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THE RISKY BUSINESS OF HIRING INDEPENDENT CONTRACTORS

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Independent contractors are a mainstay in the construction industry. While hiring independent contractors has its advantages, there are also risks such as misclassification of the worker and being responsible for the independent contractor’s negligence. Not only must companies navigate the misclassification minefield, they now must also factor in a new source of potential litigation – negligent selection of a contractor. In July 2024, the Minnesota Supreme Court decided [Alonzo v. Menholt](#) which opened the door for claims against companies who hire independent contractors.

Misclassification Minefield

Both state and federal laws carry stiff penalties for companies that misclassify a worker as an independent contractor when the worker is, in reality, an employee entitled to all of the protections typically afforded employees (e.g., protection from discrimination, protected leave, mandatory paid leave, minimum wage, overtime pay, and worker’s compensation).

At the federal level, the Fair Labor Standards Act (“FLSA”) ensures minimum wages are paid to employees. Courts and administrative agencies enforcing the FLSA have long-toiled with classifications of independent contractors and employees. For example, the Department of Labor issued a Final Rule for determining a worker’s status – employee or independent contractor. Although the authoritativeness of the Final Rule is uncertain following the [superseding of the Chevron doctrine](#), it provides solid guideposts for companies assessing whether a worker is an independent contractor or employee.

Every state has a law governing worker classification, including Minnesota. The [June 28, 2024 AGC Weekly Update](#) laid out the changes to Minnesota’s independent contractor law as it pertains to the construction industry. Beginning March 1, 2025, a 14-factor test will be used to determine the status (employee v. independent contractor) of workers in the construction industry. Companies should review their independent contractors under the 14-factor test and act accordingly to address any gaps in documentation or misclassification before March 1, 2025.

Independent Contractor Negligence Quagmire

After safely navigating the worker classification minefield, companies face another quagmire – mitigating risk related to an independent contractor’s negligence. Before July 2024, the case law in Minnesota was unclear as to whether a company who hired an independent contractor could be held responsible for harm caused by the independent contractor’s negligence while performing the contracted-for services. In July, the Minnesota Supreme Court removed all doubt in [Alonzo v.](#)

Menholt, 9 N.W.3d 148, 158 (Minn. 2024), when it formally recognized negligent selection of an independent contractor as a cognizable claim in Minnesota.

The court provided the framework for a negligent selection of an independent contractor claim. The court held that “a claimant must establish that the principal (1) breached their duty to exercise reasonable care in selecting a competent and careful contractor, and (2) that this breach of duty caused the claimant’s physical harm.” *Id.* The court explained that the “reasonable care” required is fact-dependent with some factors increasing the care required based upon the danger exposure and character of the work to be done, with a heightened duty to ensure the contractor is competent where the work performed is not within the competency of the average person. *Id.* The court noted that higher duty will typically arise in the professional setting. *Id.*

Because the claim is so fact-dependent, the court did not give hard and fast rules. Instead, it provided factors that companies must consider when hiring an independent contractor. For example, before hiring an independent contractor, the company should consider the independent contractor’s reputation. If there are some reputational concerns, the company may be obligated to investigate further.

Companies may still be obligated to vet an independent contractor, even if there are no reputational concerns. Specifically, where the work to be performed is specialized and/or dangerous and likely to cause harm if not properly performed, proactive investigation is likely required. Unfortunately, the court did not set forth the degree and depth of the investigation required to avoid liability for an independent contractor’s tortious conduct.

Conclusion

Companies considering hiring an independent contractor now must engage in a two-stage process. First, they must ensure they are properly classifying the worker or workers. Second, assuming a worker or workers are properly classified as independent contractors, the company must investigate the independent contractor. A misstep during either stage can lead to costly legal disputes, fines, and reputational damage for companies.

About the Authors



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