

# MINNESOTA BANS NON-COMPETE PROVISIONS AND WHAT IT MEANS FOR MINNESOTA CONSTRUCTION COMPANIES<sup>1</sup>

Janine M. Loetscher  
Michael J. Pfau  
Bassford Remele, P.A.<sup>2</sup>

## *Introduction*

The close of Minnesota's 93rd legislative session brought some major changes to Minnesota law, and in particular, employment law in various contexts. This piece focuses on changes to non-compete provisions, which may directly affect construction companies.

## **The New Legislation**

Governor Walz signed a bill passed by the legislature that will significantly curtail the use of non-compete agreements in Minnesota. The bill states that any covenant not to compete contained in a contractor or agreement is void and unenforceable. Minn. Stat. § 181.988, subd. 2.

The bill defines a "Covenant not to Compete" as any agreement that restricts an individual's ability to:

- (1) work for another employer for a certain length of time;
- (2) work in a specific geographical area; or
- (3) work in a capacity that is similar to the individual's previous employment duties.

*Id.* § 181.988, subd. 1(a).

Importantly, the bill applies to both employees and independent contractors. The definition of independent contractors includes any corporation, limited liability corporation, partnership, or other corporate entity when an employer requires an individual to form such an organization for purposes of entering into a contract for services as a condition of receiving compensation under an

---

<sup>1</sup> **DISCLAIMER: NOTHING IN THIS ARTICLE IS TO BE RELIED UPON AS LEGAL ADVICE. FURTHER, NOTHING IN THIS ARTICLE CREATES AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN THE READER AND BASSFORD REMELE, P.A. ADDITIONALLY, THIS ARTICLE IS NOT AN EXHAUSTIVE ANALYSIS OF THE NON-COMPETE PROVISIONS. YOU SHOULD CONTACT YOUR ATTORNEY IF YOU HAVE SPECIFIC QUESTIONS ABOUT THE NON-COMPETE PROVISIONS, INCLUDING ANY CHANGES TO THE NON-COMPETE PROVISIONS IN THE FUTURE.**

<sup>2</sup> Janine Loetscher is a shareholder and the co-chair of the Construction Practice Group at the law firm Bassford Remele, P.A. She is a litigator primarily practicing in construction, insurance coverage, products liability, and personal injury matters. Janine can be reached at [jloetscher@bassford.com](mailto:jloetscher@bassford.com). Michael Pfau is an attorney at Bassford Remele, P.A. His litigation practice focuses on the areas of construction, general liability, and insurance coverage. James can be reached at [mpfau@bassford.com](mailto:mpfau@bassford.com).

independent contractor agreement. *Id.* § 181.988, subd. 1(a)(d). This may be particularly important in the construction industry.

Under the new law, the only scenario in which a newly created non-compete agreement would be enforceable is if it relates to the sale or a dissolution of a business, and even then, only if all parties agree to the provision.

This bill does not impact existing non-compete agreements. It only applies to agreements entered on or after July 1, 2023. Additionally, this prohibition only relates to non-compete agreements (as defined by the law) and not to other restrictive covenants, such as nondisclosure agreements or agreements designed to protect trade secrets or confidential information. A covenant not to compete also does not include a non-solicitation agreement, or agreement restricting the ability to use client or contact lists or solicit customers of the employer.

It is important to note that the bill also forbids employers from circumventing the prohibition by including a choice-of-law provision involving a jurisdiction that allows non-compete agreements. Notably, the bill contains an attorney's fee provision entitling employees and independent contractors to recover litigation costs incurred in enforcing this non-compete ban.

### **Issues Specific to the Construction Industry**

While it used to be about striking the right balance of duration and geography, under the new law, employers can no longer enforce new non-compete agreements in Minnesota. The new provision is also sweeping as it includes independent contractors, instead of just employees, which could have profound effects on the construction industry. This will allow independent contractors and employees more agency if they seek new employment.

Minnesota law still recognizes that employers have certain legitimate business interests that they want to protect. The new provisions have left these certain protections stand. Employers can still enforce other restrictive covenants such as nondisclosure agreements, or agreements designed to protect trade secrets or confidential information. Additionally, the new provision will not restrict non-solicitation agreements or agreements restricting the ability to use client or contact lists or solicit customers of the employer. Thus, these restrictive covenants can still protect vital information and assets, such as a customer list.

This may robustly effect retention within the construction industry. Professionals may switch employers more frequently to what they perceive as the best available offer for their services due to the skill labor gap. Except in limited circumstances, non-compete agreements will no longer be able to prevent this. It is important to remember that, for the high-level professionals such as project managers, you can still protect your confidential information through certain restrictive covenants. Likewise, if you employ sales personnel, you can still protect those valuable customer lists through similar restrictive covenants.

It is therefore imperative that employers review any current employment agreement, or other project related documents, to remove any non-compete covenants going forward. It is also beneficial to ensure that other enforceable restrictive covenants are written in such a way to provide

protections of customer lists and confidential information. Make sure to contact your attorney so that any restrictive covenants are drafted narrowly to protect a legitimate business interest of the employer and that the covenants are reasonable in terms of duration, geography, and scope of activities.

### *Conclusion*

Now is a good time to review your employment and independent contractor contracts to ensure that the non-compete covenant is removed going forward. You should also make sure that other restrictive covenants are worded in such a way to provide you maximum protection. Remember, however, non-compete agreements entered into before July 1, 2023 are enforceable, subject to it being reasonable in terms of duration and geography.