

Testimony to House Commerce and Economic Development Committee

March 15, 2017

RE Workers' Comp and Unemployment Law

My name is Julie Smith. I'd like to start with a bit about my background which informs my perspectives. I serve as the President of Chittenden County Farm Bureau. I work for the University of Vermont as research faculty in the Department of Animal and Veterinary Sciences. I am a veterinarian by training, but have not been engaged in clinical practice for a couple decades. I am married to a farmer who until almost two years ago milked Guernsey and Holstein cows in Colchester. We have a 9-year old son. The testimony I provide is my own. I do not speak on behalf of the university or any other association.

I will do my best to address the questions provided by the committee to those presenting testimony. My key points are that the legislation must be driven by the needs of workers and employers, the legislation must first do no harm, and the legislation must set clear definitions and incentives that encourage, rather than discourage, workers being covered by appropriate insurance.

Regarding goals of legislative initiatives impacting workers' comp and unemployment coverage, it is important for the committee to understand the needs of workers and employers in the range of businesses that exist in the state. Certain classes of workers may have powerful voices lobbying on their behalf, while others don't. You must look out for everyone-- the little guy; the mother getting back into the work force as a freelancer; the neighbor (a sole proprietor) giving their neighbor a hand; the farmer trying to make ends meet while paying a fair wage; the horse barn owner or logger engaged in "high risk" employment categories; as well as the corporation with hundreds of employees performing a range of functions.

Regarding principles to inform your work as legislators, what I mean by doing no harm is to be attentive to the law of unintended consequences. Right now there are several unintended consequences of the status quo. Because certain jobs are "high risk", particularly in agriculture and forestry, and we do not have many workers in those categories, there are either limited opportunities for coverage, no opportunities for coverage, or too expensive opportunities for coverage. Take logging, if your insurer has met their "quota" for high risk policies, they don't have to write more and you have no way to get coverage. If you are certified and trained (e.g. a Master Logger) in other states, you can get a discounted rate of insurance. Not so in Vermont. What about horse farming? The road where I live transitioned from dairy farms to mostly small horse farms in the last 50 years. The boarding farms are small businesses, which struggle to make ends meet. Horse farm employees fall into the classification of stable workers and harness drivers. This is a high rate category costing over \$20/\$100 earned per worker. If a stable groom makes \$500 a week, the employer pays \$100 to workers' comp. I believe that is higher than police, fire, dairy, and carpenters, and is only exceeded by loggers. The best way to deal with this as an employer is to not have full time employees. On the other side there is a stipulation for independent contractors to have insurance. I'm not really sure how this works, but a quick look at the self-insurance formula in state statutes was confusing and discouraging. I don't know who would jump through those hoops. Those working the landscape don't believe this is the best solution. They would like to ensure that everyone has access to appropriate and affordable workers' comp.

Let's look at another situation. I write grant proposals to support part of my work. I may need to hire people with specific skills to assist in conducting the project. If the grant and the particular project's needs support less than a full-time position, I would like to be able to hire an independent contractor. If the person I am considering has worked for the university within a certain time prior to applying to work with me, they cannot be considered an independent contractor. This makes no sense. They are being hired for very different work than what was previously provided to the university while employed. You need to make sure the law works for everyone and beware of unintended consequences.

Turning now to the legislative proposals being considered, I first offer a few general comments. Having clear definitions of who qualifies as an independent contractor would be extremely helpful. Minimizing "red tape" and paperwork for sole proprietors who do not have an HR department is absolutely necessary. The state needs to get worker's comp right first before making changes to definitions of employer and independent contractor or a portion of the economy will simply evaporate. Is there something about workers' comp coverage in Vermont that makes it more expensive and difficult for insurers to provide?

In the proposed bills, I am concerned about the impact of the change from specifically excluding certain types of work from the definition of employment as in H.119 versus satisfying the Commissioner that an individual "is economically independent of" the employing unit as in H.223 and H.323. How and when shall the Commissioner be satisfied? When the contract for services is initiated? When a claim is made? Who carries the burden of satisfying the Commissioner? H.223 and H.323 establish a new bureaucracy dedicated to finding workers inappropriately classified. Perhaps if the incentives for inappropriate classification were removed, this would not be necessary. Rather than setting up a task force to educate with the goal of enforcing provisions, how about setting up a task force to clarify *why* the so-called misclassifications exist and propose solutions to the root causes.

There are many situations that must be better understood for appropriate legislation to be developed. I leave you with a few to figure out. Why were part-time employees of the university, who worked for me on grant-related projects with known end points, able to collect unemployment insurance at the end of the grant? How would a farmer who brings his own tractor or other equipment to assist another farmer with farming activities such as planting or harvesting be classified? If a logger is uninsured (because it is too expensive or not available), is the landowner with a forestry management plan on the hook if the logger gets injured? If the logging task requires more than one equipment operator to be on site, can they both be independent contractors? Or should the value of the woodlot be reduced to zero for the landowner?

Penalties for obvious abuses of worker classification are needed. Penalizing categories of employment such as agriculture, horse farming, and logging is not and must be avoided. Beware of unintended consequences before moving any bills forward.

Thank you for the opportunity to testify.

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