

**Misclassification Taskforce**  
**Independent Contractor Test Work Group**  
**Friday, October 8, 2021**  
**10:00 AM – 12:00 PM**

**Attendees:** Jennifer Dambach, Maria Guerra Lapacek, Megan Martin, Mark Reihl, Jim O'Malley, Steuart Wilson, John Varda

- Next Steps
  - Next Meeting: Friday, November 12, 2021 10:00 AM – 12:00 PM
  - Review Jennifer's documents and be prepared for final recommendations at next meeting for Misclassification Taskforce meeting in December
  
- Reports
  - Michigan
    - DWD contacted someone in Michigan's Workers Compensation department
    - They had discussions on definitions of independent contractor, but they don't have one
    - Issues are litigated case by case
    - Their WC law is dependent on court cases and more influenced by precedent than Wisconsin
    - As of now, they do not have a unified definition of an independent contractor or a unified test
  - Jennifer's Research
    - She created an excel sheet around test statements/questions
    - She noted which areas had similar test statements and areas where things didn't match up
    - These were compared to key IRS determinants
    - A lot of the areas asked similar questions or had similar statements
    - She created a general questionnaire based on this information
  
- UI questionnaire
  - DOR reviewed against theirs and created questionnaire that encompassed everyone's questions
  - Could use as referral document to refer to other agencies
  - Question on leave or other benefits accumulated/received
    - Didn't line up but included
  
- Were there different approaches differentiated by industry?
  - Some special rules on logging, but didn't dive into specific rules
  - Just used general questions
  - Could add on to questionnaire asking more specific questions
  
- Leg and Legal Updates
  - California on ABC
    - US Supreme Court rejected one of the cases
  - Principal case
    - Decide cert question in the next month or so
    - Injunction may stay in place until the court decides on the merit
    - Commercial drivers and other safety trucking
    - Any one who drives a commercial vehicle ~ 10,000 lbs
  - Uber drivers, etc.

- Not currently covered by federal motor carrier safety rules
    - Put together an advisory group that is looking into including them in these rules
  - AB 47
  - On 9/13, various Wisconsin associations came together and are working on the driver shortage issue
    - Issues included commercial vehicles
- Discussion
  - Could use a centralized way of asking the information and not necessarily create a unified test right away
  - Group thinks it's a good idea to pilot something and get feedback
    - Use Jennifer's documents as guidelines
  - Goal of this group isn't necessarily to create the questionnaire or test itself, but rather make recommendations
  - The questionnaire would be for the employees to fill out, not the employers
    - Mark is concerned about employers telling employees how to answer the questions in a way that best suits the employer
    - The questionnaire asks for contact info of the employee and they could be followed up with and asked if they were coerced
    - Would want to send directly to the employee rather than having to go through the employer
    - Employee's obligation to answer
      - No way of enforcing unless DOR is auditing
      - Limited ability as far as penalties for not responding to questionnaire