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CHANGES TO MINNESOTA’S INDEPENDENT CONTRACTOR AND EMPLOYMENT LAWS IMPACTING THE CONSTRUCTION INDUSTRY

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As anyone working in or with the construction industry knows, the 2023 Minnesota legislative session resulted in changes drastically impacting businesses across many genres – and the construction industry was no exception. Not to be outdone, the 2024 Minnesota legislative session brought even more changes that will likely impact the construction industry as well.

Some of the more significant changes likely to impact the construction industry starting in 2024 are the changes to Minnesota’s independent contractor and employment laws. Effective July 1, all employers, as well as their owners, will face substantially increased penalties for misclassifying employees as independent contractors. Undoubtedly created with the noble intention of protecting workers from being forced into unfair working conditions, this change appears to follow the trend from 2023’s changes concerning MN’s wage theft laws. However, the new law will likely create tremendous burdens on employers and owners not only to ensuring their own company complies with the new rules, but also to ensure its independent contractors or subcontractors are also in full compliance. Construction industry employers should endeavor to ensure their contractors are properly classified.

I. PRIOR LAW

Prior to the 2024 change in the law, the question of whether or not an individual providing commercial or residential building construction or improvement services was an employee or an independent contractor was determined under a nine-factor test under Minn. Stat. § 181.723. The test primarily evaluated the autonomy of the individual in performing its duties, its manner of compensation, and the nature of its business. If an individual did not meet all nine criteria, then the individual was presumed to be an employee.

Effective March 1, 2025, determining whether a construction industry worker is an employee or an independent contractor will be determined under a new 14-factor test. The test focuses on whether the individual is operating a separate business entity and whether the contractual relationship is a legitimate business-to-business transaction “at the time the services were provided or performed.”

Importantly, among many other requirements, an independent contractor needs to operate under a written contract that is signed and dated by both the independent contractor and the person for whom services are provided, and needs to provide for compensation on a commission or per-job or competitive bid basis and not on any other basis.

The fourteen-factor test applies to everyone who provides or performs building construction or improvement services anywhere in Minnesota. Building construction or improvement services include all public or private sector commercial or residential building construction or improvement services except for the following:

1. the manufacture, supply, or sale of products, materials, or merchandise;
2. landscaping services for the maintenance or removal of existing plants, shrubs, trees, and other vegetation, whether or not the services are provided as part of a contract for the building construction or improvement services; and
3. all other landscaping services, unless the other landscaping services are provided as part of a contract for the building construction or improvement services.

II. IMPLICATIONS

Under the new law, *all* employers are subject to liability for: (1) failing to classify, represent, or treat an individual as an employee under local, state or federal law; (2) failing to report or disclose a person as an employee to any government agency when required; or (3) requiring an individual who is an employee to enter into an agreement or complete paperwork that misclassifies an individual as an independent contractor. In general, the following penalties for noncompliance include the following:

1. **Compensatory Damages:** These may include, among other things, employee benefits.
2. **Fines for Misclassification:** Each worker incorrectly classified can result in a fine between \$5,000 and \$10,000.
3. **General Violation Fines:** Each specific violation of these rules can result in up to a \$10,000 fine.
4. **Non-cooperation Penalty:** Anyone who hinders the investigation into violations under this section is subject to a \$1,000 fine for each day they delay or obstruct the process.

Effective July 1, 2024, employers may face penalties of up to \$10,000 for each individual violation. Individual owners, officers, or agents who knowingly or repeatedly engage in any of the prohibited activities may also be held liable.

In addition, the Department of Labor and Industry (“DOLI”) may order the employer to pay compensatory damages to each affected worker, including those for minimum wage, overtime, shift differentials, vacation pay, sick pay, health insurance, life and disability insurance, retirement plans, savings plans and other employment benefits, as well as employer contributions to unemployment, Social Security, and Medicare.

There are also substantial construction industry-specific liabilities, fines, and fees imposed by the new law. For example, construction contractors may also incur liability by: (1) misrepresenting themselves as independent contractors even those that do not meet the fourteen-factor test articulated above; (2) requiring an individual who is an employee to register with DOLI as a construction contractor or agree to be classified as an independent contractor as a condition of payment; or (3) requiring an employee to register as a construction contractor. And in addition to the penalties available in general industry, construction contractors may also face penalties of up to \$10,000 each time a person is misclassified under the fourteen-factor test, or for each employee they require to register as an independent contractor. Construction contractor owners, officers, or agents who knowingly or repeatedly engage in any of the prohibited activities may be held individually liable.

General contractors in particular are subject to increased liability for misclassifying those who perform construction services for them. For instance, if a subcontractor fails to meet each of the fourteen factors **at the time the services were provided**, all its employees will be deemed to be employees of the business entity with whom it contracted.

Conclusion

Contractors in the construction industry operating in Minnesota need to carefully evaluate their independent contractors and whether those with whom they conduct business are properly classified under Minnesota law. Prior to March 1, 2025, construction contractors should review their contracts and paperwork to ensure that their subcontractors meet **every** prong of the new fourteen-factor test **at the time their services are provided**. This includes, among other things, ensuring they have in place for every independent contractor a written contract that is signed and dated by both the independent contractor and the person for whom services are provided. Such contract must, among other things, provide for compensation on a commission or per-job or competitive bid basis - and not on any other basis. In addition, construction contractors will need to ensure that their subcontractors' registrations and licenses remain valid for the duration of time when they are performing work for the contractor, as lapses in registrations or licenses could lead to significant misclassification concerns, which in turn could lead to significant fines and damages assessed against the contractor.

About the Author



[Janine Loetscher](#) is a shareholder with Bassford Remele and co-chair of its construction and insurance coverage practice groups. Janine is a litigator with substantial large-scale loss experience, whose practice focuses in construction, insurance coverage, products liability, and personal injury matters. Janine has defended contractors and individuals in construction defect lawsuits, and has represented both insurers and policyholders on numerous coverage issues. She has represented clients in many trials, obtaining defense and favorable verdicts. Janine serves as the Legal Advisor to the Association of Women Contractors. jloetscher@bassford.com, 612.376.1658.

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