

**Labor Standards Advisory Commission
Meeting Minutes**

Minutes prepared by: Megan Jackson

February 6th, 2019

2:30-4:30pm

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

Attendees

Commissioners Present

Position No.	Name
1	Elizabeth Ford
3	Anna Boone
4	Nicole Grant
6	Andrew Beane
8	Artie Nosrati
11	Kellis Borek
12	Mona Smith
13	Rebecca Smith
14	Alia Abboud

Commissioners Absent

Position No.	Name
2	Anthony Burnett
5	I-Miun Liu
10	Samantha Grad
15	Janet Chung

Commission Positions Pending Confirmation/Vacant Commission Positions

Position No.	Name
7	Betsy McFeely
9	Vacant

Guest Presenters:

Karina Bull, Policy Manager, Office of Labor Standards

Martin Garfinkel, Director, Office of Labor Standards

Jeneé Jahn, Policy Analyst, Office of Labor Standards

Kerem Levitas, Business Engagement and Policy Specialist, Office of Labor Standards

Sundar Sharma, Senior Investigator, Office of Labor Standards

Call to Order– Andrew Beane and Kellis Borek, Co-Chairs

- Welcome
- Approval of November Meeting Minutes
 - Minutes are unanimously approved

Orientation and Introduction of New Commissioners- Kellis Borek, Co-Chair

Discussion of State Misclassification Bill- Rebecca Smith, Commissioner

- Bill pending in the House and Senate that would harmonize the definition that determines if someone is employee or not for most state laws.

- This is meant to address the longstanding problem of misclassification of employees as independent contractors which particularly affects low-wage workers in several industries.
 - There is financial incentive for businesses to misclassify employees as independent contractors- it can save about 30% in labor costs.
- ABC test currently determines classification as it relates to unemployment insurance and workers comp. The bill would extend ABC test to minimum wage and other wage laws.
 - The current test for wages is cumbersome and confusing. There are multiple tests for different statutes that aren't consistent.
 - States with an ABC test or some version of that have greater clarity on employees vs. independent contractors. Approximately 26 states use ABC in some form. 10 states use it in wage and hour for certain industries and 4 states use it across all industries.
- Discussion
 - Commissioner notes that some workers benefit from the autonomy of being considered an independent contractor. This bill could bring unintended harm to some workers if applied incorrectly.
 - How have other states dealt with workers in industries that are adversely affected?
 - Those industries are categorically excluded in legislation.
 - Commissioner notes that one strategy to reduce misclassification is to minimize the economic incentive of misclassification for businesses.

Misclassification Resolution and Requests of LSAC and OLS

- LSAC to develop work plan- how to work with OLS on misclassification, effective strategies, suggesting possible stakeholder meetings and public hearings, etc.
 - Commissioner request to know about budget for this work before developing work plan.
 - Commissioner request to hold off on developing work plan until the session ends in April and there's clarity on what's happening at the state level.
- OLS to coordinate with LSAC to develop Outreach and Education strategies

Discussion of State Secure Scheduling Bill- Artie Nosrati, Commissioner

- House and Senate Bill HB1491 and SB5717. Both have been introduced. House had first hearing on 2/5 and Senate hearing is scheduled for 2/11.
- Differences between Seattle and State (this covers some but not all differences)-
 - Coverage has a lower threshold- 100 FTEs (state) vs 500 FTEs (Seattle)
 - State version covers hospitality in addition to Seattle industries covered
 - Good faith estimate- annual (state) vs. quarterly installments (Seattle)
 - Clopening- 12 hours between shifts (state) vs 10 hours between shifts (Seattle)
 - Access to Hours- Set award to employee for each day out of compliance (state) vs OLS opportunity to levy fines (Seattle)
 - Advance Notice of Schedule-
 - Employee may deny changes to schedule with less than 14 days' notice
 - Employers owe at least half of pay for any hours cut outside of compliance period
 - Employee schedule request made more than 14 days out must be granted unless there's a bona fide business reason.
 - Notice of Employment Information-

- If employer fails to comply or makes significant changes, this justifies employee's good cause to leave work without foregoing unemployment insurance (state).
 - Premium pay exceptions in state version are more limited.
 - Discussion
 - Commissioner notes that bill proposes a minimum requirement of 6 hours per work shift. This doesn't take the scheduling needs of the restaurant industry into consideration. A lunch shift, for example, doesn't span 6 hours.

OLS Update

- OLS Hiring- Martin Garfinkel, Director, OLS
 - Received additional budget for 5 new positions- 3 of those positions in response to Domestic Workers ordinance
 - Data Specialist
 - 2 policy analysts- one will be assigned to domestic workers board and one to help build capacity in general
 - Outreach position for domestic worker ordinance- posting will go up shortly
 - Sr. Investigator
- Case Stories- Sundar Sharma, Senior Investigator, OLS
 - Q4 cases closed-
 - Resolved 29 investigations (by ordinance) in last quarter with 16 employers (some were found in violation of more than one ordinance)
 - Case summaries are available on website.
 - Cases closed reflect strategic enforcement areas of interest.
 - Oatridge Security Group- fairly large firm that wasn't complying with PSST. Employees weren't allowed to use their vacation PTO for sick leave and their sick leave was capped at 40 hours/year.
 - Pie- paid subminimum wage to workers over a period of years. Employees weren't making enough in tips to make up for the difference between their hourly wage and the minimum wage.
 - Employers often argue they can't control income made via tips, but it is the employer's obligation to make sure the minimum wage is reached.
- Audit Update- Karina Bull, Policy Manager, Martin Garfinkel, Director, OLS
 - For the past year, OLS has been working with the City's Auditor for their review of our enforcement and outreach practices. City Council requested the audit in a 2014 resolution that followed the passage of the Minimum Wage ordinance. OLS submitted the final round of information last week.
 - Auditor will issue recommendations sometime this winter.
 - Auditor will follow up until all recommendations are implemented.
- Update on 2019 Labor Standards Ordinance- Kerem Levitas, Business Engagement and Policy Specialist, OLS
 - Will probably be heard by Council in mid to late summer and take effect in early fall. Will notify when more specifics are available.
 - There will be a robust stakeholder process including a webinar.
 - Substantive policy updates on what's in ordinance-
 - Tweaks to enforcement provisions
 - Greater efficiency

- Fines payable to workers rather than to the City even when a case doesn't end in settlement
 - Adjustments to penalties to standardize across all ordinances- inflation schedules were different.
 - Proposal for a backpay substitute when exact backpay damages can't be calculated (in cases of poor record keeping, for example). Subject to existing provision of ordinances for damages in certain situations.
 - Cut some amendments
 - Provision around which cases require written findings of fact- off the table
 - Clarifying PSST rate of pay issues for commissioned employees- off the table
 - MW and WT- making it clear that those protections apply to domestic workers under the ordinance. That was more about ease of finding information- it's already in the DW ordinance so cutting that.
- HEHS Update- Jeneé Jahn, Policy Analyst
 - Declared invalid by court of appeals. City has filed appeal with Supreme Court. There was also a second lawsuit filed on Part III that was held.
 - Enforcement accepting complaints but taking no action until Supreme Court decision.
 - If someone is close to the limitation period (3 years), what will happen?
 - For the very oldest violations, if we get the complaint by November 20th of this year, there will be no issue.
- Domestic Workers Update- Jeneé Jahn, Policy Analyst
 - Law goes into effect July 1st.
 - Hoping to complete rules by the effective date but there's a capacity issue. 9/1/19 is backup date.
 - Stakeholder meetings will cover everything from substantive rules through enforcement.
 - Outreach engagement conversation re households and domestic workers. In collaboration with OCR as they had a companion ordinance.
 - Domestic Workers Board is supposed to meet by the end of March.
 - Council appointees to be presented 2/7 at HHEWR.
 - Mayor's appointees should be announced soon.

May Agenda Planning- Andrew Beane, Kellis Borek, Co-Chairs

- Discuss outreach subcommittee.
Report from misclassification subcommittee.

Adjourn

Next Commission Meeting

May 9th from 2:30-4:30 pm in the Central Building lobby large conference room- 810 3rd Ave
(Change of date)

Follow-Up

- Artie will send state Secure Scheduling bill and bill analysis to MJ to distribute via listserv.

- Regarding Misclassification Subcommittee- session will end before LSAC's next meeting. If there are recommendations that need to be voted on, LSAC can schedule a special meeting to vote by phone.