



BASSFORD REMELE

Legal Foundations

A Publication of the Construction and Real Estate Practice Group

VOLUME 2, ISSUE 3
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Construction Industry
Economic Forecast
for 2025

The Risky Business of
Hiring Independent
Contractors

Sustainability Trends in
Minnesota Construction
and Their Potential Legal
Implications

Mechanic's Lien Seminar

Save the Date
Construction Summit



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Nothing in this publication creates an attorney-client relationship between the reader and Bassford Remele, P.A. This publication is an advertising material that contains educational content, but this content is not to be construed as legal advice.

From the Practice Group Chairs

As we look toward 2025, the construction and real estate industries are navigating an environment where “survive to 2025” has become a guiding mantra. This phrase captures the industry’s current climate—marked by uncertain market conditions and a wave of legal changes at both state and federal levels. Our goal for this issue of *Legal Foundations* is to provide a clear look at the landscape we’re approaching as we move into the new year.

This issue opens with a 2025 construction industry forecast from John Holper and Michael Pfau, setting the stage with insights into what lies ahead. You’ll also find several articles focusing on key areas that deserve attention:

The Risks of Hiring Independent Contractors: Janine Loetscher and Beth LaCanne explore Minnesota’s evolving wage theft laws, supplemented by Ben Formell’s piece on wage transparency, helping clarify new compliance expectations.

Contract Provisions to Watch in 2025: Kyle Willems and Marshall Hall provide guidance on five critical contract provisions that demand careful review as you prepare for the new year.

Coverage Corner: Janine Loetscher provides a summary of significant updates to Minnesota statutes impacting restoration contractors and homeowners’ insurance, detailing recent legislative changes now in effect.

We also encourage you to mark your calendars for two upcoming events:

Our **Mechanic’s Lien Seminar** on December 12th, which will cover key aspects of lien rights and enforcement.

The **Annual Real Estate and Construction Summit** on February 6th, featuring insights from lobbyists on the potential impact of a federal Republican trifecta, as well as what recent local election results could mean for our industries.

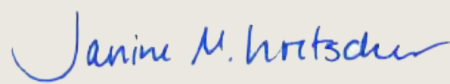
Finally, please keep an eye out for our next issue of *Legal Foundations*, which will delve into updated legislative developments and market forecasts for 2025, as well as emerging issues affecting the industry, including data security, private equity involvement, and more.

Best regards,




Kyle Willems

Construction and Real Estate Practice Group Co-Chairs



Janine Loetscher



Jeffrey Mulder



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Team Member Intro

JANINE LOETSCHER

Where are you from?

I'm a Minnesota girl, through and through. I grew up in Duluth, Minnesota, and attended college at the College of St. Benedict in St. Joseph, Minnesota. After college, I did move briefly to Austin, Texas to volunteer—but I came back the following year (I do love Austin though—it's a fabulous place). I love this state—the people, the beauty, the lakes, and of course, the best state fair in the country!

What do you do in the real estate and construction industry?

I advocate for and counsel contractors, subcontractors, and owners regarding disputes or potential disputes, and I try to solve their problems in the way that will be best for their companies in the long run. I help preserve relationships and avoid disputes, but I am ready to go to battle for my clients if need be. I also practice in insurance coverage, and I counsel my clients on their insurance needs specific to the construction industry.

In 2024, you received the Top Woman in Construction Award—Professional Services from Finance and Commerce. Can you tell us about that award?

I was incredibly honored to be among such accomplished women in the construction industry—business owners, project managers and engineers, professionals, you name it. There is nothing I like more, and learn more from, than being in the company of smart, strong, and supportive women. Let's face it—construction and the law can prove challenging arenas for women to navigate. I am so inspired by the women nominated for the Top Women in Construction.

What did you want to be when you grew up?

A lawyer! My parents always told me that I would be a lawyer. Now I know they were letting me know I was acting "difficult."

You can only eat one food for the rest of your life.

What is it?

Cheese. It makes everything better.

If you could live in any state, which state would you pick and why?

California. I love all of it: from the warm southern beaches to the cooler northern shores and forests. You can't beat mountains AND ocean. We've done some of the most beautiful hikes and seen some incredible wildlife, including sea otters, sea lions, and whales. Every time we choose a family vacation destination, I lobby for California.



Janine Loetscher and her family cheering on the Minnesota United.

Favorite place you have ever visited?

Kauai, for our honeymoon. It is easily the most beautiful place I have ever visited. But I think I would get claustrophobic if I actually lived on an island.

What is on your bucket list?

Running a destination marathon. I've run a few local marathons, but I'd love to travel for the purpose of doing one—perhaps the Big Sur International Marathon or the Vancouver Marathon.

Favorite family tradition?

We always spend Christmas Eve with just me, my husband, and my son, at our home. We make spaghetti and meatballs, play games, and wear matching jammies (even have some for our dog, Ole).

Favorite charity you wish more people knew about?

Casa Marianella/Posada Esperanza. These related organizations provide temporary housing and resources to recently-arrived immigrants. I volunteered during the year I spent in Austin, Texas. I learned so much about the struggles of those seeking a better life in the United States and the barriers they face. I met wonderful people and learned so much!

Team Member Intro

JEFFREY KLOBUCAR

Where are you from?

I was born in Duluth, but I grew up in Inver Grove Heights.

What do you do in the real estate and construction industry?

I am primarily a creditors' remedies attorney, enforcing liens, commercial leases, contracts, guaranties, and the like.

How would you describe your job to a five-year-old?

I help people solve problems they can't solve themselves.

What was your first job?

I had a paper route with the Pioneer Press when I was 11 years old. I delivered the paper before school in the morning and after school in the evening.

What did you want to be when you grew up?

A hockey player.

What is the best super power?

Everything superman has.

If you could pick up a new skill in an instant, what would it be?

I would choose to be instantly good at playing the piano.

Have you ever met anyone famous, and who?

I have met many famous people. I used to bartend in Minneapolis. The most famous person I ever met was probably either Sylvester Stallone or Arnold Schwarzenegger.

You can only eat one food for the rest of your life.

What is it?

Vietnamese noodle salads from Quang or barbequed ribs.

What is a weird food you have tried?

Octopus

If you could live in any state, which state would you pick and why?

California—the weather and the scenery.

Favorite place you have ever visited?

Rome

What is on your bucket list?

Getting a bucket list...



Favorite family tradition?

Playing pinochle with my parents and my kids

Have you had your 15 minutes of fame yet?

I'm not sure—though it is possible.

Do you collect anything?

For my clients, all the time.
For myself, not really.

Favorite season?

Summer

Favorite thing you've bought in the past year?

A new car (new to me).

Favorite charity you wish more people knew about?

The Hendrickson Foundation, which works in partnership with USA Hockey and MN Hockey, with a mission to grow the game of hockey by making it accessible to ALL people, despite any challenges they may be living with and creating a stronger and more inclusive State of Hockey. I like hockey.

What is one thing that people would be surprised to learn about you?

I used to be athletic...

Accolades



Kyle Willems was selected to *The Best Lawyers in America* and to the Minnesota Rising Stars list by *Super Lawyers*. Kyle has also been selected to the *Minnesota Monthly Top Lawyers* list in Construction Litigation. This list was generated from a survey collectively run by

Professional Research Services and *Minnesota Monthly* in which actively practicing attorneys were eligible to vote for their fellow attorneys that they believe are the best in their field of law. Kyle serves on the Minnesota State Bar Association Construction Law Section Council.



Janine Loetscher was named the 2024 Top Woman in Construction in the Professional Services category by *Finance & Commerce* and a [2024 Top Women in Law](#) by *Minnesota Lawyer*. She was also named to the *Minnesota Super Lawyers* and *Best Lawyers*

lists. Janine serves as the Legal Advisor to the Association of Women Contractors.



Jeffrey Mulder was selected to the *Minnesota Super Lawyers* list.



Andrew Marshall was named an Attorney of the Year by *Minnesota Lawyer*. Andy is committed to serving the community in which he works and lives and is recognized as a North Star Lawyer by the Minnesota State Bar Association. The program recognizes members who

provide 50 hours or more of pro bono legal services per year to people who otherwise could not afford representation. Andy was also selected to the *Minnesota Super Lawyers* list and is rated AV Preeminent® by Martindale-Hubbell®.



John Holper was named to *The Best Lawyers in America* in construction law and construction litigation. John has also been selected to the *Minnesota Super Lawyers* list and *Minnesota Monthly Top Lawyers* list. He is rated AV Preeminent® by Martindale-Hubbell®.



Jeffrey Klobucar was selected to the *Minnesota Super Lawyers* list. He was also named to the *Best Lawyers* list in Commercial Litigation and Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law. Jeff is rated AV Preeminent® by Martindale-Hubbell®.



Wynne Reece was named to the Top Woman Lawyer list by *Minneapolis/St. Paul Magazine* and to the Minnesota Rising Stars list by *Super Lawyers*. Wynne is also recognized as a North Star Lawyer by the Minnesota State Bar Association (“MSBA”) and serves as a MSBA Mock Trial Committee Member. Wynne is also the founder of

[The Creatives Counsel®](#), which focuses on making legal work accessible, with relatable counsel. To date Wynne has worked with over 1,800 clients in an outside counsel capacity.



Bryce Riddle was named to Best Lawyers: Ones to Watch in Commercial Litigation and the Minnesota Rising Stars list by *Super Lawyers*.



James Reece has been recognized as a North Star Lawyer by the Minnesota State Bar Association. He is a Qualified Neutral under Rule 114 of the Minnesota Rules of Practice for the District Courts for Mediation and Arbitration. James is also rated AV Preeminent® by Martindale-Hubbell®.



James Kovacs was selected to Best Lawyers: Ones to Watch in Personal Injury Litigation and Insurance Law.



Beth LaCanne was named to Best Lawyers: Ones to Watch in Labor and Employment Litigation and Professional Malpractice Law. She was also selected to the Minnesota Rising Stars list by *Super Lawyers*. Beth is in her second year of a four-year term serving on the

Commission on Judicial Selection for the Tenth Judicial District. Beth is a Board Member and Secretary of the Hennepin County Bar Foundation. Beth is a member of the American Bar Association Forum on Construction Law, Division 6, Labor & Employment Section.



Marshall Hall has undergone extensive training in digital forensics and digital evidence at the National Computer Forensics Institute. He holds both the Certified Information Privacy Professional/United States (CIPP/US) and Certified in Cybersecurity

(CC) certifications, allowing him to provide comprehensive legal solutions in information security, data privacy compliance, incident response, and cyber risk management.



Bassford Remele has been recognized in the 2025 edition of Best Law Firms®, a testament to our unwavering commitment to legal excellence. Firms included in the 2025 Best Law Firms list are recognized for professional excellence with impressive ratings from clients and peers. Achieving a ranking in Best Law Firms signifies high-quality legal practice and a depth of legal proficiency. Bassford has received rankings in Construction Litigation, Construction Law, Commercial Litigation, Bet-the-Company Litigation, and sixteen other practice areas.

Chambers
AND PARTNERS



"Bassford attorneys are able to navigate complex cases, whether factually or legally complex."

BASSFORD REMELE, A PROFESSIONAL ASSOCIATION
LITIGATION: GENERAL COMMERCIAL
MINNESOTA

Recent Articles

Construction Industry Economic Forecast for 2025

By John C. Holper and Michael J. Pfau

As we head into Q4 of 2024 and begin to wrap up the year, we should be looking ahead to what 2025 may or may not bring in the construction industry. 2024 still felt the persistent and lingering effects of COVID-19 such as labor shortages and rising construction costs. The industry faced a number of additional challenges including supply chain disruptions, high interest rates, and inflation. On the other hand, significant investments in manufacturing, transportation, and clean energy infrastructure at both the state and federal levels provided needed relief to the industry.

The global residential construction output is expected to grow by an average of 3.4% each year until 2025, as reported by ResearchandMarkets.com. The US market is anticipated to experience comparable growth, driven by robust demand and positive economic conditions.

According to the Minnesota Department of Employment and Economic Development, jobs in the construction industry are expected to see the fastest employment growth of an expected 0.9% per year.

Residential Construction

With inflation continuing to fall, now at a 3-year low, the Federal Reserve has recently reduced the lending rates by 50 basis points with another round of cuts expected before the end of 2024.

As interest rates fall, home buying and home construction are expected to rise as buyers and builders cautiously, but optimistically, invest in residential home building. With lower interest rates, the industry can expect to see a measurable increase in housing investment which will help to address and ease the ongoing supply and affordability issues.

Commercial Construction

The commercial construction sector is expected to experience slower growth compared to residential construction. However, specific sub-sectors such as healthcare, education, and data centers are anticipated to see significant investment. The American Institute of Architects (AIA) projects that spending on nonresidential buildings will grow by just over 1% in 2025, reflecting cautious optimism in the market. Key drivers in commercial construction are expected to include healthcare, education, technology, and data centers, along with sustainability initiatives.

Rising Demand for Sustainable and Green Construction

Sustainability has become a major theme in construction, driven by stricter environmental



Overall, the construction industry is poised for a complex but promising year in 2025.

regulations, growing consumer demand for eco-friendly buildings, and significant federal investment under the Biden Administration. In 2025, the construction industry is expected to see a continued shift toward green construction practices, with federal and state government potentially introducing stricter regulations around energy efficiency, carbon emissions, and the use of sustainable materials.

This trend will likely spur growth in sectors like renewable energy infrastructure and green retrofitting of existing buildings. As governments push for carbon-neutral policies, the construction sector will be under pressure to adopt new technologies that reduce emissions and waste, creating opportunities for firms specializing in sustainable solutions. The growth of this sector is expected to outpace traditional construction.

Conclusion: 2025 Outlook for Construction

Overall, the construction industry is poised for a complex but promising year in 2025. While the sector will benefit from global economic recovery, government investments, and technological advancements, it will also face significant challenges related to supply chain management, labor shortages, and geopolitical uncertainty. Firms that embrace sustainability, invest in digitalization, and remain agile in response to economic shifts will be best positioned to thrive in this dynamic environment.

Sustainability Trends in Minnesota Construction and Their Potential Legal Implications

By James C. Kovacs

The construction industry in Minnesota is undergoing a transformation as sustainability becomes a growing priority. With increasing awareness of climate change, resource conservation, and environmental impact, many construction companies in Minnesota are adopting more eco-friendly practices and integrating sustainable designs into their projects. With these new trends come various potential legal implications, which can impact building practices, project costs, and even liability for contractors.

A key movement in sustainable construction is the LEED (Leadership in Energy and Environmental Design) certification, a globally recognized standard for green building practices. More developers in Minnesota are aiming for LEED certification to ensure their projects meet rigorous environmental standards. While LEED certification is voluntary, it may involve contractual obligations. If a developer promises to deliver a LEED-certified building and fails to meet the criteria, they could face legal claims for breach of contract. Legal disputes may arise over whether specific materials or practices meet the agreed-upon green building standards.

Minnesota also imposes strict regulations on waste management in construction, particularly regarding the disposal of hazardous materials. Companies that fail to comply with regulations related to recycling, reusing, or safely disposing of construction waste may face penalties. Additionally, the Minnesota Environmental Policy Act (MEPA) requires certain projects to undergo environmental reviews to assess their potential impact. Legal issues can arise if these reviews are incomplete or inaccurate, leading to delays or challenges from environmental groups. Bassford Remele recently prevailed on an appeal to the Minnesota Court of Appeals on a challenge to a project under MEPA.

Another trend is the use of “green” building materials and the implementation of green building codes. Builders are shifting away from older, traditional materials—which may have a higher carbon footprint—toward more sustainable options. Products such as recycled steel, reclaimed wood, and low-emission concrete are becoming more common. Furthermore, the demand for locally sourced materials is increasing, which reduces transportation emissions and supports the local economy. Indeed, Minnesota has adopted various building codes that incorporate sustainability measures, such as energy efficiency requirements. The Minnesota State Building Code includes energy conservation standards, which construction companies must adhere to. Non-compliance with these standards

can result in fines, delays in project approval, or the need for costly retrofits. Additionally, cities like Minneapolis and St. Paul have specific sustainable building policies aimed at reducing energy use, which can create additional local compliance challenges.

Sustainable construction can also involve the use of renewable energy systems, such as solar panels or wind turbines, which can trigger legal issues related to zoning and land use. Local ordinances may restrict where and how these systems can be installed, and construction companies must navigate these regulations carefully to avoid legal complications. In some cases, developers may need to seek variances or special permits, which can add time and cost to projects.



Finally, the use of new, sustainable materials and techniques can introduce legal liability risks. For example, if a green building feature like a solar panel system or energy-efficient insulation fails or causes harm, construction companies could be liable for negligence or product defects. Contractors must ensure they have adequate insurance coverage and legal protections in place when implementing new technologies.

As Minnesota continues to prioritize environmental responsibility, the construction sector is expected to play a critical role in creating a more sustainable future. These trends help reduce the environmental impact of new buildings and make the state a leader in sustainable construction practices. And while sustainability trends offer many opportunities for innovation and environmental stewardship, they can also bring complex legal challenges. Compliance with contractual requirements, building codes, certifications, zoning laws, and waste management regulations are critical for avoiding legal disputes and ensuring the long-term success of sustainable construction projects in Minnesota.

Recent Articles

The Risky Business of Hiring Independent Contractors

By Janine M. Loetscher and Beth L. LaCanne

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

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.

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



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.

[The full article, including links, can be access on the Construction Practice Group page at bassford.com.](#)



Presentations

Pesticide Drift - Potential Liability and Impact on Environmental Approval, 2024 Minnesota Association of Townships Fall Attorney Seminar, October 2024 (Benjamin Gilchrist)

Navigating Corporate Transparency: Understanding the Corporate Transparency Act and Compliance Essentials, Wyoming State Bar's Annual Meeting & Judicial Conference, September 2024 (Kyle Willems)

Using Technology Safely and Responsibly in a Legal Setting: Understanding Key Ethics Rules, Avoiding Misuse, Strafford Webinar, August 2024 (Marshall Hall)

Exploring the Ethical Labyrinth: Navigating AI's Pitfalls and Promises in Your Practice, Bassford Remele's Annual Ethics Seminar, August 2024 (Bryce Riddle)

How to Solicit and Respond to Bids with New Laws and Contract Changes to Duty of Good Faith and Fair Dealing Update, presenter, Associated General Contractors of Minnesota Summer Mini Summit, July 2024 (Kyle Willems)

Publications

[Inspiration or Infringement: Protecting Your Intellectual Property Portfolio](#), Upsize, September-October 2024 (Wynne Reece)

[The Role of Generative AI in Law Firms: Navigating Ethical and Regulatory Challenges](#), Attorney at Law, August 2024 (Bryce Riddle)

[You've Been Served! A Law Firm's Guide for Responding to Third-Party Subpoenas](#), Attorney at Law, September 2024 (Jeffrey Klobucar and Beth LaCanne)

[Amendments to Minnesota's Earned Sick and Safe Time Law](#), Attorney at Law, July 2024 (Beth LaCanne)

[Subpoena Survival Skills](#), Upsize, May 2024 (Jeffrey Klobucar and Beth LaCanne)

Recent Articles

Five Provisions That Should Get Extra Attention During Your 2025 Contracts Review

By Kyle S. Willems and Marshall T. Hall

The past two years have ushered in substantial changes to Minnesota laws that affect the construction industry, creating new and significant risks for contractors. In addition to these legislative developments, evolving threats—such as those posed by cybercriminals—demand attention. These new realities require a thorough reevaluation of contracts and their provisions. Below are five key considerations for industry professionals:

1. Anti-Indemnity.

In 2023, Minnesota's Anti-Indemnity Statute underwent a notable amendment. The primary change was the inclusion of the term “defend” in the definition of “indemnification agreement” under Minn. Stat. § 337.01, Subd. 3. This modification means that a promisor (e.g., property owner or general contractor) can no longer require a promisee (e.g., subcontractor) to defend them against costs not stemming from the promisee's wrongful acts.

Previously, a promisee could be required to pay defense costs for both the promisee and the promisor, at least until a final determination on the liability was made. As detailed in an article we published back in June 2023 titled [“An Important Change to Minnesota's Anti-Indemnity Statute and What It Means for Minnesota Construction Companies”](#), this is no longer the case. Setting aside the concerns about the practicalities of the new anti-indemnity statute, there are a number of ways that contractors can tailor their contracts to make sure that a contractor is not stuck paying significant defense costs because it's been added to a dispute through no fault of its own. These provisions can include agreements to participate in early and discrete arbitration, the purchase of specific insurance products, etc.

2. Defense, Indemnity, and Hold Harmless Clauses to Protect against Cyber Threats.

The construction industry, like others, faces increasing risks from cyberattacks—such as data breaches, ransomware, and intellectual property theft. Beyond general concerns, the industry is vulnerable to specific threats: ransomware-induced project delays, insolvency from ransom payments or fraudulent transfers, business disruptions from system breaches, and financial liability for exposed intellectual property or personal data.

Given these growing threats, construction contracts should include robust provisions requiring third-party



vendors, subcontractors, and other stakeholders to take reasonable measures to protect data. This may include securing cyber insurance, requiring two-step authentication on certain project files, and proof that there are certain cyber threat management policies in place.

For guidance, the National Institute of Standards and Technology offers resources on managing information security and privacy risks—valuable for organizations of any size.

3. Wage Theft.

On August 1, 2023, revisions to the Minnesota Wage Theft Prevention Act (“WTPA”) took effect. Considered among the strictest in the nation, the changes impose civil and criminal penalties on employers who violate the WTPA. Our colleague Beth LaCanne discusses all of these changes, as well as relevant provisions and requirements of the WTPA in greater detail in [“Tightening the Screws on Wage Theft: Minnesota's Wage Theft Prevention Act”](#). The following, however, directly relates to the construction industry.

Under the revised WTPA, a contractor may be held liable if a subcontractor fails to pay its employees their wages or benefits. Conventional wisdom would be that a contractor can require its subcontractors to defend, indemnify, and hold harmless the contractor for a subcontractor's failure to comply with the WTPA. Unfortunately, any contract clause attempting to indemnify, release, or transfer this liability is unenforceable.

Contractors can mitigate their exposure by requiring subcontractors to provide payroll records upon request and by reserving the right to recover

damages from a subcontractor following a wage claim resolution. However, these provisions do not apply to work covered by prevailing wage rates or where a contractor and subcontractor have a bona fide collective bargaining agreement (“CBA”) with a labor organization. The CBA must address wage recovery and unpaid fringe benefit contributions.

Additionally, changes to Minn. Stat. § 181.723 introduce a new, more stringent test for classifying independent contractors, effective March 1, 2025. Contractors will be required to retain records for three years to justify their classification decisions.

To mitigate potential risks, contracts should require downstream parties to verify they have reviewed the WTPA, understand the new classification test, and represent and warrant in the parties’ contract of their independent contractor status.

4. Changes to Insurance Restoration Agreements.

On August 1, 2024, revisions to Minn. Stat. § 325E.66 took effect, governing “subject to” or “price agreeable” contracts between contractors and homeowners. These agreements typically cover insurance-paid restoration projects, such as roof repairs following storm damage.

The revisions prohibit contractors from (1) offering compensation in exchange for an inspection, assistance with an insurance claim, or referrals; (2) signing agreements without first providing a good-faith estimate of the project’s costs; and (3) failing to disclose these requirements alongside the estimate.

There is much debate about what constitutes a “good faith estimate”, but we are advising our clients that the estimate is going to be considered made in good faith if it is itemized and is one that, if accepted, the contractor would make a part of its contract. We are also advising our clients that they must include a copy of Section 325E.66 in their restoration agreements.

5. Non-Compete Agreements.

Minnesota’s stance on non-compete agreements has shifted dramatically, with the state barring their enforcement as of July 1, 2023. Federal changes are also in motion. The Federal Trade Commission’s (“FTC”) rule banning non-compete clauses under the Federal Trade Commission Act (“FTCA”), issued on April 23, 2024, has faced challenges in various circuit courts and will likely be reviewed by the U.S. Supreme Court in the next term. For more on this issue, see our colleague Bryce Riddle’s discussion of the FTC non-compete ban in [“Changes to Existing Laws Going Into Effect July 1, 2023”](#). While Minnesota’s law bans

The past two years have ushered in substantial changes to Minnesota laws that affect the construction industry, creating new and significant risks for contractors.

non-competes, this restriction does not apply to agreements executed before July 1, 2023. Additionally, non-solicitation and non-disclosure agreements remain enforceable. At Bassford Remele, we advise our clients to remove non-compete provisions from contracts to comply with Minnesota law while continuing to honor non-disclosure agreements.

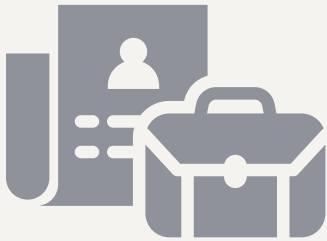
Conclusion

Minnesota’s evolving legal landscape presents new challenges for the construction industry, but it also offers opportunities for those who proactively adapt. By revising contracts to reflect changes in anti-indemnity laws, cybersecurity threats, wage theft protections, insurance restoration agreement laws, and non-compete provisions, construction companies can mitigate risks, ensure compliance, and seize new avenues for growth.

[The full article, including links, can be access on the Construction Practice Group page at bassford.com.](#)



Employment Corner



The bottom line is that employers must now include a good faith estimate of expected compensation, including benefits, in any solicitation seeking job applicants starting in 2025.



Clearing Up Wage Transparency

By Benjamin H. Formell

With the final quarter of 2024 now underway, it's never too early to start planning for more big changes coming down the pipeline in the employment space in 2025. Employers looking to hire in the new year will need to take stock of long-discussed wage transparency updates.

In short, effective January 1, 2025, all employers with 30 or more employees in Minnesota will be required to disclose either a starting salary range or a fixed pay rate in each job posting seeking new applicants. Salary ranges may be listed as annual or hourly, but the range may not be open-ended. Each job posting must also contain a general description of the benefits and other compensation to be offered, including at least health and retirement benefits.

The new requirements apply to all job postings by qualifying employers, defining job postings as any solicitation intended to recruit job applicants for a specific available position. Importantly, these requirements apply to both postings by the employer and indirect postings through third-party recruiters.

The bottom line is that employers must now include a good faith estimate of expected compensation, including benefits, in any solicitation seeking job applicants starting in 2025.

As a reminder, although employers will be subject to these new wage transparency requirements in 2025, employers have been prohibited from inquiring as to job applicants' pay history during the hiring process since the beginning of 2024. This restriction remains in effect.

Minnesota is just the ninth state to enact this kind of transparency requirement in job postings, with comparable requirements already existing in California, New York, Washington, Colorado, and Maryland.

Employers will need to review their career and advertising materials, including those distributed through third-party partners, to ensure they comply with updated Minnesota law. Even employers in states with their own wage transparency laws should ensure that their marketing materials conform with the specific details of the new Minnesota wage-transparency statute. Personnel involved in hiring will need to be prepared to answer questions prompted by this new information provided to applicants, if it was not provided in an employer's previous marketing materials. Even employers below the 30-employee threshold may wish to consider how these requirements for larger employers may impact their own hiring pool in the long term.

At Bassford Remele, our [Employment Law Practice Group](#) regularly counsels employers on complying with new hiring and recruiting standards.

Coverage Corner



2024 Legislative Update: Certain Impacts on Insurers, Residential Contractors

By Janine M. Loetscher

The 2024 Legislative Session brought about many changes, including some changes directly relevant to insurers, homeowners, and residential contractors.

Two of the biggest changes include (1) certain prohibitions against residential contractors soliciting business from homeowners to repair storm damage, and (2) a reversal of the long-standing ban on non-renewing a homeowner's policy based on weather related claims—e.g., hail and wind.

Minn. Stat. § 325E.66

Effective August 1, 2024, revisions to Minn. Stat. § 325E.66, Subd. 1 prevent a “residential contractor”¹ from offering incentives (such as the payment of the insured's deductive, referral awards, or other compensation in exchange for the residential contractor's services) as inducement to file an insurance claim. As part of this provision, residential contractors are now required, at the time a contract is signed, to provide the customer with a “good faith estimate of the itemized and detailed cost of services and materials undertaken pursuant to a property and casualty claim.” Although the statute does not define “good faith estimate,” it provides that it must include an “itemized and detailed cost of services and materials.” This will likely impact the insurance claim process for storm damage as we know it.

Many residential contractors and insurers alike use Xactimate software (or something similar) to generate estimates of the cost of repair. However, such estimates are generally not generated until much later in the process—far after the contract is signed. Now, the contractor must provide the estimate at the time the contract is entered into. And in addition to providing the good faith estimate, the residential contractor must also inform the homeowner of the obligation to provide the estimate at the time the estimate is given.

The consequences of failing to comply with the good faith estimate obligation may be substantial. Where a residential contractor violates the revisions to Section 325E.66, Subd. 1(b), “the insurer . . . shall not be obligated to consider the estimate prepared by the residential contractor.” Further, under Subd. 2, both the insured and the applicable insurer may bring a lawsuit against the residential contractor “for damages sustained by the insured or insurer as a consequence of the residential contractor's violation.”

The timing of the law's effective date is impeccable, as Minnesotans continue to deal with the massive storm damage incurred in August 2024. Residential contractors and insurers alike should contact their

attorneys to ensure their rights are protected, and that they are in compliance with their obligations under the revised law.

Minn. Stat. § 65A.29

Effective August 1, 2024, Minn. Stat. § 65A.29 is amended to include an additional provision that effectively removes the long-standing ban on non-renewals of a homeowner's policy based on weather related claims, such as hail, lightning, or wind. The new provision specifically states that insurers may decline a homeowner's policy for three or more covered losses **each over \$10,000** during a five-year period immediately preceding the non-renewal. The amendment law also requires the insurer to provide the insured sixty (60) days' advance notice of the insurer's intention to make the election not to renew, and the notice must specify the reason for the refusal to renew and must inform the insured of the possibility of coverage through the Minnesota FAIR plan under Sections 65A.31 to 65A.42. Insurers are also required to annually report to the DOC on the number of non-renewals due to weather-related claims.

¹ “Residential Contractor” is defined by the statute to include “a residential roofer,” as defined in Section 326B.802, Subdivision 14; a residential building contractor, as defined in Section 326B.802, Subdivision 11; and a residential remodeler, as defined in Section 326B.802, Subdivision 12.” Minn. Stat. § 325E.66, Subd. 1(c).



Bassford Remele in the Community



Associated General Contractors of Minnesota (AGC)

The Bassford Remele teams had a great day at the Keller Golf Course for AGC's annual golf tournament, with lucky golfer Bryce Riddle winning a new pair of Beats Studio Pros. Golfers were challenged with a ping pong game at the Bassford hole, led by Beth LaCanne and Michael Pfau. It was a great day for all.



The Bassford Remele Team celebrating Janine Loetscher's selection as a *Minnesota Lawyer* Top Women in Law.



Association of Women Contractors (AWC) Women's Retreat

AWC spent a weekend in September at the Grandview Lodge's Roy Lake Cottages in Nisswa, MN. The event featured their infamous yard game tournament, some impromptu beach volleyball, shared meals, bonfires and so much more. Janine Loetscher, who serves as the Legal Advisor to the AWC, made strong connections with other amazing women.



minnesota builders exchange



Minnesota Builders Exchange (MBEX)

John Holper and Janine Loetscher attended the MBEX Fall Social and Health Fair, featuring guest speaker Nicole Middendorf, creator of "The Live It List." The event offered wellness stations with tips on work-life balance, stress reduction, and ergonomics. Attendees enjoyed great conversations, refreshments, and the opportunity to connect with some of the best in the business. John and Janine look forward to next year's social!



James Kovacs and Kyle Willems at the AGC Sporting Clays event.



John Holper, Wynne Reece and Jeffrey Klobucar receiving Bassford Remele's *Twin Cities Business* Best of Business Readers' Choice Award in the Real Estate & Construction Law Firm category.

Upcoming Events

TUESDAY, NOVEMBER 12, 2024

6 Common Business Issues Clients Routinely Ask Their Attorneys to Resolve | Wynne Reece

Representing Small Businesses in Minnesota | Minnesota Continuing Legal Education

Wynne's session will focus on how to consult clients on non-legal issues and assist them with their business matters.

THURSDAY, NOVEMBER 14, 2024

Estate Planning and Legal Issues for Real Estate Owners | John Holper

Minnesota Commercial Real Estate Investment Summit | *Minnesota Real Estate Journal*

John will be part of a panel that will address estate planning and legal issues relevant to real estate owners, including how to mitigate legal risks in today's market. The panel will discuss updates to FinCEN reporting requirements and the impact of recent changes in zoning and environmental laws. The session will also cover estate planning strategies for managing family ownership and inheritance, while offering practical tips on avoiding litigation risks and navigating lease negotiations in fluctuating markets.

Bassford Remele is sponsoring this event so stop by our booth in the exhibit hall to say hello, grab some swag, and register to win prizes!

THURSDAY, DECEMBER 5, 2024 | Noon-1 PM
MSBA Construction Law Section CLE
Hosted at Bassford Remele

THURSDAY, DECEMBER 12, 2024 | Noon-5 PM
Mechanic's Lien: A Primer | Bassford Remele
Full invitation on page 19

TUESDAY, JANUARY 21, 2025

Litigation and Case Law Update; Drafting Effective Management and Voting Provisions; Drafting Robust Dispute Resolution and Dissolution Clauses; and Amending Your Operating Agreements: Tips and Tactics | Wynne Reece

Drafting and Amending LLC Operating Agreements | National Business Institute

THURSDAY, JANUARY 23, 2025

17th Annual Construction Summit | *Minnesota Real Estate Journal*

Bassford Remele is sponsoring this event so stop by our booth in the exhibit hall to say hello, grab some swag, and register to win prizes!

THURSDAY, FEBRUARY 6, 2025 | Noon-4 PM
Bassford Remele Construction Summit
Details to Follow

WEDNESDAY, FEBRUARY 19, 2025

Ethical Traps in the Post-Covid Construction Industry
Kyle Willems and John Holper

Construction Summit | Associated General Contractors of Minnesota

Kyle and John will discuss the latest ethics problems that the construction industry has faced since the end of the COVID pandemic. Using examples, they will highlight some new post-COVID challenges that the construction industry is facing and the ethical traps that are created by these challenges. The session is designed to fulfill continuing legal education (CLE) requirements and will discuss legal implications and application of the Minnesota Rules of Professional Conduct, but the session has broad applicability for engineers, architects, owners/developers, business leaders and managers, superintendents, and employees. 1.0 Ethics CLE applied for in Minnesota

Bassford Remele is sponsoring this event so stop by our booth in the exhibit hall to say hello, grab some swag, and register to win prizes!



UPCOMING EVENT



Mechanic's Lien: A Primer

YOU'RE INVITED

Join us for a practical, how-to seminar on mechanic's liens in Minnesota. This comprehensive workshop will cover everything you need to know about the mechanic's lien process from start to finish. This seminar is designed to equip you with the knowledge and tools to navigate the complexities of mechanic's liens effectively.

Attendees will learn crucial strategies to preserve their lien rights and efficiently collect payment for work performed or supplies provided when payment is not made.

Whether you're a contractor, subcontractor, or supplier, this seminar will provide valuable insights to protect your interests and improve your bottom line. For those in the financial services sector, the seminar will delve into the complexities of how mechanic's lien foreclosure proceedings impact financial institutions. Don't miss this opportunity to stay ahead in your industry and optimize your business operations.

DATE: Thursday, December 12, 2024

TIME: Noon-5:00 PM

LOCATION: Bassford Remele, 100 South 5th Street, Suite 1500
Minneapolis, Minnesota, 55402
Complimentary parking

AGENDA:

12:00-12:30 Registration and Lunch

12:30-1:30 Pre-Lien Considerations

1:45-2:45 Foreclosure of the Lien and Trial Considerations

3:00-4:00 Post-Trial Enforcement and Considerations

4:00-5:00 Happy Hour and Networking

Continuing Education Credit:

This seminar is pending approval for:

3.00 hours of Residential Building Contractor continuing education credit by the Minnesota Department of Labor and Industry

3.00 CLE credits in Minnesota and Wisconsin

REGISTRATION:

No fee to attend.

[Register HERE](#) by Monday, December 2, 2024





BASSFORD REMELE EVENTS



Mechanic's Lien: A Primer

Thursday, December 12, 2024 | Noon-5 PM

Join us for a practical, how-to seminar on mechanic's liens in Minnesota. This comprehensive workshop will cover everything you need to know about the mechanic's lien process from start to finish.



SAVE THE DATE

Bassford Remele Construction Summit

Thursday, February 6, 2025 | Noon-4 PM

[Register at Bassford.com](https://www.bassford.com)



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