AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals
MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:
Employer Account No. - 1354871
THE CLUB AT ADMIRALS COVE INC
KRIS DINGES
200 ADMIRALS COVE BLVD
JUPITER FL 33477-4046

PROTEST OF LIABILITY
DOCKET NO. 2010-136035L

RESPONDENT:
State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated August 9, 2010.

After due notice to the parties, a telephone hearing was held on January 11, 2011. The Petitioner, represented by the Director of Human Resource, appeared and testified. The Director of Spa, Salon, and Fitness testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared and testified.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue:

Whether services performed for the Petitioner by the Joined Party and other individuals constitute insured employment pursuant to Sections 443.036(19), 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of the liability.

Findings of Fact:

1. The Petitioner is a private club which provides golf, tennis, marina, food and beverage, spa, salon, and fitness facilities for its members.
2. The salon operated by the Petitioner provides the services of nail technicians, exclusively for members. The Petitioner determines the amounts to be charged to the members for the services and bills the members for the services. Generally, the Petitioner has approximately four to five nail technicians who perform services. Approximately two to three of the nail technicians are classified as independent contractors while the remainder are classified by the Petitioner as employees.

3. The Joined Party applied for work with the Petitioner as a nail technician and was interviewed by the Director of Spa, Salon, and Fitness. The Director of Spa, Salon, and Fitness informed the Joined Party that the Petitioner would pay the Joined Party a commission based on the work which the Joined Party completed. During the first ninety days the Petitioner would pay the Joined Party a commission of 45% plus an hourly rate of pay of $6. The Director of Spa, Salon, and Fitness referred to the first ninety days as a probationary period. Upon successful completion of the probationary period the Petitioner would then pay the Joined Party a commission of 50%. The Director of Spa, Salon, and Fitness asked the Joined Party to provide the days and hours that she was available to work so that the Petitioner could schedule the Joined Party during those times. The Joined Party complied and began work on March 9, 2009.
4. The purpose of the ninety day probationary period was for the Petitioner to see how well the Joined Party performed the work and to make sure that the relationship was going to work out.
5. The Petitioner provided the Joined Party with a uniform and name tag. The Petitioner provided the place of work and all tools and supplies that were needed to perform the work.
6. The Petitioner's salon is open from Tuesday through Saturday from 9 AM until 5 PM during the season and from Tuesday through Friday from 9 AM until 5 PM during the off season. The Joined Party did not have a key to the salon and could not perform services outside the Petitioner's regular business hours.
7. The Joined Party was required to personally perform the work. She was not allowed to hire others to perform the work for her. The Joined Party did not perform services for anyone else during the time that she worked for the Petitioner, however, the Joined Party believed that she had the right to perform services for others on her days off.
8. Generally, the Petitioner scheduled appointments for the Joined Party during the Joined Party's stated days and times of availability. If the Petitioner wanted to schedule the Joined Party during other days or times, the Petitioner would contact the Joined Party for approval. On some days the Joined Party was required to be on-call even though the Joined Party did not have scheduled appointments. On those occasions the Joined Party was required to report to the Petitioner's salon and wait in the event that members came in without an appointment.
9. The Joined Party worked under the supervision of the Salon Supervisor. If the Joined Party wanted to take time off from work she had to make a written request in advance and had to receive approval before taking time off. If the Joined Party was not able to report for work as scheduled she was required to notify the Salon Supervisor. On one occasion the Joined Party requested time off to attend a wedding one month in advance. The Joined Party had to wait one week to obtain approval before the Joined Party could make her plans to attend the wedding.
10. The Petitioner scheduled periodic staff meetings. It was the Joined Party's understanding that attendance at the staff meetings was mandatory. On one occasion a staff meeting was scheduled on a day that the Joined Party was not scheduled to work. The Joined Party notified the Salon Supervisor that she could not attend because she did not have a babysitter. The Salon Supervisor allowed the Joined Party to bring her daughter to the meeting with her so that she could attend the meeting.
11. The Petitioner determined the amounts that were charged to the members for the nail services. The Joined Party did not submit a bill or invoice to the Petitioner for the services which she performed for the Petitioner's members. The Petitioner paid the Joined Party on the same day of the week as the Petitioner paid the acknowledged employees. No taxes were withheld from the Joined Party's pay. The Petitioner did not provide any fringe benefits for the Joined Party.
12. The Joined Party did not have an occupational license, did not have liability insurance, did not advertise, and did not offer services to the general public.
13. Either party had the right to terminate the relationship at any time without incurring liability.

14. In October 2009 an individual who was employed by the Petitioner as a nail technician left her employment to relocate out of state. The Petitioner offered the employment position to the Joined Party. The Joined Party accepted the offer and was classified as an employee of the Petitioner effective October 12, 2009.

15. Beginning October 12, 2009, the Joined Party worked under the same terms and conditions as prior to October 12. The only difference was that as an acknowledged employee the Petitioner withheld taxes from the pay and the Joined Party was entitled to receive fringe benefits beginning October 12.

16. At the end of 2009 the Petitioner reported the Joined Party's earnings prior to October 12 on Form 1099-MISC as nonemployee compensation. The earnings beginning October 12 were reported on Form W-2.

17. The Joined Party's employment as a nail technician ended on April 24, 2010. The Joined Party filed a claim for unemployment compensation benefits effective May 30, 2010. Her filing on that date established a base period consisting of the calendar year 2009. When the Joined Party did not receive credit for her earnings prior to the fourth quarter 2009 a *Request for Reconsideration of Monetary Determination* was filed and an investigation was issued to the Department of Revenue to determine if the Joined Party performed services as an employee or as an independent contractor. On August 9, 2010, the Department of Revenue determined that the Joined Party and other individuals performing services as nail technicians were the Petitioner's employees retroactive to January 1, 2009. The Petitioner filed a timely protest.

Conclusions of Law:

18. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Unemployment Compensation Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.

19. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).

20. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).

21. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.

22. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:
    (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.

    (2) The following matters of fact, among others, are to be considered:
        (a) the extent of control which, by the agreement, the business may exercise over the details of the work;
        (b) whether or not the one employed is engaged in a distinct occupation or business;
        (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
        (d) the skill required in the particular occupation;

(e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
(f) the length of time for which the person is employed;
(g) the method of payment, whether by the time or by the job;
(h) whether or not the work is a part of the regular business of the employer;
(i) whether or not the parties believe they are creating the relation of master and servant;
(j) whether the principal is or is not in business.

23. Comments in the Restatement explain that the word "servant" does not exclusively connote manual labor, and the word "employee" has largely replaced "servant" in statutes dealing with various aspects of the working relationship between two parties.

24. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1st DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1st DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often cannot be answered by reference to "hard and fast" rules, but rather must be addressed on a case-by-case basis.

25. No evidence was presented to show the existence of any written or verbal agreement that the Joined Party would perform services as an independent contractor. In Keith v. News & Sun Sentinel Co., 667 So.2d 167 (Fla. 1995) the court provides guidance on how to proceed absent an express agreement, "In the event that there is no express agreement and the intent of the parties cannot be otherwise determined, courts must resort to a fact specific analysis under the Restatement based on the actual practice of the parties."

26. As a private club it is the Petitioner's primary business activity to provide certain facilities, including a nail salon, to the Petitioner's members. The Joined Party performed services in the nail salon, exclusively for the Petitioner's members, as a nail technician. Thus, the services performed by the Joined Party were not separate and distinct from the Petitioner's primary business activity but were an integral and necessary part of the Petitioner's business.

27. The Petitioner provided the place of work and all tools and supplies that were needed to perform the work. The Joined Party did not have any expenses in connection with the work and was not at risk of suffering a financial loss from performing services.

28. The Petitioner determined the days and hours that the Joined Party performed services, generally within the Joined Party's stated days and hours of availability. The Joined Party was required to personally perform the work and was prohibited from hiring others to perform the work for her.

29. The Joined Party was hired on a ninety day probationary basis. The purpose of the probationary period was to evaluate the Joined Party's work performance and to make sure that the relationship was going to work out. The Joined Party worked under the direction of a supervisor and was required to wear a uniform and name tag provided by the Petitioner and was required to attend mandatory staff meetings.

30. Initially, the Joined Party was paid a 45% commission plus $6 per hour during the probationary period. After the Joined Party satisfactorily completed the probationary period the commission was increased to 50% and the hourly salary was discontinued. Section 443.1217(1), Florida Statutes, provides that the wages subject to the Unemployment Compensation Law include all remuneration for employment including commissions, bonuses, back pay awards, and the cash value of all remuneration in any medium other than cash.

31. No evidence was presented concerning the level of skill required of nail technicians. However, the Joined Party used the same level of skill and professional knowledge during the time that she worked as an employee.

32. Either party had the right to terminate the relationship at any time without incurring liability. In Cantor v. Cochran, 184 So.2d 173 (Fla. 1966), the court in quoting 1 Larson, Workmens' Compensation Law, Section 44.35 stated: "The power to fire is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contractor, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract."

33. The evidence presented reveals that the Petitioner exercised the same degree of control over the details of the work when the Joined Party performed services as an employee as when she was classified by the Petitioner as an independent contractor. During both periods of time the Petitioner exercised significant control over where the work was performed, when the work was performed, and how the work was performed. In Adams v. Department of Labor and Employment Security, 458 So.2d 1161 (Fla. 1st DCA 1984), the Court held that if the person serving is merely subject to the control of the person being served as to the results to be obtained, he is an independent contractor. If the person serving is subject to the control of the person being served as to the means to be used, he is not an independent contractor. It is the right of control, not actual control or interference with the work which is significant in distinguishing between an independent contractor and a servant. The Court also determined that the Department had authority to make a determination applicable not only to the worker whose unemployment benefit application initiated the investigation, but to all similarly situated workers.

34. It is concluded that the services performed for the Petitioner by the Joined Party and other individuals working as nail technicians constitute insured employment.

Recommendation: It is recommended that the determination dated August 9, 2010, be AFFIRMED.

Respectfully submitted on January 13, 2011.

R. O. SMITH, Special Deputy
Office of Appeals

AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA

PETITIONER:
Employer Account No. - 1354871

THE CLUB AT ADMIRALS COVE INC
KRIS DINGES
200 ADMIRALS COVE BLVD
JUPITER FL 33477-4046

PROTEST OF LIABILITY
DOCKET NO. 2010-136035L

RESPONDENT:
State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

O R D E R

This matter comes before me for final Agency Order.

The issue before me is whether services performed for the Petitioner by the Joined Party and other individuals as nail technicians constitute insured employment pursuant to Sections 443.036(19); 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of liability.

The Joined Party filed an unemployment compensation claim in May 2010. An initial determination held that the Joined Party earned insufficient wages in insured employment to qualify for benefits. The Joined Party advised the Agency that she worked for the Petitioner during the qualifying period and requested consideration of those earnings in the benefit calculation. As a result of the Joined Party's request, the Department of Revenue conducted an investigation to determine whether work for the Petitioner was done as an employee or an independent contractor. If the Joined Party worked for the Petitioner as an employee, she would qualify for unemployment benefits, and the Petitioner would owe unemployment compensation taxes on the remuneration it paid to the Joined Party and any others who worked under the same terms and conditions**.** On the other hand, if the Joined Party worked for the Petitioner as an independent contractor, she would remain ineligible for benefits, and the Petitioner would not owe unemployment compensation taxes on the remuneration it paid to the Joined Party and the other workers. Upon completing the investigation, an auditor at the Department of Revenue determined that the services performed by the Joined Party and the other nail technicians were in insured employment. The Petitioner was required to pay unemployment compensation taxes on wages paid to the Joined Party and any other workers who performed services under the same terms and conditions. The Petitioner filed a

timely protest of the determination. The claimant who requested the investigation was joined as a party because she had a direct interest in the outcome of the case. That is, if the determination is reversed, the Joined Party will once again be ineligible for benefits and must repay all benefits received.

A telephone hearing was held on January 11, 2011. The Petitioner, represented by the Director of Human Resources, appeared and testified. The Director of Spa, Salon, and Fitness testified as a witness on behalf of the Petitioner. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared and testified.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner is a private club which provides golf, tennis, marina, food and beverage, spa, salon, and fitness facilities for its members.
2. The salon operated by the Petitioner provides the services of nail technicians, exclusively for members. The Petitioner determines the amounts to be charged to the members for the services and bills the members for the services. Generally, the Petitioner has approximately four to five nail technicians who perform services. Approximately two to three of the nail technicians are classified as independent contractors while the remainder are classified by the Petitioner as employees.
3. The Joined Party applied for work with the Petitioner as a nail technician and was interviewed by the Director of Spa, Salon, and Fitness. The Director of Spa, Salon, and Fitness informed the Joined Party that the Petitioner would pay the Joined Party a commission based on the work which the Joined Party completed. During the first ninety days the Petitioner would pay the Joined Party a commission of 45% plus an hourly rate of pay of $6. The Director of Spa, Salon, and Fitness referred to the first ninety days as a probationary period. Upon successful completion of the probationary period the Petitioner would then pay the Joined Party a commission of 50%. The Director of Spa, Salon, and Fitness asked the Joined Party to provide the days and hours that she was available to work so that the Petitioner could schedule the Joined Party during those times. The Joined Party complied and began work on March 9, 2009.
4. The purpose of the ninety day probationary period was for the Petitioner to see how well the Joined Party performed the work and to make sure that the relationship was going to work out.
5. The Petitioner provided the Joined Party with a uniform and name tag. The Petitioner provided the place of work and all tools and supplies that were needed to perform the work.
6. The Petitioner's salon is open from Tuesday through Saturday from 9 AM until 5 PM during the season and from Tuesday through Friday from 9 AM until 5 PM during the off season. The Joined Party did not have a key to the salon and could not perform services outside the Petitioner's regular business hours.
7. The Joined Party was required to personally perform the work. She was not allowed to hire others to perform the work for her. The Joined Party did not perform services for anyone else during the time that she worked for the Petitioner, however, the Joined Party believed that she had the right to perform services for others on her days off.
8. Generally, the Petitioner scheduled appointments for the Joined Party during the Joined Party's stated days and times of availability. If the Petitioner wanted to schedule the Joined Party during other days or times, the Petitioner would contact the Joined Party for approval. On

some days the Joined Party was required to be on-call even though the Joined Party did not have scheduled appointments. On those occasions the Joined Party was required to report to the Petitioner's salon and wait in the event that members came in without an appointment.

9. The Joined Party worked under the supervision of the Salon Supervisor. If the Joined Party wanted to take time off from work she had to make a written request in advance and had to receive approval before taking time off. If the Joined Party was not able to report for work as scheduled she was required to notify the Salon Supervisor. On one occasion the Joined Party requested time off to attend a wedding one month in advance. The Joined Party had to wait one week to obtain approval before the Joined Party could make her plans to attend the wedding.

10. The Petitioner scheduled periodic staff meetings. It was the Joined Party's understanding that attendance at the staff meetings was mandatory. On one occasion a staff meeting was scheduled on a day that the Joined Party was not scheduled to work. The Joined Party notified the Salon Supervisor that she could not attend because she did not have a babysitter. The Salon Supervisor allowed the Joined Party to bring her daughter to the meeting with her so that she could attend the meeting.

11. The Petitioner determined the amounts that were charged to the members for the nail services. The Joined Party did not submit a bill or invoice to the Petitioner for the services which she performed for the Petitioner's members. The Petitioner paid the Joined Party on the same day of the week as the Petitioner paid the acknowledged employees. No taxes were withheld from the Joined Party's pay. The Petitioner did not provide any fringe benefits for the Joined Party.

12. The Joined Party did not have an occupational license, did not have liability insurance, did not advertise, and did not offer services to the general public.

13. Either party had the right to terminate the relationship at any time without incurring liability.

14. In October 2009 an individual who was employed by the Petitioner as a nail technician left her employment to relocate out of state. The Petitioner offered the employment position to the Joined Party. The Joined Party accepted the offer and was classified as an employee of the Petitioner effective October 12, 2009.

15. Beginning October 12, 2009, the Joined Party worked under the same terms and conditions as prior to October 12. The only difference was that as an acknowledged employee the Petitioner withheld taxes from the pay and the Joined Party was entitled to receive fringe benefits beginning October 12.

16. At the end of 2009 the Petitioner reported the Joined Party's earnings prior to October 12 on Form 1099-MISC as nonemployee compensation. The earnings beginning October 12 were reported on Form W-2.

17. The Joined Party's employment as a nail technician ended on April 24, 2010. The Joined Party filed a claim for unemployment compensation benefits effective May 30, 2010. Her filing on that date established a base period consisting of the calendar year 2009. When the Joined Party did not receive credit for her earnings prior to the fourth quarter 2009 a *Request for Reconsideration of Monetary Determination* was filed and an investigation was issued to the Department of Revenue to determine if the Joined Party performed services as an employee or as an independent contractor. On August 9, 2010, the Department of Revenue determined that the Joined Party and other individuals performing services as nail technicians were the Petitioner's employees retroactive to January 1, 2009. The Petitioner filed a timely protest.

Based on these Findings of Fact, the Special Deputy recommended that the determination be affirmed. The Joined Party's exceptions to the Recommended Order were received by mail postmarked January 20, 2011. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

> The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Joined Party's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

Upon review of the record, it was determined that a portion of Finding of Fact #9 must be modified because it does not accurately reflect the testimony provided at the hearing. While the Joined Party testified that she was required to wait for approval before taking time off from work for a wedding, the Joined Party did not specify how long she had to wait for approval. Finding #9 is amended to say:

> The Joined Party worked under the supervision of the Salon Supervisor. If the Joined Party wanted to take time off from work she had to make a written request in advance and had to receive approval before taking time off. If the Joined Party was not able to report for work as scheduled she was required to notify the Salon Supervisor. On one occasion the Joined Party requested time off to attend a wedding one month in advance. The Joined Party had to wait to obtain approval before the Joined Party could make her plans to attend the wedding.

In the exceptions, the Joined Party takes exception to Finding of Fact #3. The Joined Party contends that the Joined Party did not begin work on March 9, 2009. The Joined Party relies on additional evidence that was not presented during the hearing. Pursuant to section 120.57(1)(l), Florida Statutes, the Agency may not reject or modify the Special Deputy's Findings of Fact unless the Agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. A review of the record reveals that both the Petitioner and the Joined Party testified during the hearing that the Joined Party began working on March 9, 2009. Finding of Fact #3 is supported by competent substantial evidence in the record. As a result, the Agency may not modify the Finding of Fact #3 pursuant to section 120.57(1)(l), Florida Statutes, and accepts Finding of Fact #3 as written by the Special Deputy. Rule 60BB-2.035(19)(a) of the Florida Administrative Code prohibits the acceptance of evidence after the hearing is closed. The Joined Party's request for the consideration of additional evidence is respectfully denied. The Joined Party's exceptions are respectfully rejected.

The amended Findings of Fact and Conclusions of Law support the Special Deputy's ultimate conclusion that an employer/employee relationship existed between the Petitioner and the nail technicians. The Special Deputy's conclusion that the Petitioner exerted control over the Joined Party consistent with an employment relationship is supported by competent substantial evidence in the record. The Special Deputy's Conclusions of Law represent a reasonable application of law to the facts and are not rejected by the Agency.

A review of the record reveals that the Findings of Fact as amended herein are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The amended Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Joined Party, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as amended in this order.

In consideration thereof, it is ORDERED that the determination dated August 9, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **March, 2011.**

_____
TOM CLENDENNING,
Assistant Director
AGENCY FOR WORKFORCE INNOVATION