



April 15, 2024

Dear Members of the House Labor and Industry Finance and Policy Committee:

Our organizations collectively represent tens of thousands of Minnesota businesses that provide jobs for hundreds of thousands of Minnesota employees and workers. Thank you for the opportunity to provide feedback on Article 9 of the DE Amendment to HF 5217 (Rep. Nelson), provisions seeking to address the issue of illegally misclassifying workers as independent contractors instead of employees.

We share the goal of preventing misclassification, and believe repeat, willful or deliberate misclassification should be thoroughly investigated and punished because it cheats workers and honest employers alike. At the same time, our members do not want more complex regulation in an area where clear and consistent guidance from regulators is often lacking. Well-rounded laws should make it easier for good actors to legally participate in our economy and harder for bad actors to engage in violative behavior.

We believe that progress can be made this session on creating a fairer and more level playing field. With that in mind, we would like to highlight the main areas in the underlying language where we believe progress still needs to be made:

First, many of our members identified interagency collaboration and knowledge sharing as a defect in state enforcement of worker classification rules. Unfortunately, the proposed Intergovernmental Misclassification Enforcement and Education Partnership fails to focus on a core concern of our members: consistent and uniform application of independent contractor regulations across state agencies. Employers want certainty just like complainants do when an investigation is started. Giving employers due notice, due process, and timely updates is valuable. The Office of Legislative Auditor (OLA) Report on Worker Misclassification recommends the establishment of standards for investigatory communications including communications to complainants and respondents. We remain concerned with a lack of safeguards as it relates to the Partnership as well. There's no data trail or means to understand how the Partnership uses private, confidential, and nonpublic data, particularly as this information could harm a business that is ultimately exonerated.

Second, we remain concerned with the expanded violations, the expanded civil penalties, and the overly broad nature of consequential damages that this bill will impose. We agree that misclassified workers should have appropriate remedies, many of which are provided under existing law. In particular, we are concerned that these penalties are not limited to intentional acts of misclassification. While we believe that those who intentionally misclassify their employees should be held accountable, the OLA report even acknowledges that some employers may genuinely mistakenly misclassify employees. In such instances, we believe that education and corrective actions are more appropriate than imposing thousands of dollars in civil penalties. We think that penalties should be scaled, with the harshest penalties reserved for willful and repeated violations. Finally, we are concerned that there is no reasonable limit on what might be claimed as damages in a misclassification case.

Third, within the context of the expanded scope of the commissioner's authority as whole, the provisions relating to the issuance of stop work orders are particularly troubling. Not only does this language expand the scope of violations for which the commissioner can issue stop work orders, but it also allows a single potential violation to empower the commissioner to shut down an entire business at all locations. In essence, if an employer has a single, isolated violation at one jobsite, they would be subject to the closure of all jobsites, which could have broadly negative consequences. This language should be limited to locations at which a violation of Minnesota state law has actually occurred and should also clearly provide for an opportunity for due process and to correct potential violations before being forced to halt work. The OLA report reaffirms that an investigation should occur before any action can be taken.

Finally, in the construction industry, revisions to the independent contractor test and contractor registration must not result in additional burdens to the business or contractor, must not disrupt the pace of work, and should allow for working arrangements to adapt to changing demands and unforeseen challenges. Legislation must come with robust lead times and an education campaign to allow affected individuals and entities to understand the new expectations.

As Minnesota's workforce and workplaces rapidly change and more workers choose entrepreneurship – choosing to work as independent contractors for the earning potential, control, and experience it provides – policymakers should commit to thoughtful, deliberative analysis and reform the existing regulatory landscape before seeking to impose rigid regulations or restrictions or adopt model legislation from other jurisdictions. Employers must be able to efficiently manage operational challenges the same way that individual workers should have the freedom to choose how they legally participate in the workforce. Balanced employment-related policy benefits both employers and workers as well as taxpayers while enabling our economy to grow.

Finally, in speaking with many of our members over the past several months, Minnesota businesses of all sizes are experiencing significant administrative, implementation, and compliance challenges with the state's suite of new labor laws – laws that in and of themselves seek to address some of issues being discussed within the context of this bill. Significant new rules, obligations, and penalty structures at this time only add to the confusion by employers and workers alike and increase the likelihood of honest mistakes and violations.

We appreciate the opportunity to share these recommendations with the committee and respectfully request you strike Article 9 while you continue to work on modifications that align with them. Again, we are committed to holding bad actors accountable while protecting the employers and independent contractors that play by the rules and follow the laws.