cariño Barragán
13	Rebecca Smith
14	Alia Abboud

Open Commission Positions

Position No.	Name
1	NA
6	NA
7	NA

Guests/Presenters:

Alex Clardy, Legislative Assistant to Councilmember Herbold, Seattle City Council
Kerem Levitas, Business Engagement and Policy Specialist, Office of Labor Standards
Martin Garfinkel, Director, Office of Labor Standards
Karina Bull, Policy Manager, Office of Labor Standards

Call to Order– Andrew Beane and Kellis Borek

- Welcome
- Approval of June Meeting Minutes
 - Motion to vote and minutes are unanimously approved

Misclassification Resolution and LSAC's role

- Misclassification Resolution presented by Alex Clardy, Legislative Assistant to Councilmember Herbold

- CM Herbold's office is gathering input
- CM Herbold's office received anonymous email 1.5 years ago explained working conditions and outlined circumstances created by being classified as independent contractor.
 - Employer had a great deal of control over how these contractors performed their work- seemed to be employees in all but name
- Asking OLS and LSAC to do some work to move this conversation forward
 - OLS
 - propose policy solutions that City Council can enact
 - develop enforcement strategies
 - develop outreach and education strategies
 - performing a legal analysis on the Supreme Court case allowing arbitration clauses- any other potential solutions or pathways?
 - LSAC
 - add Misclassification issues to work plan and find ways to support OLS in these efforts
 - provide updates to Council
 - No hard timeline on moving this forward yet. Right now is about gathering input.
- **Memo Summary presented by Kerem Levitas, Business Engagement and Policy Specialist, OLS**
 - 10-30% of companies misclassify workers
 - Confusing laws contribute to misclassification- legal standard for employment status can also be manipulated and result in skewed decisions on employment status
 - Independent contractors do not receive Seattle Labor Standards protections or some of the Office for Civil Rights' protections
 - Greater shares of payroll taxes are paid directly by the independent contractor
 - No access to workers' comp
 - Independent contractor pays for work costs (tools, etc.) that employees do not
 - Impact
 - Government- reduced revenue, vulnerable populations without protections
 - Employers- Skews competition because of reduced labor cost and increases insurance premiums
 - Economic Realities Test
 - 6 factor test, no one factor determines, about the totality of the circumstances
 - Confusing and easy to misapply or manipulate
 - From Enforcement perspective, you must know about every aspect of a business to determine misclassification
 - Misclassification Reform
 - ABC test- used in many jurisdictions to make determinations about unemployment insurance, also sometimes used for minimum wage and overtime
 - Presumes employment status unless the employer can show that the worker meets three determining factors indicative of independent contracting

- The City is making an effort to not do something in conflict with what the state is doing in progressing this issue- may be a sub-committee to address this

Discussion re LSAC Endorsement of Ending Sub-Minimum Wage in Washington (request from Arc of King County)- Andrew Beane and Kellis Borek, Co-Chairs

- Motion passes and commissioners unanimously vote to add LSAC to the list of organizations supporting ending the sub-minimum wage at the state level

LSAC Work Plan- Kellis Borek, Co-Chair

- Review of Work Plan Draft
- Discussion of possible sub-committees

Labor Standards Update- Martin Garfinkel, Director, Karina Bull, Policy Manager

Policy Developments

- HEHSI
 - Part 3 being challenged by ERISA Industry Committee via lawsuit
 - Part 3 about additional compensation to allow low income hotel employees to afford medical expenses- gives exception per employee for those hotels that provide gold level plan that doesn't cost above a certain threshold
 - May be additional stakeholder meetings
- Domestic Workers
 - Domestic Workers Ordinance was passed by City Council and signed by the Mayor
 - Will be announcing next steps for rulemaking and outreach plans once OLS has additional staffing to help with those efforts
 - Worker Board will be meeting in the 1st Quarter of 2019
- Commuter Benefits
 - Committee vote expected on September 18th
 - Will go to City Council for full vote after that
 - Option to have pre-tax income go toward an ORCA card
 - Would have Enforcement structure similar to all labor standards but employers would have a chance to show proof of compliance within 90 days before our office would begin an investigation
 - Saves employee and employer money so the burden is specific to setting up the benefit
 - Employer size threshold is 20+ employees
 - For businesses in the City of Seattle
 - OLS will develop rules
 - Enforcement wouldn't happen until July of 2020
 - If employer already provides ORCA card, they don't need to set up the system
 - Mandatory for businesses to offer this, not mandatory for employees to accept
- Retirement Savings Plan
 - This is an opt-out, employee is automatically enrolled

- Board deciding how this will be implemented for the City over next year
 - Employers required to set aside money for retirement plans
 - There may be a place in the City where it is housed for Enforcement, Outreach, etc.- might be Office of Labor Standards, might be elsewhere
 - Board Timeline- TBD
 - Omnibus Ordinance
 - Touches almost all Labor Standards
 - Effort to make changes to Enforcement provisions- more enforcement, strengthen remedies for workers, make technical fixes to laws
 - Secure Scheduling is the main area that needs corrections
 - Will gather stakeholder feedback and present to Council in late December or early January
- Business Outreach and Education Fund/Community Outreach and Education Fund Contracts Update
 - 40% of OLS budget is dedicated to funding to BOEF and COEF
 - 2-year contracts to primary organizations with subcontracting organizations
 - Current contracts expire in March 2019
 - RFP for contracts this fall
 - Tweaking scopes of work
 - COEF- 1.5 million/year
 - BOEF- \$800,000/year
 - 2 OLS staff dedicated contract managers- Business Engagement and Community Engagement Specialists
- Enforcement Q&A
 - Clearing out case backlog
 - largely due to OLS beginning with a very small staff and a lack of Enforcement priorities. There was also no private right of action until January of 2016
 - Strategic Enforcement- trying to think about how to change industries with vulnerable workers and business sectors with a large amount of violations
 - Questions/Comments
 - What is Outreach like to small businesses?
 - Some of the grantees of BOEF are from Ethnic Chambers of Commerce
 - Groups are meeting their goals, but we're trying to assess if these trainings change behavior
 - Starting to reach out to academic partners about how to measure effectiveness
 - At what point does an employer know that an employee has contacted OLS? At what point do the rest of the employees of that employer know about the investigation?
 - Once an investigation starts, there is a posting and employees do respond
 - Trying different methods for communication with employer when they are on the waitlist re things they can do to clean up violations and mitigate fines
 - Is there a self-audit that helps employers understand if they are out of compliance?
 - Currently working on document with top 10 violations seen in Enforcement.

- Talking about tools that employers can use to make compliance easier.
- Discussing training for bookkeepers as they often do the payroll.

Agenda Planning- Andrew Beane and Kellis Borek

- Q4 November 27th meeting
 - Work Plan
 - Discuss sub-committees and who will be on what
 - Labor Standards Updates- Commuter Benefits and Omnibus Ordinance Updates

Adjourn

Next Commission Meetings

Tuesday, November 27th, 2018- 3:00 – 5:00 pm, Boards and Commissions Room L280, City Hall