

Date: August 18, 2015

To: Business and Labor Interim Committee

From: Jaceson R. Maughan, Deputy Commissioner, Utah Labor Commission, and Chair,
Workers Classification Coordinated Enforcement Council.

Re: Sunset review of the Workers Classification Coordinated Enforcement Act

Employee misclassification occurs when an employer improperly classifies a worker as an independent contractor rather than an employee in order to avoid the legal obligations that arise from the employer/employee relationship. It is a significant problem in Utah and across the nation. Misclassification adversely affects workers, who lose a number of protections afforded employees under state and federal law. These protections include workers' compensation coverage, unemployment insurance coverage, payment of wage protection, and workplace safety and health protections. Misclassification also adversely affects legitimate employers who find it difficult to compete with those employers that skirt the law.

The Utah Legislature enacted the Worker Classification Coordinated Enforcement Act ("Act") in 2011 to address employee misclassification in Utah. The Act authorizes the Worker Classification Coordinated Enforcement Council ("Council") to meet on a quarterly basis in order to coordinate regulatory and law enforcement efforts related to employee misclassification. Though the majority of Utah employers properly classify their employees, there remains a significant number who inadvertently or intentionally misclassify employees. As such, both the issue of employee misclassification and the Council's work remain relevant.

Utah Code Ann. §63I-1-103(3), outlines the factors to be considered when evaluating whether to reauthorize a statute. Those factors, and the Council's response to each, are outlined below.

(a) The extent to which the statute or agency has operated in the public interest and any areas in which the statute or agency needs to improve its ability to operate in the public interest;

The Worker Classification Enforcement Council has provided a valuable service to the public and operated in the public interest. The current system enables the member agencies to coordinate regulatory and law enforcement efforts related to misclassification in a comprehensive manner and at minimal cost to the state. The key component of the Council's effectiveness is the ability of the member agencies to share information regarding investigations and referrals with one another. Each agency then utilizes its specific enforcement authority to ensure employers are complying with that agency's regulations.

The Labor Commission, for example, is charged with ensuring each employer in the state carries workers' compensation coverage for its employees. When the Commission investigates an employer for a coverage violation, and if it suspects the violation occurred due to misclassification, the Commission shares the results of the investigation with the member agencies. The member agencies then conduct their own investigation of that employer. The

Commission also conducts investigations based on the information it receives from member agencies.

There are no specific improvements necessary for the Council to continue to operate in the public interest.

(b) The extent to which existing statutes interfere with or assist the legitimate functions of the statute or agency, and any other circumstances including budgetary, resource, and personnel matters that have a bearing on the capacity of the statute or agency to serve the public interest;

The current statute assists the Council in fulfilling its core functions and in its ability to serve the public interest. Again, the key component of the Council's effectiveness is the ability of the member agencies to share information. The current statute requires the member agencies to share information whenever possible. When the Council was first formed, and as necessary and when permitted by statute, the member agencies entered into information sharing agreements to accomplish this. Also, each member agency enforces its specific regulatory and enforcement authority in investigating those employers that misclassify employees.

There are no circumstances that impact the Council's capacity to serve the public interest.

(c) The extent to which the public has been encouraged to participate in the adoption of the rules established in connection with the statute or agency;

The Council holds regular public meetings. The public is notified of the meetings and encouraged to attend. Each Council meeting also includes a specific time on the agenda for the public to comment or raise concerns. Also, when adopting any necessary rules regarding misclassification, each member agency has allowed and encouraged public involvement in the process.

(d) The extent to which the statute's provisions or agency's programs and services are duplicative of those offered by other statutes or state agencies;

The Council's statutory mandate is not duplicative of other statutes. Likewise, the Council's work in coordinating regulatory and law enforcement efforts related to employee misclassification is not duplicative of services offered by other state agencies.

(e) The extent to which the objectives of the statute or agency have been accomplished and their public benefit;

The Council's main statutory objective has been to coordinate regulatory and law enforcement efforts related to misclassification. The Council has effectively accomplished this. Based on these coordination efforts, the Labor Commission has assessed penalties against a number of employers for failing to provide workers' compensation coverage based on misclassified employees; the Department of Commerce has prosecuted several cases involving large employers that misclassify hundreds of employees; and the Department of Workforce Services has identified millions of dollars in unreported wages associated with misclassified employees.

The Council's work has provided a public benefit. The majority of those employers investigated by the Council's member agencies become compliant. Some cease to do business. This means that employees working for those employers who stay in business enjoy those protections afforded all employees. This also means that employers who refuse to conduct business in a legitimate and fair manner cease to do business, allowing legitimate employers greater opportunity to compete.

(f) The adverse effect on the public of termination of the statute or agency; and

Terminating the statute may have an adverse effect on the Council's ability to share information. It also may affect the Council's ability to coordinate enforcement activities. Each member agency would, however, maintain its current regulatory and enforcement authority.

(g) Any other matter relevant to the review.

The Council is unaware of any other matters relevant to this review.

