

Minutes of the  
Employment Advisory Council  
Department of Workforce Services, 140 East 300 South, Salt Lake City  
**January 22, 2015 – 2:00 p.m.**

<b>Council Members Present:</b>	John Chindlund	Employer Representative, Prince, Yeates & Geldzahler
	David Davis	Employer Representative, Utah Retail Merchants Assn.
	Dale M. Cox	Employee Representative, Utah State AFL-CIO
	Tony Montano	Employee Representative, Utah State AFL-CIO
	Dan Peay	Employee Representative, United Steelworkers, AFL-CIO
	Diane Lewis	Employee Representative, Laborer's Local #295
<b>Via Phone:</b>	Dee Rowland	Public Representative
	Jan Zogmaister	Public Representative
<b>Council Members Excused:</b>	Raylene Ireland	Public Representative
	Matt Minkevitch	Public Representative, Executive Director, the Road Home
	Kit Morgan	Employee Representative, Operating Engineers, Retired
	Richard Thorn	Employer Representative, Assoc. of General Contractors
	Todd Bingham	Employer Representative, Utah Manufacturers Assn.
	Greg Diven	Employer Representative, OCM, Inc.
<b>DWS Staff Present:</b>	Jon Pierpont	DWS Executive Director
	Michelle Beebe	UI Director
	Kathy Bounous	Appeals Director
	Mary Gehman-Smith	Support Staff Supervisor, Minutes

Agenda Item	Discussion
Welcome and Approval of Minutes	<p>Mr. Pierpont called for a motion to approve the Minutes from the December 10, 2014 meeting.</p> <p><b>Motion:</b> Ms. Rowland motioned to approve the Minutes as written, Mr. Davis seconded the motion and the Minutes were approved unanimously.</p>
DWS Organizational Changes	<p>Mr. Pierpont distributed an updated DWS org chart. This will be distributed to members participating by phone after the meeting (Attachment A). Casey Cameron was announced as the deputy director overseeing UI. Mr. Pierpont stated Kathy Bounous will be handling the legislative issues during this session.</p>
Council Appointments and Vacancies	<p>Ms. Beebe introduced Jan Zogmaister, new Public Representative. Ms. Zogmaister stated she and her husband own National Battery, is glad to join the Council, and has been involved in committees having to do with business for the last 35 years. She recently served eight years as a Weber County Commissioner. Ms. Beebe stated there is still one Public Representative vacancy. If anyone knows an individual who can join the Council, they should contact Michelle. Mr. Chindlund suggested Patrick Poulin, IRC. Mr. Pierpont will reach out and see if Mr. Poulin is interested.</p>
Potential Legislation for 2015	<p>Ms. Beebe stated today's meeting has been scheduled to discuss the <i>Workforce Services Amendment</i>. She recapped the December 10, 2014 meeting by reporting DWS participates in a Worker Misclassification Enforcement Council, with the Utah Tax Commission, the Department of Commerce, and the Labor Commission. They meet quarterly and discuss misclassified workers. In that Council, DWS shares investigation results for workers that have been identified as misclassified and then follow up with our respective agencies. The Department of Labor (DOL), Wage and Hour Division, which oversees enforcement of the Fair Labor Standards Act (FLSA) attends these meetings but does not have statutory authority to receive this information. The proposed Legislation would allow DWS to provide this information to them. At the last meeting, there were concerns from the entire Council regarding what information would be shared.</p> <p>After the December 10, 2014 meeting, Mr. Davis, Mr. Cox and Ms. Rowland met with staff from Wage and Hour and received information on what they were going to request and what they planned to do with the information. She referred to the proposed amendment to the draft legislation (Attachment B).</p> <p>Mr. Davis stated data is provided for a specific purpose and should not be widely distributed. During the follow up meeting, there was consensus on what data should be shared with Wage and Hour. This has been captured in the statute. There are a couple more things we hope will be added to the Memorandum of Understanding (MOU), such as the way the data is used and how it needs to be restricted to only Wage and Hour. He continued it is important we get something back as well. There needs to be some value to the State. Ms. Beebe added Wage and Hour will continue to share misclassified worker information with DWS. Mr. Davis reiterated he doesn't want the data to go to multiple agencies and it appeared Wage and Hour doesn't have intent to redistribute.</p>

Mr. Pierpont asked what Wage and Hour plans to do with the information. Ms. Beebe stated they currently conduct audits to determine if the FSLA has been violated. They will use DWS' information to target investigations of employers who are known as misclassifying workers. The impression is they will be conducting their own internal investigations and will not be contracting with other entities. Mr. Davis added Wage and Hour wants DWS to do their job for them. They know DWS has done a lot of work identifying where these misclassified workers are. He doesn't want legitimate employers harassed. Mr. Cox is concerned but doesn't believe this will be a problem. Mr. Chindlund stated they will ultimately stand on their own investigation, take the information, and make a decision on who they will investigate, conduct their own audit and come up with their own results. This requires they still do the work. DWS does not have specific details on how Wage and Hour will operationalize this. Ms. Rowland stated she sees this as efficiency in the Government.

Ms. Beebe added in the proposed statute, DWS specifies they will only be provided aggregate information and not actual detailed audit reports. She is not aware if this type of agreement is in place in other states. Ms. Zogmaister stated we need to keep in mind there is a cost to DWS to obtain and compile this information and, therefore has value. Mr. Chindlund stated they will share what they have, although it probably won't be equal to what DWS is giving to them.

Mr. Davis continued the statute authorizes, but doesn't require, DWS to share. He suggested periodic reports come back to the Council on how it is going. This way, if DWS isn't getting any useful data, there could be costs attached to what we are sharing. The proposed bill provides that.

Mr. Pierpont expressed concern when DWS goes out and conducts field audits and provides the information to the Federal Government, then the Feds go out and do their own audit - employers may put two and two together and believe it is actually DWS coming after employers. Mr. Davis stated the first question he would ask his members if they called is have they been misclassifying workers. Mr. Pierpont asked the Council if they are comfortable with the changes that have been made since the last discussion.

Mr. Davis added he wants it on the record that the Council wants to be sure they are getting an MOU containing some language which limits their ability to share and wants to make sure DWS is evaluating the value proposition. Ms. Bounous stated the MOU will contain the provisions discussed. They won't be allowed to share any information further and there will be a cost agreement, either in-kind giving us information, or paying for our costs. As far as drafting language, we haven't got that far. This group wants to review the MOU before it is finalized.

**Motion:** Mr. Davis motioned that the Council support the statute, with the provision that there is an MOU in place that addresses both the value proposition and limiting the distribution of the data. Mr. Cox seconded the motion, with the change of *limiting* the distribution of the data to *prohibiting* distribution of the data. With that change, the motion was approved unanimously. Ms. Beebe stated should this move forward, she will be happy to provide updated information to the Council in future meetings. Mr. Davis stated a minimum of annually and as often as necessary.

Adjourn

Mr. Cox motioned to adjourn, Mr. Chindlund seconded the motion and the motion was approved unanimously. The meeting adjourned at 2:35 p.m.