

CLASSIFICATION OF WORKERS IN THE CONSTRUCTION INDUSTRY TASK FORCE

Minutes of the 1st Meeting of the 2020 Interim

August 6, 2020

Call to Order and Roll Call

The 1st meeting of the Classification of Workers in the Construction Industry Task Force was held on Thursday, August 6, 2020, at 8:30 AM, in Room 171 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Matt Castlen, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Karen Berg and Jared Carpenter; Representatives Terri Branham Clark and Sal Santoro; Jason Clark, Spencer Coates, Billy Doelker, Tommy Gumm, Marty Hammons, Patrick Jennings, Ken Lyons, Gary Morris, Anthony Russell, Kevin Sell, Allyson Smith, and Robert Swisher.

LRC Staff: Andrew Manno, Audrey Ernstberger, Sasche Allen, and Kirsten Parker.

The purpose of the first meeting of the 2020 Classification of Workers in the Construction Industry Task Force was to provide members the opportunity to introduce themselves, express the important issues to be addressed going forward, and give suggestions for topics to be discussed at future meetings. Co-Chair Jason Nemes explained several areas of concern regarding the classification of workers in the construction industry and wants to create a package to address some of these concerns to present to the General Assembly during the 2021 Regular Session. He said his four main issues included losing tax revenue in regards to the misclassification of construction workers; protecting legitimate contractors; protecting the workforce of the Commonwealth from illegally employed individuals; and protecting Kentucky families who are currently being undercut by illegal workers in the construction industry. Co-Chair Matt Castlen stated that with his background in steel, the issue is extremely important, and he hopes the task force can produce legislation that will work for everyone across the Commonwealth. Senator Karen Berg stated she was very interested in the subject matter and glad to be included on the task force. Representative Terri Branham Clark, a small business owner, said she wants to see the same standards across the board for everyone. Representative Sal Santoro, an electrical contractor, made similar remarks and said all contractors should be employing qualified workers.

Kevin Sell, a citizen member and a member of the Indiana/Kentucky Chapter of Associated Builders and Contractors, discussed several issues of importance including a current workforce shortage; avoiding overregulating the construction industry; the distinction between public and private projects; limitation on the applicability any legislation that the task force may produce; and the consideration of other industry areas that face misclassification. He recommended obtaining data from state agencies regarding misclassification of employees.

Allyson Smith, a citizen member representing the Kentucky Employers' Mutual Insurance, expressed concern about fraud and the insurance companies wasting resources after a misclassified worker files a claim.

Commissioner Robert Swisher, Department of Workers' Claims, said often times those businesses that are doing things properly have to pay for those businesses that are not doing things correctly in reference to injured workers who are not technically employees but are filing workers' compensation claims.

Co-Chair Matt Castlen suggested that each citizen member of the task force present at least two subject areas of concern to be discussed during future meetings. He agreed with comments made by Kevin Sell and said there should be distinction between public and private projects. Co-Chair Castlen also added that strict regulations would limit an already depleted workforce.

After Co-Chair Jason Nemes noted the intent was not to burden those employers who are doing the right thing, he solicited responses regarding the prevalence of the workers compensation claims being filed by misclassified employees. Commissioner Robert Swisher said that those employers that are correctly classifying their employees pay out about \$7 million in benefits to injured workers through the Uninsured Employers' Fund for employers who don't have appropriate workers' compensation insurance. He also presented the idea of how employees and employers are defined and addressed the possibility of a uniform definition of employee. He discussed the process of assessing a civil penalty against employers who do not carry workers' compensation insurance.

Billy Doelker, a citizen member representing the Home Builders Association of Kentucky, noted that most contractors try to do the right thing and posed the question of whether the problem is rooted in an issue with immigration and not necessarily a misclassification of employees. He said he fears overregulation of general contractors and said the task force should have a good understanding of the current laws. Ken Lyons, that is representing the Indiana Kentucky Ohio Regional Council of Carpenters, added that the task force should refer to misclassification laws in Virginia and Tennessee.

Anthony Russell of the Labor Cabinet noted much of the information the Cabinet would have is anecdotal. The Cabinet could solicit information on how to accurately obtain data.

Representative Terri Branham Clark further explained her stance as a small business owner that manages numerous properties. She said there needs to be a clear definition across the board of employee and independent contractor. Co-Chair Jason Nemes responded by explaining the varying definitions may not be easy to change in order to become more uniform. Commissioner Robert Swisher agreed with Representative Branham Clark and said a uniform set of standards for an employee and an independent contractor is a potential solution. Representative Branham Clark also expressed the need to track fraud.

Co-Chair Jason Nemes also posed the question of whether the employer or the employer contractor pays taxes. If cash is being used to pay the worker, then taxes are not being paid. His proposed solution revolved around proper reporting and licensing, which could protect those abiding by the law while requiring compliance from those that are not.

Patrick Jennings, a citizen member with Commonwealth Alliances, advocated for avoiding passing any legislation and would prefer that the findings and potential solutions formulated by the task force be communicated directly to industry stakeholders who can establish approached internally.

Senator Jared Carpenter expressed his concerns about workforce availability and does not want to penalize general contractors or other smaller construction companies that are simply trying to work. Co-Chair Jason Nemes commented that at some point there is no future for state trades men and women to compete for jobs in the industry when they are being undercut by workers being paid under the table.

There being no further business, the meeting adjourned at 9:44 a.m.