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March 4, 2024

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

Our organizations collectively represent tens of thousands of Minnesota businesses and hundreds of thousands of Minnesota employees and workers. We appreciate the opportunity to provide feedback relative to this Committee's consideration of HF 4444 (Rep. Greenman), legislation seeking to address the issue of worker misclassification.

We share many of the same goals in preventing the practice of illegally classifying workers as independent contractors instead of employees – in fact, 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.

We believe that progress can be made this session on creating a fair and level playing field. That said, we want to make sure that efforts to hold bad actors accountable are done so while protecting all of the employers and independent contractors that play by the rules and follow the laws. Those willfully engaging in labor trafficking or other such practices should not be protected by ineffective laws, but employers and workers already complying with the laws shouldn't be subjected to an overreaching regulatory regime, complicated processes, and restrictions on how to legally participate in our economy.

We are also concerned by the rushed nature of this legislation. Following the 2023 legislative session, two state efforts commenced to study the issue of worker misclassification and its impacts. The Attorney General's Office established a Task Force on Worker Misclassification and the Office of the Legislative Auditor (OLA) was tasked with conducting an evaluation on Worker Misclassification. Both of these efforts are still ongoing.

The AG's Task Force was populated with 15 members that include advocates, researchers, Minnesotans with an interest in the topic, a member of each body of the Minnesota Legislature, and representatives from the Minnesota Departments of Labor and Industry (DLI), Department of Revenue (DOR), and Department of Employment and Economic Development (DEED). On February 7, 2024, the Task Force released a series of interim recommendations focused on "Government Investigation & Enforcement," which we understand serves as the basis for HF 4444. This legislation was introduced on February 29, 2024 and was scheduled to be before this Committee four days later.

At the same time, the OLA evaluation is due in early 2024 – but has yet to be released. This evaluation will focus specifically on the misclassification of employees as independent contractors and to better understand Minnesota’s approach to addressing misclassification. In doing so, the OLA will:

- review state and federal laws and court determinations to understand worker classification requirements, including those for gig workers;
- evaluate the relevant policies and practices of DEED, DLI, and DOR that help ensure correct worker classification;
- review the efforts of other states to address misclassification;
- review Minnesota’s approach to enforcing certain other employment-related laws;
- interview select stakeholder organizations; and
- estimate how frequently employers in the state’s unemployment insurance program misclassify employees.

Overall, this evaluation will focus on questions pertaining to Minnesota’s laws and practices regarding the classification of workers. It is therefore unclear whether the work of the OLA and AG's Task Force will be in alignment or not and whether HF 4444 is the appropriate legislative response.

As Minnesota’s workforce and workplaces rapidly change and more workers are choosing to participate as independent contractors, policymakers should commit to thoughtful, deliberative analysis and seek to understand emerging policy within the current the regulatory landscape before prematurely 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 be able to choose how they participate in the workforce. Balanced employment-related policy benefits both employers and workers as well as taxpayers while enabling our economy to grow.

Furthermore, 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.

With that in mind, we respectfully request that the Committee wait until the results of the OLA’s evaluation on Worker Misclassification are released before prematurely considering HF 4444.