

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 15<sup>th</sup> Street, Room 244,  
Austin, Texas, before RUTH R. HUGHS, Chair; JULIAN ALVAREZ  
and ROBERT D. THOMAS, Commissioners.

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PAGE

PROCEEDINGS, TUESDAY, DECEMBER 4, 2018

AGENDA ITEM NO. 1 ..... 4  
CHAIRMAN HUGHS

AGENDA ITEM NO. 2 ..... 4  
No Discussion

AGENDA ITEM NO. 3 ..... 4  
SHERRI MILLER

AGENDA ITEM NO. 4 ..... 4  
JENNIFER TURNER

AGENDA ITEM NO. 5 ..... 5  
JENNIFER TURNER

AGENDA ITEM NO. 6 ..... 5  
SHERRI MILLER

AGENDA ITEM NO. 7 ..... 5  
SHERRI MILLER

AGENDA ITEM NO. 8 ..... 5  
JENNIFER TROKE AND TRAVIS WEAVER

AGENDA ITEM NO. 9 ..... 5  
CHUCK ROSS & JASON STALINSKY

AGENDA ITEM NO. 10 ..... 12  
CAB BELL & COURTNEY ARBOUR

AGENDA ITEM NO. 11 ..... 13  
JASON VADEN

AGENDA ITEM NO. 12 ..... 13  
JENNIFER TROKE & COURTNEY ARBOUR

AGENDA ITEM NO. 13 ..... 13  
TOM McCARTY

AGENDA ITEM NO. 14 ..... 14  
ED SERNA

AGENDA ITEM NO. 15 ..... 18  
Adjournment

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE.....20



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

1 Public Comment Proposed Rules Relating to Marketplace  
2 Platform Digital Networks Within the Unemployment Insurance  
3 Program, 40 Texas Administrative Code Chapter 815. Chuck  
4 Ross.

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

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

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

25 Section 201.041 of the Texas Unemployment

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

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

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

20 Also excluded would be from -- also excluded  
21 would be marketplace platforms regulated as professional  
22 employer organizations and professional employment service  
23 -- employer services under Chapter 91 Texas Labor Code, and  
24 temporary employees and temporary help firms as defined in  
25 the Texas Unemployment Compensation Act.

1                   Staff is seeking your direction on submitting  
2 these proposed rules to the Texas Register for a 30-day  
3 public comment period. If so directed staff seeks approval  
4 to make any minor non-substantive corrections to the  
5 document for purposes of publication to the register.

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

8                   CHAIR HUGHS: Thank you, Mr. Ross.  
9 Commissioner Thomas, do you have any questions?

10                  COMM. THOMAS: No. I'm just ready to make a  
11 motion.

12                  CHAIR HUGHS: Okay, and Commissioner Alvarez,  
13 do you have any questions or concerns?

14                  COMM. ALVAREZ: I do have some comments.

15                  CHAIR HUGHS: Okay.

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

20                  In the past year we've had several tax cases  
21 dealing with marketplace platforms and digital networks that  
22 were properly analyzed using our current rules. The  
23 exclusion from employment that currently exists in the  
24 statute were all legislatively created, including House Bill  
25 100 passed during the last legislative session that define



1 transportation network drivers as independent contractors.

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

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

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

15 For these reasons I cannot support the  
16 proposed rules.

17 COMM. THOMAS: I do have a comment, Chair  
18 Hughs.

19 CHAIR HUGHS: Okay.

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

25 I think, colleagues, staff, it is important

1 for us to sometimes think outside the box and look for  
2 opportunities to see if we can be responsive to the economy  
3 as it evolves and changes. Therefore, I believe that this  
4 is an appropriate rule, and if -- as it goes through the  
5 process hopefully we'll get to do a deep-dive. So I think  
6 that this is actually a good suggestion that you made, Chair  
7 Hughs. I think that this is exactly what we should be doing  
8 for looking for opportunities to be responsive in the  
9 marketplace, and I'm prepared to make a motion.

10 CHAIR HUGHS: All right.

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

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

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

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

24 COMM. ALVAREZ: So I'm not supporting it.

25 MR. SERNA: Yes, ma'am. Just so we have the

1 vote on record so we --

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

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

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

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

10 CHAIR HUGHS: Okay. Sure.

11 MR. SERNA: You wanna make the motion?

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

15 MR. SERNA: And then you seconded, and then  
16 --

17 CHAIR HUGHS: Okay, is there a motion?

18 COMM. THOMAS: I made the motion.

19 CHAIR HUGHS: I second.

20 COMM. ALVAREZ: I'm in disagreement.

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

23 MR. SERNA: Yes ma'am. Sorry.

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

1 MR. SERNA: That's all, yes.

2 COMM. THOMAS: Yeah. That makes --

3 COMM. ALVAREZ: Nay.

4 COMM. THOMAS: I think you've got two yea's  
5 and a nay.

6 CHAIR HUGHS: That's right.

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

10 MR. SERNA: Okay.

11 CHAIR HUGHS: Thank you.

12 AGENDA ITEM NO. 10

13 CHAIRMAN HUGHS: Item -- yeah, okay. Item  
14 10, Discussion, Consideration, Consideration and Possible  
15 Action Regarding Approval of Local Workforce Development  
16 Board Nominees.

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

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

23 CHAIR HUGHS: Are there any comments or  
24 questions?

25 COMM. ALVAREZ: No.

1                   COMM. THOMAS: No, thank you.

2                   CHAIR HUGHS: Is there a vote?

3                   COMM. ALVAREZ: I move that we approve the  
4 board nominees from Alamo, North Central Texas, Middle Rio  
5 Grande, Northeast Texas, and Texoma.

6                   COMM. THOMAS: Second.

7                   CHAIR HUGHS: We are unanimous. Thank you.

8                   MR. BELL: Thank you.

9                                 AGENDA ITEM NO. 11

10                   CHAIRMAN HUGHS: There is nothing for Item  
11 11.

12                                 AGENDA ITEM NO. 12

13                   CHAIRMAN HUGHS: There is nothing on Item 12.

14                                 AGENDA ITEM NO. 13

15                   CHAIRMAN HUGHS: Are there any updates  
16 regarding enacted, proposed or considered federal or state  
17 legislation? Michael Britt.

18                   MR. BRITT: Good morning Chair Hughs,  
19 Commissioners. For the record, Michael Britt, Governmental  
20 Relations.

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

25                   As you are aware, federal funding for -- that

1 has not already been appropriated through appropriation  
2 titles is scheduled to expire this Friday. Congressional  
3 leaders have introduced House Joint Resolution 143, which  
4 will extend federal funding until December 21st to get  
5 funding past the funeral this week. The President has  
6 indicated he would support such an action.

7 Congress is also continuing to work on the  
8 2018 Farm Bill, which is currently in conference committee,  
9 and the U.S. House and Senate are still considering options  
10 for TANF reauthorization as they wind down the current  
11 congress.

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

14 CHAIR HUGHS: Any questions Commissioner  
15 Thomas, Commissioner Alvarez?

16 MR. BRITT: Thank you.

17 AGENDA ITEM NO. 14

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

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

24 MS. PURSELL: Good morning Chair and  
25 commissioners. For the record, I'm Leigh Pursell, UI

1 Division.

2 As scheduled, 2019 UI tax rate notices will  
3 be mailed starting December 10th. The minimum tax rate for  
4 340,158 employers is 0.36 percent compared to 0.46 percent  
5 for 2018. 65.6 percent of experience-rated employers have a  
6 minimum tax rate compared to 64.9 percent in 2018. 5.3  
7 percent of experience-rated employers have the maximum tax  
8 rate compared to 5.8 percent in 2018.

9 The maximum tax rate for 2019 decreased from  
10 6.46 percent to 6.36 percent in 2019. The average tax rate  
11 is 1.25 percent compared to 1.37 percent for 2018 and the  
12 average experience rated tax rate is 1.06 percent compared  
13 to 1.20 percent for 2018.

14 A stable Texas Economy resulted in the trust  
15 fund balance being above the floor, which means that we will  
16 not have a deficit tax rate next year. Overall Texas  
17 employers can expect to see a decrease in their taxes in  
18 2019, and I will be happy to answer any questions you may  
19 have.

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

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

25 MS. PURSELL: Yes. Thank you.

1 MR. SERNA: The second item I have is to let  
2 you all know that the American Institute for Full Employment  
3 awarded Larry Temple the Full Employment Lifetime  
4 Achievement Award.

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

9 COMM. THOMAS: Wow.

10 COMM. THOMAS: Did you communicate that to  
11 Larry?

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

13 COMM. THOMAS: Good.

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

23 So as a result, we'll be sending a notice out  
24 to all of our staff that we will be closed tomorrow, but  
25 open on the skeleton crews; we'll have a skeleton crew



1 operating all of our functions tomorrow. And that'll go out  
2 later this morning.

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

8 MR. SERNA: Yes, ma'am.

9 CHAIR HUGHS: Okay, thank you for that.

10 MR. SERNA: Yes ma'am. For -- in the boards,  
11 yes ma'am.

12 CHAIR HUGHS: Okay. Anything on that?

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

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

19 COMM. THOMAS: Oh, my.

20 CHAIR HUGHS: Is that right?

21 COMM. THOMAS: Yeah

22 CHAIR HUGHS: So -- is that right?

23 COMM. THOMAS: In fact it is.

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

1 Birthday.

2 (Singing Happy Birthday)

3 COMM. ALVAREZ: Party all day in Commissioner  
4 Thomas' office.

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

7 CHAIR HUGHS: Well happy birthday.

8 COMM. THOMAS: Thank you.

9 COMM. ALVAREZ: He looks great for 39.

10 Right?

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

13 AGENDA ITEM NO. 15

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

16 COMM. ALVAREZ: I move we be adjourned.

17 COMM. THOMAS: Seconded.

18 CHAIR HUGHS: Thank you, we are adjourned.

19 Have a great day.

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

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

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

Verbatim Reporting & Transcription, LLC  
1322 Space Park Drive, Suite C165  
Houston, Texas 77058  
281.724.8600