TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING  
FOR THE TEXAS  
WORKFORCE COMMISSION  

COMMISSION MEETING
TUESDAY, DECEMBER 4, 2018

BE IT REMEMBERED THAT at 9:00 a.m. on
Thursday, the 4th day of December, 2018, the above-entitled
matter came on for hearing at the Texas Workforce
Commission, TWC Building, 101 East 15th Street, Room 244,
Austin, Texas, before RUTH R. HUGHS, Chair; JULIAN ALVAREZ
and ROBERT D. THOMAS, Commissioners.

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PROCEDINGS

TUESDAY, DECEMBER 4, 2018

(9:00 a.m.)

AGENDA ITEM NO. 1

Call to order.

AGENDA ITEM NO. 2

CHAIR HUGHES: Ms. Holt, has anyone signed up for public comment?

MS. HOLT: No, Ma’am, there is no one signed up for public comment.

CHAIR HUGHES: All right, thank you.

AGENDA ITEM NO. 3

Discussion, Consideration and Possible Action Regarding Whether to Assume Continuing Jurisdiction on Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases and Reconsideration of Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases, if any.

No Discussion.

AGENDA ITEM NO. 4

Discussion, Consideration and Possible Action Regarding Tax Liability Cases Listed on the Texas Workforce Commission Docket 49

The Commission considered and took action on all tax liability cases listed on Docket 49.
AGENDA ITEM NO. 5
Discussion, Consideration and Possible Action Regarding Fair Housing Cases listed on the Texas Workforce Commission Docket 49.
No Discussion.

AGENDA ITEM NO. 6
Discussion, Consideration and Possible Action Regarding Higher Level Appeals in Wage Claim Cases Listed on the Texas Workforce Commission Docket 49.
The Commission considered and took action on all wage claim cases listed on Docket 49.

AGENDA ITEM NO. 7
Discussion, Consideration and Possible Action Regarding Higher Level Appeals in Unemployment Compensation Cases Listed on the Texas Workforce Commission Docket 49.
The Commission considered and took action on all unemployment compensation cases listed on Docket 49.

AGENDA ITEM NO. 8
CHAIRMAN HUGHS: We are now back in session. There is nothing for Item 8. I’m going to give the monitors a minute to catch up to us here.

AGENDA ITEM NO. 9
CHAIRMAN HUGHS: So it’s not -- the agenda’s not showing. Okay, All right. Item number 9, Discussion, Consideration and Possible Action Regarding Publication for

MR. ROSS: Good morning Chair Hughes, Commissioner Alvarez, Commissioner Thomas and Mr. Serna. For the record, I am Chuck Ross, Unemployment Insurance Policy.

At the July 31st, 2018 TWC Public Meeting Chair Hughes noted that she had been receiving interest in providing some clarity on the gig economy and the classification of workers. Particularly in the marketplace contractor industry. She indicated a desire for employers to have an understanding of where we are in Texas and requested staff to bring forward a proposal of potentially looking at an administrative rule that addresses the employment status of marketplace contractors. She reiterated that it would be helpful to have a clear set of standards so that the Commission knows what the employment status is and can evaluate under that standards and that a rule might be a solution for that.

In collaboration with the Office of the General Counsel proposed rules responsive to that request are behind Tab 9 in your notebooks this morning.

Section 201.041 of the Texas Unemployment
Compensation Act tasks TWC with determining if the service of an individual has been and will continue to be free from control or direction under the contract and in fact.

To that end, the proposed rules amend Commission Rule 815.134 Employment Status, Employee or Independent Contractor by adding a new sub-section B, which defines the terms Digital Network, Marketplace Platform and Marketplace Contractor and provides for conditions under which a marketplace contractor should be treated as not in employment. Those conditions established through nine criteria relevant to the marketplace contractor business model would inform the decisions of staff and the Commission when questions arise regarding in-employment and not in-employment status for the purposes of the Texas Unemployment Compensation Act.

Excluded from this analysis would be service preformed for certain governmental entities, not-for-profit organizations and Indian tribes which under federal law is required to be covered employment.

Also excluded would be from -- also excluded would be marketplace platforms regulated as professional employer organizations and professional employment service -- employer services under Chapter 91 Texas Labor Code, and temporary employees and temporary help firms as defined in the Texas Unemployment Compensation Act.
Staff is seeking your direction on submitting these proposed rules to the Texas Register for a 30-day public comment period. If so directed staff seeks approval to make any minor non-substantive corrections to the document for purposes of publication to the register.

I am here this morning as a resource to answer any technical questions you may have.

CHAIR HUGHES: Thank you, Mr. Ross.

Commissioner Thomas, do you have any questions?

COMM. THOMAS: No. I’m just ready to make a motion.

CHAIR HUGHES: Okay, and Commissioner Alvarez, do you have any questions or concerns?

COMM. ALVAREZ: I do have some comments.

CHAIR HUGHES: Okay.

COMM. ALVAREZ: I am unable to support the proposed rules. Our current rules provide a flexible frame from -- that can be applied to a variety of industries and workers.

In the past year we’ve had several tax cases dealing with marketplace platforms and digital networks that were properly analyzed using our current rules. The exclusion from employment that currently exists in the statute were all legislatively created, including House Bill 100 passed during the last legislative session that define...
transportation network drivers as independent contractors.

As we are about to enter a new legislative session I would refer -- I would prefer that we allow the legislature to address this issue.

I have also concerns about unintended consequences. The proposed rules give an advantage to out-of-state entities and industries that are -- that are able to shift their service requests to an online enabled application or website. This may give an unfair advantage to these out-of-state entities over established Texas employers.

Our current rules have worked well for Texas workers and employers while allowing for innovation in a growing economy.

For these reasons I cannot support the proposed rules.

COMM. THOMAS: I do have a comment, Chair Hughes.

CHAIR HUGHES: Okay.

COMM. THOMAS: I appreciate my colleagues’ comments and concerns and appreciate him putting on the record. I also understand that this is a -- this is a critical -- this is a critical part of our function as commissioners.

I think, colleagues, staff, it is important
for us to sometimes think outside the box and look for opportunities to see if we can be responsive to the economy as it evolves and changes. Therefore, I believe that this is an appropriate rule, and if -- as it goes through the process hopefully we’ll get to do a deep-dive. So I think that this is actually a good suggestion that you made, Chair Hughes. I think that this is exactly what we should be doing for looking for opportunities to be responsive in the marketplace, and I’m prepared to make a motion.

CHAIR HUGHS: All right.

COMM. THOMAS: Chair Hughes, I move that we accept staff recommendation to submit this proposed rule to the Texas Register as presented.

CHAIR HUGHS: Commissioner Thomas, Commissioner Alvarez, I appreciate both of your comments on this matter. I think that clarity will be important, and I’ll look forward to the 30-day public comment period to see where we are with this at the end of that. So thank you. Thank you to staff, and I second the motion.

MR. ROSS: Yes ma’am. We’ll move forward with public -- publishing in the Register.

MR. SERNA: Madam, excuse me. Do we need to have the vote on record?

COMM. ALVAREZ: So I’m not supporting it.

MR. SERNA: Yes, ma’am. Just so we have the
vote on record so we --

CHAIR HUGHS: Yeah. He made a motion. I
seconded the motion, and the motion passes.

MR. SERNA: Yes, ma’am. I know the motion
passed. It’s just to have the three commissioners --

COMM. THOMAS: We didn’t have it on --
formally voted. It probably is procedural with this.

MR. SERNA: That -- yeah. It’s just a
procedural issue, ma’am.

CHAIR HUGHS: Okay. Sure.

MR. SERNA: You wanna make the motion?

COMM. THOMAS: I made the motion, it’s been
seconded, so if the Chair can call it to question we’ll just
go ahead and formally vote.

MR. SERNA: And then you seconded, and then

--

CHAIR HUGHS: Okay, is there a motion?

COMM. THOMAS: I made the motion.

CHAIR HUGHS: I second.

COMM. ALVAREZ: I’m in disagreement.

CHAIR HUGHS: All right, and the motion
passes. Thank you.

MR. SERNA: Yes ma’am. Sorry.

COMM. THOMAS: I understand. Ed was just
asking us for an I -- Yea or Nay.

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MR. SERNA: That’s all, yes.

COMM. THOMAS: Yeah. That makes --

COMM. ALVAREZ: Nay.

COMM. THOMAS: I think you’ve got two yea’s and a nay.

CHAIR HUGHS: That’s right.

COMM. THOMAS: I think let the record reflect. Okay. Thanks, Ed, that makes a lot of sense.

Thank you.

MR. SERNA: Okay.

CHAIR HUGHS: Thank you.

AGENDA ITEM NO. 10

CHAIRMAN HUGHS: Item -- yeah, okay. Item 10, Discussion, Consideration, Consideration and Possible Action Regarding Approval of Local Workforce Development Board Nominees.

MR. BELL: Madam Chair, commissioners, Mr. Serna, Cameron Bell, Workforce Development Division.

Before you for your approval this morning are Workforce Development Board nominations for Workforce Solutions Alamo, North Central Texas, Middle Rio Grande, Northeast Texas, and Texoma.

CHAIR HUGHS: Are there any comments or questions?

COMM. ALVAREZ: No.
COMM. THOMAS: No, thank you.
CHAIR HUGHS: Is there a vote?
COMM. ALVAREZ: I move that we approve the board nominees from Alamo, North Central Texas, Middle Rio Grande, Northeast Texas, and Texoma.
COMM. THOMAS: Second.
CHAIR HUGHS: We are unanimous. Thank you.
MR. BELL: Thank you.

AGENDA ITEM NO. 11
CHAIRMAN HUGHS: There is nothing for Item 11.

AGENDA ITEM NO. 12
CHAIRMAN HUGHS: There is nothing on Item 12.

AGENDA ITEM NO. 13
CHAIRMAN HUGHS: Are there any updates regarding enacted, proposed or considered federal or state legislation? Michael Britt.

MR. BRITT: Good morning Chair Hughes, Commissioners. For the record, Michael Britt, Governmental Relations.

The U.S. House and Senate were scheduled to be in session this week, however, the schedule of legislative business has been altered due to the funeral of Former President George H. W. Bush.

As you are aware, federal funding for -- that
has not already been appropriated through appropriation
titles is scheduled to expire this Friday. Congressional
leaders have introduced House Joint Resolution 143, which
will extend federal funding until December 21st to get
funding past the funeral this week. The President has
indicated he would support such an action.

Congress is also continuing to work on the
2018 Farm Bill, which is currently in conference committee,
and the U.S. House and Senate are still considering options
for TANF reauthorization as they wind down the current
congress.

This concludes my remarks, and I’m happy to
answer any questions you have.

CHAIR HUGHS: Any questions Commissioner
Thomas, Commissioner Alvarez?

MR. BRITT: Thank you.

AGENDA ITEM NO. 14

CHAIR HUGHS: Thank you. All right. Item
14. Do we have any updates?

MR. SERNA: Yes ma’am. Sorry for the
confusion earlier. We have three items to provide you
updates on. The first will be Lee Purcel regarding the 2019
tax rate.

MS. PURSELL: Good morning Chair and
commissioners. For the record, I’m Leigh Pursell, UI
Division.

As scheduled, 2019 UI tax rate notices will be mailed starting December 10th. The minimum tax rate for 340,158 employers is 0.36 percent compared to 0.46 percent for 2018. 65.6 percent of experience-rated employers have a minimum tax rate compared to 64.9 percent in 2018. 5.3 percent of experience-rated employers have the maximum tax rate compared to 5.8 percent in 2018.

The maximum tax rate for 2019 decreased from 6.46 percent to 6.36 percent in 2019. The average tax rate is 1.25 percent compared to 1.37 percent for 2018 and the average experience rated tax rate is 1.06 percent compared to 1.20 percent for 2018.

A stable Texas Economy resulted in the trust fund balance being above the floor, which means that we will not have a deficit tax rate next year. Overall Texas employers can expect to see a decrease in their taxes in 2019, and I will be happy to answer any questions you may have.

CHAIR HUGHS: Commissioners, do you have any questions? Any questions?

Thank you, Leigh, this is excellent news, and just in time for the holidays. So we’ll be happy to receive the new information. Thanks.

MS. PURSELL: Yes. Thank you.
MR. SERNA: The second item I have is to let you all know that the American Institute for Full Employment awarded Larry Temple the Full Employment Lifetime Achievement Award.

The award reads; In recognition of 26 years of leading the nation in better ways to give millions of struggling people a hand up into employment. And it was issued December 1st of 2018.

COMM. THOMAS: Wow.

COMM. THOMAS: Did you communicate that to Larry?

MR. SERNA: Yes, sir. He’s aware of it.

COMM. THOMAS: Good.

MR. SERNA: It made him very proud. The last item I have is I know that you all probably have already heard, but the governor did designate tomorrow as the day of remembrance for President George H. W. Bush -- Bush’s funeral, and his proclamation reads in part; To allow state agency -- to allow state employees to attend such observances state agencies, offices, and apartments shall be closed on that day and general government operations and services will be maintained by skeletal work crews.

So as a result, we’ll be sending a notice out to all of our staff that we will be closed tomorrow, but open on the skeleton crews; we’ll have a skeleton crew
operating all of our functions tomorrow. And that’ll go out later this morning.

CHAIR HUGHS: Thank you for that update. I noticed some executive directors have been reaching out asking about their offices and whether it -- what the proclamation means for their offices, so I assume you’ll be addressing that and getting back to them as well.

MR. SERNA: Yes, ma’am.

CHAIR HUGHS: Okay, thank you for that.

MR. SERNA: Yes ma’am. For -- in the boards, yes ma’am.

CHAIR HUGHS: Okay. Anything on that?

MR. SERNA: And that’s all that I had. The -- those are the three things that I had for y’all this morning.

CHAIR HUGHS: Okay. Well, Mr. Serna, I don’t know if you can confirm this, but a little bird told me that today is Commissioner Thomas’ birthday.

COMM. THOMAS: Oh, my.

CHAIR HUGHS: Is that right?

COMM. THOMAS: Yeah

CHAIR HUGHS: So -- is that right?

COMM. THOMAS: In fact it is.

CHAIR HUGHS: Okay. Well you don’t wanna hear me croak, but please help me when the singing Happy
Birthday.

(Singing Happy Birthday)

COMM. ALVAREZ: Party all day in Commissioner Thomas’ office.

COMM. THOMAS: Believe me, there’s more than enough holiday candy in our office. Please. Help us.

CHAIR HUGHS: Well happy birthday.

COMM. THOMAS: Thank you.

COMM. ALVAREZ: He looks great for 39. Right?

CHAIR HUGHS: Yeah, fantastic. So with that are there any other updates or comments?

AGENDA ITEM NO. 15

CHAIR HUGHS: Okay, is there a motion to adjourn?

COMM. ALVAREZ: I move we be adjourned.

COMM. THOMAS: Seconded.

CHAIR HUGHS: Thank you, we are adjourned.

Have a great day.

(Proceedings concluded at 9:50:50 a.m.)
CERTIFICATE

STATE OF TEXAS )
COUNTY OF TRAVIS )

I, Kimberly C. McCright, Certified Vendor and Notary in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of December, 2018.

/s/ Kimberly C. McCright
Kimberly C. McCright
Certified Vendor and Notary Public

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