

LEGAL COMMITTEE

SUPPLEMENTAL REPORT

* This report addresses the non-statutory questions and issues that were posed to the Committee.

1. Whether the Tennessee Department of Labor and Workforce Development (TDLWD) and Employee Misclassification Education and Enforcement Fund (EMEEF) or another state agency should take the lead in investigations involving employee misclassification and related unlawful employment practices?

RESPONSE: The Legal Committee believes that the TDLWD and its EMEEF unit are best suited for investigation of employee misclassification and should take the lead in such investigations.

2. Whether legislation is needed to expand the Workers' Compensation Act to include a uniform definition of the employment relationship (specifically the words "employee" and "independent contractor")? If so, how should it be defined?

RESPONSE: The Legal Committee addresses this question in its Report in response to the question posed in T. C. A. §50-6-919(b)(4).

3. Whether legislation should expand the term "employee misclassification" to "employee misclassification and related unlawful employment practices"?

RESPONSE: The Legal Committee sees no useful purpose being served by expanding the term "employee misclassification" and that the legislature should focus its energy on legislation that enhances the TDLWD's enforcement capabilities. If the legislature were to consider expanding the term "employee misclassification" it should not include the word "employment" in the expanded term. Instead, the expanded term, if considered, should be "employee misclassification and related unlawful practices" because some of the fraud schemes involve violations of law that are not usually associated with employment law, such as mail fraud, forgery, conspiracy and grand theft.

4. Whether legislation is needed that will expand the original study to include non-construction industries?

RESPONSE: The Legal Committee believes that expanding the original study to include non-construction industries is not a good idea at this time. The focus of the legislature should be on legislation to enhance the TDLWD's enforcement capabilities. There is nothing that restricts the TDLWD's enforcement units from addressing employee misclassification in whatever industry it comes to light. TDLWD currently and in the past has assessed fines and penalties under current

law against employers found engaging in the practice of employee misclassification in industries other than construction.

5. Whether state contracts should be monitored and regulated to ensure that all employers meet statutory requirements prior to beginning a state project?

RESPONSE: Yes, state contracts should be monitored and regulated more closely to ensure compliance by all employers working the state contract. The Legal Committee addressed this somewhat in its Report in its response to T. C.A. §50-6-919(b)(5).

6. Whether there should be stricter laws to assist Unemployment Insurance in handling employee misclassification and related employment practices?

RESPONSE: This question is addressed in the Legal Committee's Report in its response to T. C. A. §50-6-919(b)(5).

7. Whether there should be stricter laws to assist Labor Standards in handling employee misclassification and related employment practices?

RESPONSE: This question is addressed in the Legal Committee's Report in its response to T. C. A. §50-6-919(b)(5).

8. Whether the Commissioner of the TDLWD or some other official should have the authority to issue administrative penalties in cases involving employee misclassification and related unlawful employment practices?

RESPONSE: This question is addressed somewhat in the Legal Committee's Report in its response to T. C. A. §50-6-919(b)(5). The Commissioner of the TDLWD currently has the authority to assess back unemployment premiums plus interest to employers who fail to report their complete payroll because they have misclassified workers as independent contractors or have paid off the books and the Commissioner currently has the authority to penalize employers who fail to obtain workers' compensation insurance coverage because the employer has misclassified its employees as independent contractors or paid them off the books. The authority that the Commissioner currently does not have is the authority to issue an administrative penalty to an employer who has been found to be committing worker compensation insurance premium avoidance because the employer under reported the number of employees or misrepresented the type of work performed.

9. Whether the Commissioner of the TDLWD or some other official have the authority to issue stop work order and/or injunctions in cases involving employee misclassification and related employment practices?

RESPONSE: This question is addressed in the Legal Committee’s Report in its response to T. C. A. §50-6-919(b)(5). The Legal Committee believes the Commissioner of the TDLWD should have the authority to issue stop work orders as part of the TDLWD’s enforcement capabilities.

Legal Committee Expenditures – No expenditures necessary.

Respectfully submitted on behalf of the Legal Committee,

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