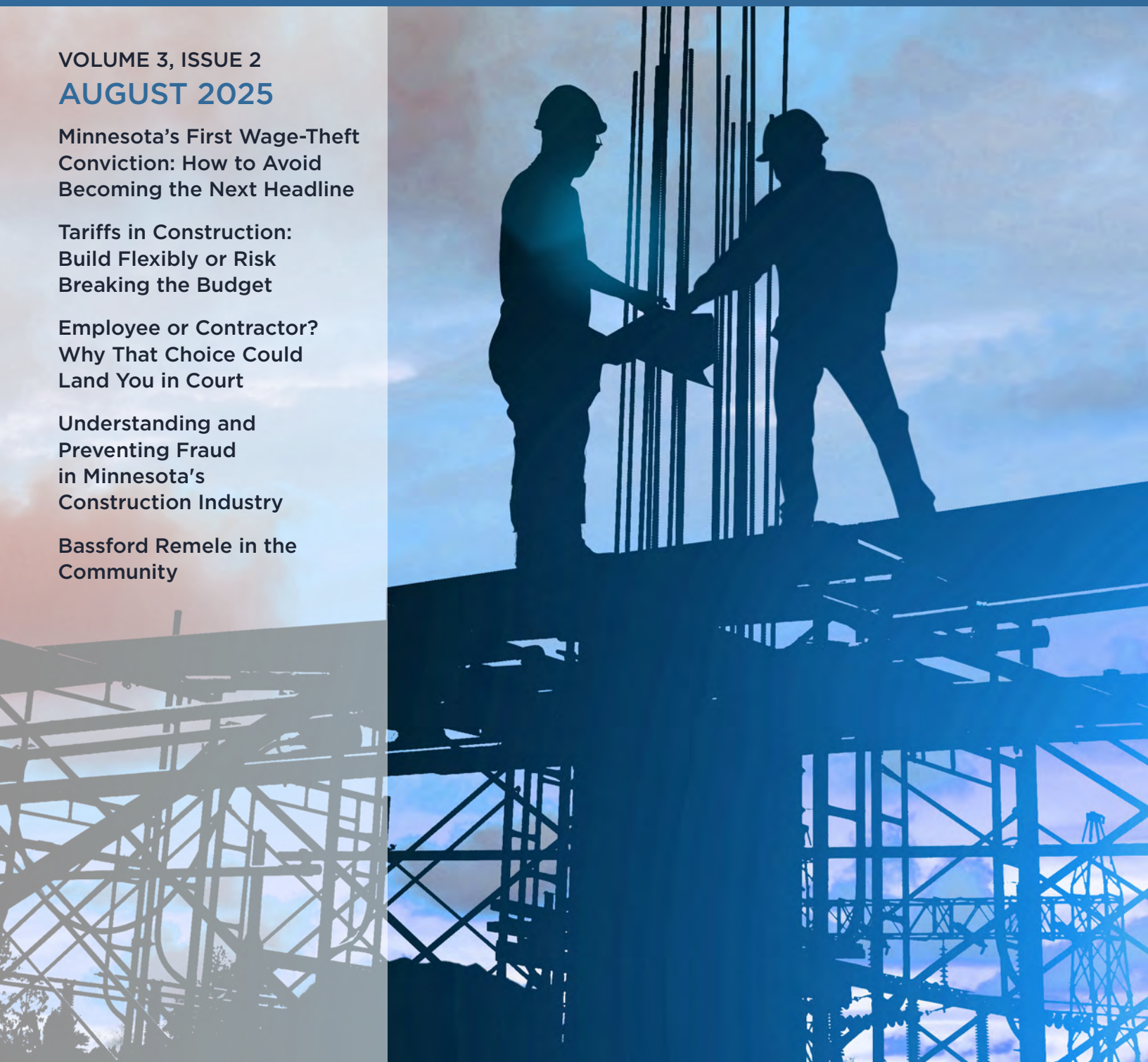
BASSFORD REMELE

Legal Foundations

A Publication of the Construction and Real Estate Practice Group

VOLUME 3, ISSUE 2
AUGUST 2025



Inside this Issue

From the Practice Group Chairs

As we look back on 2024, a clear theme emerges across every edition of *Legal Foundations* and in the seminars we presented: a historic number of major legal changes affecting the construction and real estate industries, particularly at the state level. Throughout the past year, our focus was on unpacking these black letter changes to the law and offering our perspective on what they might mean for our industries.

Now, as we move into 2025, we are beginning to see how these changes are taking shape in real-world application. This edition of *Legal Foundations* is article heavy for good reason. Its central purpose is to examine some of the earliest developments in how these laws are being interpreted and enforced. Inside, you will find discussion of Minnesota's first conviction under the new wage theft law, the first legal challenge to Minnesota's new independent contractor test, the first ESST class-action lawsuit, and updates on legal challenges to the Disadvantaged Business Enterprise Program. You will also find articles on other timely trends and hot topics that are shaping our industries right now.

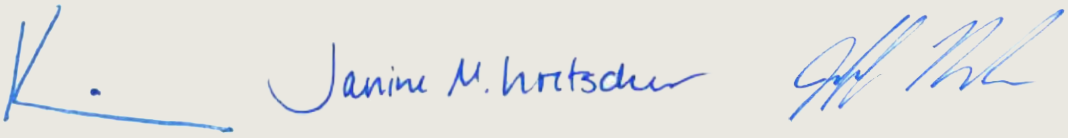
We are also proud to share some exciting recognitions for our construction and real estate team. *Best Lawyers*®, a peer reviewed distinction, named Bassford Remele a Tier 1 firm for construction litigation. It also recognized eight of our attorneys in these practice areas as *Best Lawyers* or Ones to Watch. *Super Lawyers* honored eight of our attorneys as Super Lawyers or Rising Stars. On a personal note, Kyle Willems was humbled and honored to be named Real Estate Attorney of the Year by the *Minnesota Real Estate Journal*.

Finally, as the year draws to a close, we are preparing a slate of new seminars to continue providing timely and practical insights to our clients and industry partners.

- ***The Work Week with Bassford Remele* Annual Employment Law Seminar,** Tuesday, October 28, 2025
- **Five Key Provisions When Negotiating Your Contract**, Thursday, December 11, 2025
- **Bassford Remele Annual Construction and Real Estate Summit,** Thursday, February 12, 2026

We hope you enjoy this edition of *Legal Foundations* and that it serves as both a resource and a conversation starter as we all navigate these evolving legal landscapes together.

Best regards,



Kyle Willems Janine Loetscher Jeffrey Mulder

Construction and Real Estate Practice Group Co-Chairs

BASSFORD REMELE

Employment Corner

New Wage Theft and Whistleblower Updates

By Benjamin H. Formell

On May 23, 2025, Governor Tim Walz signed several notable bills. Among these recent bills were updates to Minnesota's wage theft and whistleblower laws, which generally follow Minnesota's trend of broadening employee protections.

On July 1, 2025, Minnesota's whistleblower law was be amended to add statutory definitions under Minn. Stat. § 181.931 for "fraud," "misuse," and "personal gain," and these terms were also inserted into the substantive statute. Minn. Stat. § 181.932 generally prohibits an employer from terminating or disciplining an employee who takes any of several listed protected actions, including reporting a violation of law, participating in an investigation, and refusing to take actions believed in good faith to be prohibited by law. This general statutory structure mostly remains unchanged, but the language of the statute was updated to reflect that an employer cannot retaliate as defined in the statute when:

> a state employee communicates information that the employee, in good faith, believes to be truthful and accurate, and that relates to state services, including the financing of state services programs, services, or financing, including but not limited to fraud or misuse within state programs, services, or financing, to:
>
> (i) a legislator or the legislative auditor;
>
> (ii) a constitutional officer;
>
> (iii) an employer;
>
> (iv) any governmental body; or
>
> (v) a law enforcement official.

The new updates define "fraud" as an intentional or deceptive act (or failure to act) to gain an unlawful benefit. The update defines "misuse" as the improper use of authority or position for personal gain or to cause harm to others, including the improper use of public resources or programs contrary to their intended purpose. Finally, "personal gain" is defined as a benefit to a person, a person's spouse, parent, child, or other legal dependent, or an in-law of the person or the person's child, as those terms pertain to the application of Minnesota's whistleblower statute.

Second, effective August 1, 2025, Minnesota's wage theft laws will receive another update. Specifically, Minn. Stat. § 388.23 will be amended to authorize the county attorney to subpoena new categories of employer records related to wage theft investigations.

> Employers in all industries should be careful to both comply with existing wage theft and whistleblower laws and be aware of ongoing changes.

Under the existing law, such a subpoena can already compel production of a wide range of materials as long as they are relevant to the investigation, including financial information, telephone, utilities, and other related records, insurance records, and wage and employment records. The new updates add new categories which can be subpoenaed, to include: (i) accounting and financial records such as books, registers, payrolls, banking records, credit card records, securities records, and records of money transfers; (ii) records required to be kept pursuant to section 177.30, paragraph (a); and (iii) other records that in any way relate to wages or other income paid, hours worked, and other conditions of employment of any employee or of work performed by persons identified as independent contractors, and records of any payments to contractors, and records of workers' compensation insurance.

Particularly with the latter changes, the scope of materials potentially open to subpoena in investigations by authorities is considerably broader. In general, these new laws also reflect the legislature's apparently increasing interest in strengthening employee protections. Employers in all industries should be careful to both comply with existing wage theft and whistleblower laws and be aware of ongoing changes.

What Makes an Independent Contractor?

By Benjamin H. Formell

One of the most consequential aspects of the employment relationship in today's business landscape is the classification of workers as either employees or independent contractors. Employers across all industries in Minnesota face significant penalties for misclassifying employees as independent contractors, and things became more complicated for employers in the construction industry specifically. On March 1, 2025, construction employers became subject to a 14-factor test to determine whether a worker is an employee under Minnesota law.

In general, employers may be familiar with the five-factor test employed by the Minnesota Department of Labor and Industry, focusing on the right to control the means and manner of performance, mode of payment, furnishing of tools and materials, control over the work premises, and right to discharge. Until now, employers in the construction industry have been subject to a somewhat more involved nine-factor test.

Under the newly expanded and modified fourteen-factor test that became effective March 1, 2025, a worker in the construction industry qualifies as an independent contractor only if they satisfy **all** of the following **at the time the services were performed:**

(1) was established and maintained separately from and independently of the person for whom the services were provided or performed;

(2) owns, rents, or leases equipment, tools, vehicles, materials, supplies, office space, or other facilities that are used by the business entity;

(3) provides or performs, or offers to provide or perform, the same or similar building construction or improvement services for multiple persons or the general public;

(4) is in compliance with all of the following:

(i) holds a federal employer identification number (if required by federal law);

(ii) holds a Minnesota tax identification number (if required by Minnesota law);

(iii) has received and retained 1099 forms for income received for building construction or improvement services provided or performed (if required by Minnesota or federal law);

(iv) has filed business or self-employment income tax returns, including estimated tax filings, with the federal Internal Revenue Service and the Department of Revenue, as the business entity or as a self-employed individual reporting income earned, for providing or performing building construction or improvement services, if any, in the previous 12 months; and

(v) has completed and provided a W-9 federal income tax form to the person for whom the services were provided or performed (if required by federal law);

(5) is in good standing;

(6) has a Minnesota unemployment insurance account (if required);

(7) has obtained required workers' compensation insurance coverage (if required)

(8) holds current business licenses, registrations, and certifications (if required);

(9) is operating under a written contract to provide or perform the specific services for the person that:

(i) is signed and dated by both an authorized representative of the business entity and of the person for whom the services are being provided or performed;

(ii) is fully executed no later than 30 days after the date work commences;

(iii) identifies the specific services to be provided or performed under the contract;

(iv) provides for compensation from the person for the services provided or performed under the contract on a commission or per-job or competitive bid basis and not on any other basis; and

(v) the requirements of item (ii) shall not apply to change orders;

(10) submits invoices and receives non-cash payments for completion of the specific services provided or performed under the written proposal, contract, or change order in the name of the business entity;

(11) the terms of the written proposal, contract, or change order provide the business entity control over the means of providing or performing the specific services, and the business entity in fact controls the provision or performance of the specific services;

(12) incurs the main expenses and costs related to providing or performing the specific services under the written proposal, contract, or change order;

(13) is responsible for the completion of, or failure to complete, the specific services to be provided under the written proposal, contract, or change order; and

(14) may realize additional profit or suffer a loss, if costs and expenses to provide or perform the specific services under the written proposal, contract, or change order are less than or greater than the compensation provided under the written proposal, contract, or change order.

A major theme among these new requirements is ensuring entities maintain any licensure and insurance standards to retain their status as independent contractors. Enforcement may now be by individuals operating under the private attorney general statute. Since mid-2024, misclassification can come with a penalty of up to $10,000 for each individual violation, regardless of the industry in question. Even before these new changes, misclassification has been the subject of active litigation in Minnesota, with the Minnesota Chapter of Associated Builders and Contractors, Inc., the Builders Association of Minnesota, and J & M Consulting LLC seeking to unwind some of the statute's arguably more onerous requirements in at least one recent case. While these new requirements create potential new pitfalls and compliance costs for construction employers, the steep penalties associated with violations mean that construction employers will need to be proactive in ensuring their compliance with the quickly changing standards.

Minnesota's First Wage-Theft Conviction and Sentence: How to Avoid Becoming the Next Headline

By Andrew T. James

On June 6, 2025, Frederick Newell was sentenced in Hennepin County District Court to three years of probation for stealing more than $37,000 in wages from five workers at an affordable housing development in Minneapolis.

The felony sentence imposed on Newell—believed to be the first of its kind under the Wage Theft Prevention Act (WTPA)—sent shockwaves across Minnesota employers and serves as an unmistakable reminder that the consequences for wage theft are severe. Employers of Minnesota employees should internalize the message that compensation-related issues, including those involving terminated or departing employees, demand meticulous attention. Failure to comply can lead to not just civil penalties, but potentially felony charges and significant restitution.

From Contract to Conviction

Frederick Newell's company, Integrated Painting Solutions ("IPS"), secured a contract in 2020 for painting work on a publicly funded affordable apartment complex in Minneapolis. As a government-funded project by virtue of tax-increment funding, IPS was legally obligated to pay its employees prevailing wages and to maintain accurate payroll records. For painters and general laborers on this project, that meant rates around $36 per hour, plus benefits.

Several employees came forward alleging that Newell paid them significantly less—ranging from $15 to $25 per hour. The City of Minneapolis' Civil Rights Division (and later the Hennepin County Attorney's Office) investigated and found a pattern of intentional underpayment and deception by IPS and Newell. Newell was found to have not only paid workers far below the required rates, but even further, to have actively concealed the actual hours worked by his employees. He was also found to have submitted falsified payroll records to the general contractor. In one egregious instance, a laborer who worked 32 hours in June 2020, earning approximately $1,779.84, never received a paycheck for that work, and IPS falsely reported that the hours had not been worked. In total, the subsequent investigation revealed that Newell underpaid five employees by over $37,000.

After a bench trial, Newell was convicted of both wage theft and theft by swindle. The felony wage-theft charge arose from Newell's intentional failure to pay employees the legally owed prevailing wages, coupled with an intent to defraud. Newell's sentence included three years of supervised probation, 200 hours of community service, over $42,000 in restitution (paid to the general contractor who had already covered the underpaid wages), and Newell is prohibited from bidding on new public contracts during his probation.

Avoiding Felony Charges and Reputational Ruin

Very few employers believe they are engaging in wage theft or appreciate the severe consequences associated with that conduct. The best time to address these issues is now; it is easier and less expensive to make proactive changes before any complaints, investigations, charges, or lawsuits materialize. The sentence in Newell—notable not just for the felony conviction, but also because IPS is now prohibited from bidding on new contracts for the three-year probation period—is a signal that employers with any connection to Minnesota should prioritize taking protective action:

- **Understand and Comply with Applicable Wage & Hour Laws:** This includes minimum wage, overtime, and prevailing wage laws (where applicable). Ignorance of the law is not a defense. All employers need to stay updated on statutory and regulatory changes.
- **Maintain Meticulous Records:** Complete and accurate records of hours worked, wages paid, deductions, and employee acknowledgments are paramount. These records are your primary defense in any wage claim or investigation. More specifically, the WTPA specifically mandates certain information on pay stubs and requires written notice to employees at the start of employment regarding their pay, benefits, and employment status. Employers should keep signed copies of these notices.
- **Regular Audit Payroll Practices:** Consider conducting regular internal audits of your payroll system and processes. This will help ensure all employees are being paid correctly, including for all hours worked, breaks, and any required overtime or prevailing wages. This can help catch errors before they become significant issues.

- **Provide Clear and Timely Communication:** Ensure employees fully understand their rate of pay, pay periods, and how their wages are calculated. Any changes to these terms must be communicated in writing *before* they take effect. Transparency builds trust and can prevent misunderstandings.
- **Address Employee Concerns Promptly:** Take all employee complaints regarding wages seriously. Investigate them thoroughly and address any discrepancies immediately. Proactive resolution can prevent minor issues from escalating into major legal problems or formal complaints.
- **Seek Legal Counsel:** Given the complexities of wage-and-hour laws and the severe penalties for non-compliance, consulting with experienced legal counsel is crucial. A proactive legal review of your compensation policies and practices can help identify and mitigate risks before they lead to costly litigation or criminal charges.

The Newell conviction and sentence is a bellwether for increased scrutiny of employer wage practices in Minnesota. By taking these preventative measures seriously, employers can protect their businesses, maintain their reputations, and, most importantly, ensure their employees are compensated fairly and legally.

U.S. Supreme Court Revives Reverse Discrimination Claim

Michael J. Pfau

On June 5, 2025, the U.S. Supreme Court handed down a groundbreaking 9–0 decision in *Ames v. Ohio Department of Youth Services*, significantly lowering the bar for so-called "reverse discrimination" claims under Title VII of the Civil Rights Act.

Writing for the Court, Justice Ketanji Brown Jackson emphasized that Title VII offers protection to "any individual," making clear that courts may not impose additional pleading hurdles on plaintiffs who belong to majority groups, such as whites or heterosexuals, when they bring discrimination claims. Specifically, Justice Brown wrote:

> The Sixth Circuit's "background circumstances" rule requires plaintiffs who are members of a majority group to bear an additional burden at step one. But the text of Title VII's disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs. The provision focuses on individuals rather than groups, barring discrimination against "any individual" because of protected characteristics. Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.

The decision rejected the "background circumstances" requirement, which had previously forced majority-group plaintiffs to demonstrate patterns of bias or statistical evidence before proceeding.

As for the underlying case, Marlean Ames—a longstanding employee of the Ohio Department of Youth Services since 2004—alleges that in 2019, she was passed over for promotion in favor of a lesbian colleague and then demoted and replaced by a gay man, because she is straight. Although she met the usual prima-facie criteria under Title VII, the Sixth Circuit dismissed her case for failing to show "background circumstances," indicating bias against majority groups.

This change increases litigation risk and puts greater pressure on employers to review and refine their hiring and promotion policies.

The ruling eliminates a legal barrier used in five federal appellate circuits covering roughly 20 states plus D.C., leveling the playing field so that majority and minority-group plaintiffs proceed under the same standard. Courts no longer need to treat "reverse discrimination" claims differently, rather they will use the same Title VII framework: A qualified individual who is rejected under suspicious circumstances may proceed to demonstrate intentional discrimination.

Ames's lawsuit now returns to the lower courts under the corrected standard, with no extra burdens on majority-group plaintiffs.

The ruling is expected to spur more "reverse discrimination" lawsuits. Courts will now evaluate all claims for intentional discrimination evenly, without using additional filters for group identity.

The Supreme Court's ruling in Ames signals a shift toward a uniform standard for all Title VII claims, regardless of the claimant's identity. This change increases litigation risk and puts greater pressure on employers to review and refine their hiring and promotion policies.

Current Construction Developments in Minnesota: Growth, Challenges, and Shifting Priorities

By John C. Holper

Minnesota's construction industry in 2025 is undergoing a period of significant transformation. While major infrastructure and industrial projects are reshaping urban and suburban landscapes, residential construction is experiencing a sharp slowdown amid rising costs. At the same time, the state faces complex questions around energy capacity and historic preservation.

Infrastructure and Transit Take Center Stage
The Minnesota Department of Transportation (MnDOT) has rolled out nearly 180 road and bridge projects across the state this year. In the Twin Cities, this includes a $70 million rehabilitation project along the I-394/I-94 corridor, as well as widespread resurfacing and full reconstruction of city streets in Minneapolis. Additional work includes the replacement of lead service lines and rehabilitation of aging water mains—efforts critical to improving safety and long-term sustainability.

Transit is also a priority. Metro Transit has recently launched the METRO Gold Line and B Line, both high-frequency bus rapid transit (BRT) routes designed to improve reliability and reduce commute times. Rochester's Link BRT is under construction, with a 2026 target for completion, while the METRO F Line is in advanced planning stages for one of the region's most heavily used corridors.

Industrial and Institutional Growth Continues
Despite broader economic pressures, industrial development is thriving. Endeavor Development recently broke ground on the Cobalt Business Center, a 175,000-square-foot industrial facility in Mendota Heights. At the institutional level, the University of St. Thomas is constructing the $175 million Lee & Penny Anderson Arena in St. Paul, which will serve as a multipurpose venue for athletics, events, and community engagement. It is slated to open in late 2025.

Housing Starts Decline Sharply
Minnesota's housing sector, especially multifamily construction, is facing a significant downturn. Permits for new apartments have dropped dramatically since 2022 due to high interest rates and escalating construction costs—now averaging between $320,000 and $340,000 per unit, far above market value in many areas. Without public subsidies or policy interventions, developers remain hesitant to break ground, raising concerns about future affordability and supply shortages, particularly in the Twin Cities.

Data Center Surge and Energy Implications
The state has quickly become a national hub for data center development. Tech giants including Meta, Microsoft, and Amazon have projects underway in Rosemount and Becker. In total, these facilities could demand more than 2,300 megawatts of electricity—equivalent to the energy consumption of every household in Minnesota. Utilities are now facing mounting pressure to deliver this capacity while still meeting aggressive carbon-free energy mandates.

> Employers in all industries should be careful to both comply with existing wage theft and whistleblower laws and be aware of ongoing changes.

Tensions Between Preservation and Development
In downtown Excelsior, a proposed three-story, mixed-use development has sparked local controversy. While the project would bring new apartments, retail space, and a restored theater, it would also exceed the town's long-standing two-story height restriction. This debate reflects broader statewide tensions as communities try to balance the need for growth with the desire to preserve historic character and identity.

Conclusion
Minnesota's construction sector is marked by both momentum and restraint in 2025. Infrastructure and transit investment remain robust, and industrial growth is accelerating. Yet, housing production is contracting, and questions about energy capacity, preservation, and development priorities loom large. As these trends continue to unfold, stakeholders across the public and private sectors will play a pivotal role in shaping the state's built environment for the years ahead.

Tariffs in Construction: Build Flexibly or Risk Breaking the Budget

By Wynne C. S. Reece and Megan L. Tilton

In the current construction landscape, material pricing is anything but stable. Tariffs, domestic supply shortages, labor bottlenecks, and transportation delays can all send prices soaring, even after the contract is inked. And it's not just imported steel and aluminum. Locally sourced staples like lumber, concrete, and drywall have seen sudden, significant jumps too.

In an industry where margins are already tight, these swings can turn a profitable project into a financial mess and strain valued client relationships. Guaranteed Maximum Price (GMP) contracts are designed to provide cost certainty, but without tailored coverage such as a tariff or escalation clause, that certainty can become a liability. A well-crafted provision allows for carve-outs or adjustments tied to objective indexes, for example, helping allocate risk more equitably. Without it, you may be stuck eating cost hikes no one saw coming, or worse, cutting corners to stay within the cap.

Even standard AIA contracts that don't use a GMP format (like the A201) can, and often should, be tailored. Supplemental conditions or negotiated riders can build in flexibility for cost fluctuations, whether from international relations or domestic market dynamics. Just because the form is silent doesn't mean your contract should be.

Construction is unpredictable. Your contract doesn't have to be.

Bassford Remele Opens New Office in Sioux Falls

This spring, Bassford Remele opened an office in Sioux Falls, South Dakota. This expansion marks a significant milestone in our firm's history and demonstrates our commitment to providing exceptional legal services across the Midwest. The new office is strategically located in the Steel District Office Tower, offering convenient access for our clients in the region and expanding our ability to deliver tailored legal services that address the unique needs of South Dakota's dynamic communities and businesses.

The Sioux Falls office will enhance our ability to serve clients with local knowledge and personalized attention. Our experienced attorneys dedicate themselves to delivering high-quality legal representation. This new location will allow us to better meet the needs of our clients in South Dakota and the surrounding areas.

Our South Dakota location will offer a full range of legal services, including litigation, business law, employment law, trust and estate law, corporate law, and more. Our presence in Sioux Falls allows us to engage more deeply with the local community and to support businesses and individuals with their legal needs, reflecting our dedication to addressing the growing legal needs of clients throughout South Dakota.

We look forward to serving the Sioux Falls community and continuing to deliver the exceptional legal services that Bassford Remele is known for. Stay tuned for updates as we grow our presence in this thriving city!

The Bassford Remele Corporate Group has been named the 2025 Best Corporate Law Firm by *Twin Cities Business!*

This recognition reflects our dedication to supporting clients like you with practical, business-focused legal solutions. Our team proudly serves clients nationwide.

Accolades

Kyle Willems has been named the 2025 Real Estate Lawyer of the Year by the *Minnesota Real Estate Journal*. Kyle was recognized for his leadership on some of the region's most significant real estate and construction projects, his success in resolving complex disputes, and his commitment to setting new standards of excellence in real estate law. Kyle was selected to *The Best Lawyers in America* and to the Minnesota Rising Stars list by *Super Lawyers*. He has also been selected to the *Minnesota Monthly* Top Lawyers list in Construction Law. 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 to the 2025 *Minnesota Lawyer* Construction and Real Estate Law Power List. She was selected as 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 *Best Lawyers* list. 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 also 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 and *Minnesota Monthly* Top 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, The Best Lawyers in America*, the Minnesota Rising Stars list by *Super Lawyers*, and the *Minnesota Monthly* Top Lawyers list. 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 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®. He has been recognized as a North Star Lawyer by the Minnesota State Bar Association.

James Kovacs was selected to *Best Lawyers*: Ones to Watch in Construction Litigation, Personal Injury Litigation, Appellate Practice, Commercial 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 also 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.

Nicolas Hanson was selected to the Minnesota Rising Stars list by *Super Lawyers*.

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.

Recent Articles

Employee or Contractor? Why That Choice Could Land You in Court

By Beth L. LaCanne and Michael J. Pfau

Efforts to crack down on wage theft are no longer just about fines and warnings in Minnesota. Although Minnesota's wage theft statutory scheme has long included criminal sanctions for violations, until recently, enforcement has primarily involved civil fines and penalties. The Minnesota Attorney General's Office and county attorneys are now wielding the criminal provisions of the wage theft statutory scheme to deter wage theft.

WTPA Background
In 2019, Minnesota amended existing statutes and enacted new ones to combat wage theft (the Wage Theft Protection Act ("WTPA")). The statutes included a clarification of the term "wages"; notice requirements to employees at the outset of employment, and any time the employer changed such things as wages, paid time off accrual and usage; payroll deductions; and earning statement requirements.

Wage theft can take many forms, including the obvious failure to pay earned wages. Additionally, failing to pay the applicable minimum wage is wage theft, even if the employer pays the employee for all hours worked. Misclassifying an employee as an independent contractor may also violate the WTPA if the employee isn't paid overtime, or if the misclassification negatively affects the employee's right to Earned Sick and Safe Time ("ESST").

Worker misclassification occurs when employers improperly deem employees as independent contractors to avoid paying minimum wage, overtime, and providing benefits. Worker misclassification is considered to be particularly problematic in the construction industry. To combat misclassification in the construction industry, the Minnesota legislature enacted a new law that creates a 14-factor test for the construction industry. The 14-factor test has been effective since March 1, 2025, and remains the standard unless there is an amendment to the statute, or a court concludes otherwise.

Challenge to Minnesota's New Independent Contractor Test
Trade groups have challenged Minnesota's new Independent Contractor Test for construction workers which went into effect on March 1, 2025. *Minn. Chapter of Associated Builders and Contractors Inc., et al. v. Nicole Blissenbach, et al.,* No. CV 25-550 (JRT/JFD), 2025 WL 713608 (D. Minn. Mar. 5, 2025).

As a reminder, to be considered an independent contractor, the individual must operate as a business entity and meet all of the requirements under a 14-factor (plus subparts) test at the time the services were provided or performed instead of the previous 9-factor test. Minn. Stat. § 181.723, subd. 4. The law also provides for statutory fines and damages to the misclassified individual.

On February 12, 2025, the plaintiffs moved for a temporary restraining order, seeking to enjoin the enforcement of the statute before it took effect on March 1, 2025. The plaintiff trade groups argued that the statute is unconstitutionally vague both facially and as applied, violates the Excessive Fines Clause of the U.S. Constitution, is preempted by the National Labor Relations Act, violates procedural due process, and that they would will face irreparable harm as a result. Plaintiffs argued that the new law imposes a "strict yet vague" 14-factor test to determine how workers should be classified and that an ordinary person would not be able to understand what conduct is prohibited.

The United States District Court for the District of Minnesota denied the temporary restraining order in a lengthy ruling. In doing so, the Court first rejected the plaintiffs' contention that certain terms such as "invoice" and "main expenses and costs" are unconstitutionally vague as to support their argument that the statute will be arbitrarily enforced. Second, the Court noted that the statute was not yet in effect, thus no fines have actually been imposed and a ruling on whether the fines are excessive would be premature. Additionally, the Court noted that the fine imposed under the statute would be directly proportional to the conduct, thus the Court questioned if the fine would actually be "excessive."

The Court then disagreed with the plaintiffs' argument that the statute is preempted by the National Labor Relations Act.

The Court continued that the statute appeared to have sufficient due process because members would be afforded criminal due process rights before any deprivation of liberty interests and administrative process rights before any deprivation of property.

The plaintiffs appealed the decision in March 2025 to the Eighth Circuit Court of Appeals where oral arguments have not yet been set. The Eighth Circuit's ruling could significantly impact Minnesota's new Independent Contractor Test and the construction industry. The decision may prompt calls for legislative clarification or clarification from the Minnesota Department of Labor and Industry on how it enforces the new law.

Criminal Wage Theft Explained
Wage theft rises to the criminal level when the employer engages in one or more of the following, with the intent to defraud:

- Fails to pay an employee all wages, salary, gratuities, earnings or commissions at the employee's rate or rates of pay or at the rate or rates required by law, whichever is greater.
- Directly or indirectly causes any employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered.
- Directly or indirectly demands or receives from any employee any rebate or refund from the wages owed the employee under contract of employment with the employer.
- Makes or attempts to make it appear in any manner that the wages paid to any employee were greater than the amount actually paid to the employee.

The length of the prison term for violations of the wage theft statute ranges between one year and twenty years, depending on the value of the stolen wages. Moreover, the employer is still responsible for paying the unpaid wages and civil fines.

Caught With Their Hands in the Payroll Jar
In April 2025, a Hennepin County judge convicted a painting contractor of felony wage theft and theft by swindle. In 2020, the contractor was awarded a contract on a publicly funded project, which required him to pay his employees a prevailing minimum wage. Instead, the contractor paid his employees well below the prevailing wage and covered up the underpayment by submitting falsified records to the general contractor. The contractor was sentenced to three years of supervised probation, 200 hours of community service, and over $42,000 in restitution. He is also prohibited from bidding on new public contracts during his probation.

Compliance with the WTPA, including properly classifying workers, is not just an administrative detail—it's a legal obligation with significant consequences.

Bassford Remele previously covered a civil wage theft case brought by the Minnesota Attorney General's Office against a farming entity and its owners in Stearns County. In October 2024, the defendants settled the civil case by agreeing to pay $250,000 to the State of Minnesota for distribution to workers, and a civil penalty of $250,000, which did not have to be paid so long as the defendants did not violate the terms of the agreement. Just four months after resolving the civil case, the Minnesota Attorney General's Office charged one of the farm's owners with four felonies under the WTPA and felony racketeering.

Even if an employer's violation of the WTPA does not rise to the criminal level, wage theft investigations can lead to the discovery of other criminal activities or statutory violations, such as tax fraud or worker misclassification. A Stillwater-based masonry contractor found this out the hard way. In February, the masonry contractor pled guilty to felony tax fraud. Its fraudulent practices were uncovered during an investigation into wage theft complaints against the contractor, highlighting how wage theft investigations can have broad-reaching impacts.

Get It Right or Face Criminal Charges
Compliance with the WTPA, including properly classifying workers, is not just an administrative detail—it's a legal obligation with significant consequences. As wage theft enforcement intensifies, employers face increased scrutiny and potential liability. The risk to companies in the construction industry is even higher in light of the new 14-factor test for worker classification. Companies must proceed with caution, ensuring their classification practices align with evolving legal standards to avoid costly penalties and possibly even jail time.

Recent Articles

Constructive Acceleration: The Silent Litigation Threat Facing Construction Projects

By Wynne C. S. Reece and Megan L. Tilton

Deadlines drive the construction industry, but what happens when unexpected delays make those deadlines impossible to meet? Owners have become increasingly insistent on "staying on schedule"—forcing contractors to work faster and harder, often at a steep cost. This scenario, known as "constructive acceleration," is becoming a leading source of costly legal disputes. Understanding how these claims arise and how to manage them is essential for owners, general contractors, and in-house counsel who want to avoid unexpected liability and protect the bottom line.

A Crash Course in Constructive Acceleration: The Courts' Perspective

Constructive acceleration is a doctrine grounded not in explicit contractual mandates but in the practical realities of project management and the conduct of owners and contractors: when a contractor faces what would ordinarily constitute an excusable delay, submits a timely and substantiated request for an extension, and is either denied or met with silence, the owner's insistence—whether explicit or implied—that the original completion date be met can result in legal liability.

The foundational elements of a constructive acceleration claim have been consistently recognized by courts and boards of contract appeals. Generally, a contractor must demonstrate: (1) the occurrence of an excusable delay; (2) a timely request for a contractually justified time extension; (3) the owner's denial of that request or failure to act; (4) an implicit or explicit demand for timely completion according to the original schedule; and (5) the incurrence of additional costs due to the acceleration efforts. However, these requirements are not stringent, and various courts have made clear that so long as the "essential elements" of excusable delay, an acceleration order, and acceleration with associated costs are met, a contractor may still have a viable constructive acceleration claim.

In *Framaco*, the Court of Federal Claims held that even informal communications emphasizing the necessity of maintaining an original project schedule may be sufficient to establish the demand prong. In doing so, the court underscored that an absence of a formal directive does not necessarily preclude a finding of constructive acceleration if the owner's conduct and communications effectively require adherence to the initial schedule.

Further, in *L3Harris*, the District Court for the Eastern District of Virgina refused to dismiss a constructive acceleration claim brought by a subcontractor that allegedly incurred significant increased costs that resulted from delays caused by the COVID-19 pandemic. In doing so, the Court noted that the law makes clear that an order to accelerate need not be specific or explicit to become actionable. Instead, any direction that implies an expectation that a contractor continue performing through an excusable delay may amount to an acceleration order.

What Changed, and Why Does it Matter?

Several modern developments have heightened the prevalence and risk of constructive acceleration claims. For example, persistent labor shortages have constrained project staffing and flexibility, forcing contractors to stretch limited resources across multiple projects. Meanwhile, global supply chain disruptions, compounded by recent tariffs on steel, aluminum and other critical building materials, have introduced significant uncertainty into material procurement timelines. Owners, under increasing financial pressures and faced with compressed project schedules, have grown even more reluctant to grant time extensions, even when delays are clearly excusable. The lingering effects of the COVID-19 pandemic continue to reverberate, having upended traditional risk allocations and disrupted longstanding scheduling norms across the construction industry.

> Put simply, no longer is constructive acceleration a mere peripheral concern—it is a central risk in modern construction project management.

Typical scenarios giving rise to constructive acceleration claims include the unreasonable denial or delayed response to extension requests, informal owner communications that stress the need to "stay on schedule"—e.g. handshake deals or text messages—milestone-based payment structures that financially incentivize on-time completion irrespective of project realities, and the failure to adjust project schedules following significant change orders.

The financial ramifications of constructive acceleration claims are substantial. Contractors often seek compensation for premium labor costs, including overtime and weekend work, expedited material shipping, additional equipment rentals, and subcontractor acceleration premiums. From a litigation standpoint, these claims are inherently fact-intensive and document-dependent, leading to protracted disputes that strain both financial and relational capital.

Minimizing the Threat

To mitigate the risks associated with constructive acceleration, owners and general counsel alike should adopt a proactive and disciplined approach. First, construction contracts must be drafted with precision, incorporating explicit procedures for requesting and granting time extensions and, where enforceable, "no damages for delay" clauses, with careful attention to jurisdictional nuances. They should also include a clear definition of acceleration and establish compensation mechanisms for any required acceleration efforts.

While there are, of course, industry norms—with some associations even providing base contracts to their members—these documents should be carefully tailored alongside experienced counsel. Engaging counsel who understands not only the construction business but also the unique practices and risk tolerances of the specific owner or general contractor is critical. Such counsel can ensure that the contract reflects the client's preferred approach to handling timing-related issues and is appropriately attuned to the jurisdictional environment and the particular market dynamics in which the project will be executed.

Second, formalizing all communications related to scheduling is critical. Owners should avoid casual or off-the-record exhortations to "stay on schedule" and should take special care to ensure that responses to extension requests are timely, reasoned, and thoroughly documented. While this sounds tedious, simple email follow-ups on casual communications, documenting what was agreed to or discussed, can mean the difference between getting paid versus not.

Third, project managers and site supervisors should be trained on the legal implications of their communications and actions. A lack of awareness at the management level can inadvertently create the foundation for a constructive acceleration claim.

Fourth, robust scheduling protocols should be employed and regularly updated to accurately reflect project conditions and delays. Proof of such protocols is often pivotal in defending against claims.

Fifth, tight documentation must be maintained throughout the project lifecycle. Detailed records of delays, extension requests, owner responses, and internal discussions regarding schedule adjustments will form the evidentiary backbone of any future dispute.

For in-house legal teams, pre-project contract review is essential to ensure that acceleration and delay provisions are clear and enforceable. Internal training programs should equip teams with the knowledge necessary to manage delays prudently and recognize the potential legal ramifications of their actions and communications. Additionally, establishing escalation pathways for time-sensitive scheduling issues and conducting periodic legal audits of project documentation can serve as early warning systems, enabling intervention before issues escalate into formal claims.

What Happens Next?

Looking forward, the construction industry is unlikely to experience a decline in constructive acceleration claims. Market volatility, evolving regulatory landscapes, and the complexities introduced by large-scale infrastructure initiatives ensure that the risk will persist, if not intensify. Thus, business owners and general counsel who neglect to address this exposure proactively will find themselves increasingly vulnerable to significant financial and operational consequences.

Put simply, no longer is constructive acceleration a mere peripheral concern—it is a central risk in modern construction project management. However, by embedding thoughtful contractual provisions, fostering disciplined communication practices, and maintaining vigilant project oversight, stakeholders can position themselves to effectively mitigate this risk and shield the integrity and profitability of their construction endeavors.

Recent Articles

More Challenges Continue for DBE

By Janine M. Loetscher

Many in the construction industry are aware of ongoing challenges against the US Department of Transportation's ("DOT") Disadvantaged Business Enterprise Program (DBE). By way of background, DBE is a legislatively mandated program aimed at ensuring that federally-assisted contracts for highway, transit, and aviation projects are available to small businesses owned and controlled by socially and economically disadvantaged individuals. While any small business owner may qualify as socially and economically disadvantaged, women and certain racial and ethnic minorities have been subject to a rebuttable presumption of social and economic disadvantage under the program. Upon establishing this program, Congress set a nationwide goal that at least 10% of allocations to State and local entities as part of DOT-assisted aviation, highway, and transit contracting projects be allocated to businesses owned by small and socially disadvantaged individuals.

October 26, 2023, Mid-America Milling Company, Inc. and Bagshaw Trucking, Inc. filed a lawsuit in the U.S. District Court for the Eastern District of Kentucky against DOT, alleging that despite having a long history of participating in federally financed road construction projects and being qualified, willing, and able to apply for federal highway and surface transportation contracts, they could not compete for these contracts on an equal footing with women and racial and ethnic minorities because of DBE.

> What is certain is that challenges to the DBE program are not going away, and can only be expected to increase.

They alleged that DBE and the federal regulations controlling the program violated the equal protection guarantee of the Fifth Amendment to the U.S. Constitution and the Administrative Procedure Act. The plaintiffs sought a preliminary and permanent injunction enjoining the defendants from applying race and gender-based classifications in DBE, as well as a declaratory judgment that the race and gender-based classifications were unconstitutional. On December 15, 2023, the plaintiffs sought a preliminary injunction prohibiting the defendants from implementing or enforcing DBE's race and gender presumptions and participation goal.

On September 23, 2024, Judge Van Tatenhove granted a preliminary injunction forbidding the mandatory use of DBE's race and gender presumptions in awarding DOT contracts, concluding that the mandatory presumption of disadvantage awarded to minority- or woman-owned contractors violated the Equal Protection Clause. The court limited its preliminary injunction to the case parties themselves. At least two other claimants sought to intervene as plaintiffs ("Proposed Plaintiff Intervenors") and modify the terms of the injunction to also apply to them.

Following the transition to the Trump Administration, and President Trump's executive order purporting to end equity-based decisions in federal contracting, on May 21, 2025, Magistrate Judge Edward B. Atkins allowed a group of minority and women owned contractors and other organizations to intervene as defendants in the case ("Intervenor DBEs").

On May 28, 2025, the plaintiffs and the government submitted a joint motion for a consent order. The proposed text of this order would stipulate that the government's past use of DBE rebuttable presumptions in awarding contracts violated the Equal Protection Clause and end the use of such presumptions. The following day, the Intervenor DBEs filed a notice they intended to oppose the joint motion.

On June 5, 2025, Judge Van Tatenhove issued a multi-faceted order (1) granting a requested 90-day stay of the case to allow parties to consider resolution of the case, (2) extending case deadlines, (3) taking under advisement the Proposed Plaintiff Intervenor's motion for intervention and modification of the injunction during the pendency of the stay, and (4) taking under advisement the plaintiffs' and government's joint motion for a consent order for the pendency of the stay. Importantly, the court indicated that, despite the stay, the Intervenor DBEs could file their opposition to the joint motion.

Although the case remains stayed for the time being, there has been substantial activity. The Intervenor DBEs filed their opposition to the proposed consent order on June 24, 2025. The Intervenor DBEs argue that the bulk of caselaw does not support the argument that the race and gender-based classifications in DBE Program are purportedly unconstitutional. The Intervenor DBEs also challenge the authority of the court to enter judgment on the proposed consent order, as they are parties in the lawsuit, yet they have not consented to the proposed consent order. Their position is that, while the government and the plaintiffs could enter a private settlement agreement between themselves, they cannot turn that settlement into a judgment that binds nonconsenting third parties. The Intervenor DBS's further argue that the proposed consent order is tainted by collusion.

On July 2, 2025, the Court allowed the parties to submit reply briefs regarding the motion for a consent order. On July 16, 2025, plaintiffs and the government filed separate reply briefs responding to the Intervenor DBE's opposition to the proposed consent order. The Intervenor DBEs have until August 13, 2025 to file their reply brief.

On July 18, 2025, Judge Van Tatenhove issued an order denying the Proposed Plaintiff Intervenors' motion to intervene and modify the terms of the injunction to apply to them. The court concluded that the motion was untimely and unjustifiably delayed.

It is uncertain how the latest ruling by Judge Van Tatenhove will impact the ongoing challenges to the DBE program. It appears the court is unwilling to extend the injunction this late in the game to anyone other than the original plaintiffs. However, it is unclear whether this is of any consequence, particularly if the motion for the consent order is ultimately granted.

What is certain is that challenges to the DBE program are not going away, and can only be expected to increase. Contractors performing work that was or may be subject to DBE should consult counsel regarding the status of DBE and their rights and obligations.

Presentations

Latest Changes in Employment and Contracting Issues, Associated General Contractors of Minnesota Mini Summit, July 2025 (Beth LaCanne)

Modern Risk in Construction: Cybersecurity & Artificial Intelligence, Associated General Contractors of Minnesota Board of Directors, July 2025 (Kyle Willems)

Getting the Deal Done! The 7 Most Problematic Issues For M&A Transactions Under $5 Million and How to Resolve Them, Minnesota Continuing Legal Education Business Law Institute, May 2025 (Wynne Reece)

6 Common Business Issues Clients Routinely Ask Their Attorneys to Resolve, Minnesota Continuing Legal Education Business Law Institute, May 2025 (Wynne Reece)

Office Market Update, *Minnesota Real Estate Journal,* May 2025 (Kyle Willems)

Navigating Contracts, Liability, and Risk in the Catering Industry, National Association for Catering & Events (NACE) EDU Conference on Pathways to Success, March 2025 (Wynne Reece)

Beautiful Things: A Discourse on the Application of IP to Designs, the Bowbeer, Sandeen and Scobie pupilage of the Hon. Jimmie V. Reyna Intellectual Property American Inn of Court, March 2025 (Wynne Reece)

Ethical Traps in the Post-Covid Construction Industry, Associated General Contractors of Minnesota, February 2025 (John Holper and Kyle Willems)

Publications

Avoiding the Employment Law Hot Seat, *Attorney at Law*, July 2025 (Beth LaCanne and Danielle Fitzsimmons)

Recent Articles

Cracks in the Foundation: Understanding and Preventing Fraud in Minnesota's Construction Industry

By Kyle S. Willems and Nicolas L. Hanson

Introduction

We are navigating a volatile real estate and construction market. Interest rates remain high, public and private funding remain uncertain, labor shortages persist, and inflation continues to pressure margins. In times like these, stress fractures in the industry often begin to show. And while some of those cracks are the result of market conditions, others expose more troubling issues—poor oversight, questionable decision-making, and in some cases, fraud.

Fraud in the construction and real estate industries doesn't always look like fraud. It's not always about bad actors with malicious intent. Sometimes it's a careless misstatement. Other times it's a failure to speak up when disclosure is required. But regardless of intent, the legal consequences can be serious—destroying careers, collapsing businesses, and leaving long-term financial and reputational damage in their wake.

Recently, we've seen a rise in civil fraud claims in Minnesota's construction and real estate sectors come across our desks. That trend inspired this article. Our goal is to provide a practical overview of Minnesota's civil fraud laws, explain how fraud arises in real-world project settings, outline the legal consequences, and offer guidance on how to spot and prevent fraudulent conduct before it leads to irreversible harm.

The Three Types of Fraud

Fraud, in legal terms, is a misrepresentation or concealment of a material fact made with the intent to deceive another party and induce them to act to their detriment.

Under Minnesota law, there are three primary types of civil fraud claims: intentional misrepresentation, negligent misrepresentation, and fraudulent omission. The legal elements of an intentional misrepresentation claim demonstrate that these cases often involve the most blatant examples of fraud and are rarely excusable. It's the other two types—negligent misrepresentation and fraudulent omission—that are more often misunderstood and deserve closer attention. Understanding them is key to avoiding fraud liability and to protecting yourself from becoming a victim.

To prevail on a claim of intentional misrepresentation, a plaintiff must prove: (1) a false representation of a material fact; (2) that the representation was made with knowledge of its falsity or with reckless disregard for the truth; (3) that the representation was made with the intent to induce reliance; (4) that the plaintiff actually and reasonably relied on the representation; and (5) that damages resulted from that reliance. Take a common example: a general contractor might submit a low bid for materials with the intention of later increasing the cost via change order and knowing the pricing is fabricated, in an effort to increase its profit margin. The owner relies on that bid and enters into a contract, only to suffer financial losses when the true costs come to light.

Negligent misrepresentation differs in that the party did not intend to deceive but failed to use reasonable care in ensuring the accuracy of the information provided.

Negligent misrepresentation differs in that the party did not intend to deceive but failed to use reasonable care in ensuring the accuracy of the information provided. This is often the most concerning type of fraud because it's not uncommon for the misrepresenting party to be unaware they committed it. To succeed on a claim for negligent misrepresentation, a plaintiff must show: (1) that a duty of care was owed by the defendant; (2) that a false statement was made without reasonable grounds for believing it was true; (3) that the statement was made with the intent to induce reliance; (4) that the plaintiff justifiably relied on the statement; and (5) that the plaintiff suffered damages as a result. In the construction context, this duty is typically owed by parties who hold themselves out as having special knowledge or expertise—such as subcontractors, design professionals, engineers, surveyors, vendors, or consultants—when they provide information they know others will rely upon in making project decisions.

Here's a hypothetical situation that illustrates how a claim for negligent misrepresentation can arise: Imagine a subcontractor telling a general contractor that a specific material is in stock and can be delivered within two days—without actually confirming availability with the supplier. The subcontractor knows the project is on a tight timeline and that the general contractor is coordinating multiple trades based on that schedule. Relying on the subcontractor's statement, the general contractor schedules work and makes time-sensitive commitments. Days later, it turns out the material is backordered for several weeks, causing delays, added costs, and potential penalties. The subcontractor didn't intend to mislead, but the

failure to verify the information—especially knowing the contractor was relying on it under time pressure—could be enough to support a claim for negligent misrepresentation.

Fraudulent omission arises when a party has a legal duty to disclose a material fact but fails to do so. Unlike a misrepresentation, where something false is said, omission liability is based on what was not said—when there was an obligation to speak. To establish a claim for fraudulent omission, the plaintiff must prove: (1) the existence of a legal duty to disclose; (2) the failure to disclose a material fact; (3) the intent to induce reliance through that silence; (4) justifiable reliance by the plaintiff; and (5) resulting harm or damages. Duties to disclose often arise in situations where there is a fiduciary or confidential relationship, a statutory or contractual obligation, or where one party has exclusive knowledge of a fact that would be material to the other party's decision-making.

A claim for fraudulent omission often arises in the sale or transfer of real property, particularly when hidden conditions or regulatory issues are involved. Consider a developer who knows that a commercial property contains asbestos but fails to disclose that fact to a buyer before closing. The buyer, relying on the seller's silence and assuming the building is compliant with environmental regulations, proceeds with the purchase. After the sale, the buyer discovers the asbestos and is forced to incur significant abatement costs and faces potential delays and penalties from regulatory authorities. Because the developer had knowledge of the condition and a duty to speak—and instead chose silence—their conduct may support a claim for fraudulent omission.

The Consequences of Engaging in Fraud

What makes fraud particularly dangerous is that its consequences often reach far beyond a typical breach of contract dispute. In addition to the potential for significant money damages, a finding of fraud can expose both companies and individuals to heightened legal, financial, and reputational risk. The judgment might not be dischargeable in bankruptcy, personal liability may be imposed, and corporate protections such as the "corporate veil" may be lost. Fraud findings also often snowball—triggering related claims, regulatory scrutiny, and lasting harm.

If a party prevails on a fraud claim, it may recover a range of damages. These typically include compensatory damages for the actual losses suffered, such as out-of-pocket costs or lost profits. In particularly egregious cases, punitive damages may also be awarded to punish and deter fraudulent conduct. Courts may also allow rescission of a contract or other equitable remedies to undo the effects of the fraud.

In most civil cases, a prevailing party is limited to recovering against the entity that breached the contract. But in cases involving fraud, liability can extend beyond the company to the individuals involved. A plaintiff may sue both the business and the person who committed the fraud and seek to recover the full amount of damages jointly and severally from either or both. In other words, individual actors may find themselves personally on the hook.

In complex business structures—particularly those involving subsidiaries, shell entities, or affiliates—a fraud finding may support piercing the corporate veil. This doctrine permits a court to disregard the legal separateness of a corporation and hold its officers, directors, or shareholders personally liable. In Minnesota, courts consider several factors in deciding whether to pierce the veil, including commingling of funds, undercapitalization, failure to observe corporate formalities, and—critically—use of the entity to perpetrate a fraud.

In this context, courts assess whether the corporation functioned as an individual's "alter ego." Relevant factors include: (1) insufficient capitalization for corporate purposes, (2) nonpayment of dividends, (3) insolvency at the time of the transaction, (4) siphoning of funds by the dominant shareholder, (5) nonfunctioning of other officers and directors, (6) absence of corporate records, and (7) use of the corporation as a mere facade for individual dealings. Often, evidence of fraud is the tipping point. Often, evidence of fraud is the tipping point.

Even bankruptcy may offer little relief. While bankruptcy is a tool for businesses and individuals to reorganize or discharge debts, fraud judgments are often nondischargeable. This means that if a court finds that the debt arose Fraud also thrives where the wrong behaviors are tolerated or overlooked. It often starts small—getting away with something that doesn't seem like a big deal.it—even after bankruptcy.

Continued

Continued

Beyond the courtroom, a finding of fraud can attract unwanted attention from law enforcement agencies, regulatory bodies, and licensing boards. Even when no criminal charges are filed, the reputational fallout can be devastating. It may become harder to obtain financing, secure bonding, win bids, or maintain client relationships.

How To Prevent Fraud

Preventing fraud starts with education—but simply knowing what fraud is often isn't enough. While many professionals understand that intentional misstatements are wrong, they may not fully grasp the personal consequences of engaging in misconduct. Training should therefore go beyond definitions and include practical guidance on the legal and financial risks individuals may face. Someone found liable for fraud may not only expose the company to litigation, but also face personal liability, non-dischargeable debt, and even regulatory or criminal exposure. These risks are often far more persuasive deterrents than the abstract threat of corporate litigation.

Effective training should include seminars, workshops, and written materials that reinforce these consequences. While such materials can sometimes be used to show the company was aware of certain risks, they more often help establish that the individual acted in knowing disregard of clear guidance. In that context, well-documented training can demonstrate that the misconduct was the work of a "lone wolf," and that the company should not be held responsible for an employee's intentional wrongdoing.

Prevention also goes beyond simply warning people not to lie. Fraud can occur when individuals fail to act on legal duties they didn't realize applied. In addition to the obligation to be truthful, two other duties carry significant legal risk: the duty to exercise reasonable care when providing information, and the duty to disclose material facts when silence would be misleading or when disclosure is legally required. Training programs should address these duties directly—not just by outlining the law, but by walking through real-world examples of how negligent misrepresentation and fraudulent omission can arise in contexts such as financing, estimating, subcontractor coordination, contract negotiation, and project delivery.

Fraud also thrives where the wrong behaviors are tolerated or overlooked. It often starts small—getting away with something that doesn't seem like a big deal. But over time, those acts can escalate, especially if they go unchallenged. In some organizations, patterns of dishonesty or misrepresentation become cultural norms. That's why fostering a strong internal culture of ethics is just as important as training on legal definitions. A zero-tolerance policy toward fraud, backed by consistent enforcement and leadership accountability, helps ensure that shortcuts and deception are not normalized.

Finally, as the market becomes more volatile, so does the risk of being on the receiving end of fraud. Whether you're hiring a subcontractor, evaluating a bid, considering a partnership, or closing a deal, you should assume that the current environment demands a higher standard of verification. Ask for supporting documentation. Verify representations with third-party sources. Build due diligence into your project timelines and budgeting processes. The more aggressive or uncertain the deal, the more thorough your fact-checking should be. In short: in a high-risk market, protecting your company starts with doing your homework.

Fraud also thrives where the wrong behaviors are tolerated or overlooked. It often starts small—getting away with something that doesn't seem like a big deal.

Conclusion

Fraud claims don't just spike in recessions. The also rise in times of pressure, uncertainty, and transition. That's exactly where the industry is today. And historically, when the market shifts, it tends to force out those who have been operating on unstable ground. The financial and legal fallout can be swift and unforgiving.

But fraud is preventable. Whether it's intentional misrepresentation, negligent miscommunication, or a failure to disclose material facts, the best protection is awareness, training, and a culture that values doing the right thing, especially when it's inconvenient. Equally important is staying vigilant when working with others. In today's environment, due diligence is not optional.

We hope this article helps you spot the warning signs early, educate your teams, and foster the kind of accountability that protects your business and your people.

Minnesota's ESST Law Faces First-of-Its-Kind Class Action: What Employers Need to Know About the Hormel Lawsuit

By Rachel A. Ball

We are navigating a volatile real estate and The legal landscape of Minnesota's employment laws continues to evolve, and this week has brought a significant new development. The July 30, 2025 filing of a class action lawsuit against Hormel Foods Corporation is a landmark event, marking the first class action of its kind under Minnesota's recently enacted Earned Sick and Safe Time (ESST) laws. This lawsuit, filed in Mower County District Court, provides a critical glimpse into how plaintiffs may approach ESST-related litigation and offers a potent cautionary tale for employers statewide.

As we've previously discussed in *The Work Week,* Minnesota's ESST statute, Minn. Stat. §§ 181.9445-181.9448, became effective on January 1, 2024. This law generally requires Minnesota employers to provide paid leave to employees for a wide range of personal or family health-related reasons, absences related to domestic abuse or sexual assault, and workplace closures due to weather or public emergencies. Minnesota's ESST law also contains specific requirements for how this time must be accrued, used, and carried over. Employers who fail to comply face potential fines from the Minnesota Department of Labor and Industry (DOLI) and are exposed to civil liability, including the risk of class action lawsuits seeking damages, penalties, and attorneys' fees.

The Allegations Against Hormel: A Deeper Dive
The Class Action Complaint, captioned *Daniel Lenway, et al. v. Hormel Foods Corp*., Case No. 50-CV-25-1464, identifies the plaintiffs as approximately 1,600 employees of Hormel Foods' Austin, Minnesota facility. The core allegation is that Hormel willfully failed to comply with the ESST laws by refusing to allow these employees to accrue, use, and carry-over paid ESST benefits for a 14-month period from the law's effective date on January 1, 2024, until March 1, 2025.

The complaint asserts that rather than provide the statutorily mandated paid leave, Hormel forced these employees to use their existing vacation benefits for ESST-qualifying absences. The plaintiffs contend that by doing so, Hormel was able to avoid the cost of providing additional paid leave benefits as required by the state.

A crucial wrinkle in this case is that the employees are members of a bargaining unit and thus are subject to a collective bargaining agreement (CBA). The lawsuit highlights a direct conflict between the CBA's vacation provisions and the state's ESST requirements. The plaintiffs argue that regardless of the CBA, the ESST law's minimum standards took effect on January 1, 2024, and the company had a statutory obligation to comply immediately.

This case also brings to light a prior, related dispute. Before the lawsuit was filed, a labor arbitrator ruled in favor of the union, finding that Hormel's practice of requiring employees to use vacation time for sick days did not satisfy its obligations under the new state law. While the arbitrator's ruling prompted Hormel to begin complying with the ESST law in March 2025, the class action seeks to recover damages and compensation for the benefits allegedly denied to workers during the preceding 14-month period.

"Willful" Failure to Comply
The Complaint's assertion that Hormel "willfully" failed to comply is noteworthy. Under Minnesota law, a willful violation can have serious consequences, including the potential for enhanced damages and civil penalties. The plaintiffs may argue that Hormel's actions—continuing its paid leave practices for over a year after the law took effect and only changing course after an adverse arbitration ruling—demonstrate a deliberate choice to ignore the statute.

Practical Takeaways for Minnesota Businesses
This lawsuit serves as a powerful reminder of the importance of proactive compliance. For Minnesota employers, especially those with large workforces or unionized employees, this case offers several key lessons:

1. **Audit Your Leave Policies Now:** The most immediate takeaway is to review all existing paid time off (PTO), sick leave, and vacation policies to ensure they are fully compliant with the ESST law. Ensure your policies meet the minimum accrual rate (one hour for every 30 hours worked), the annual maximum (at least 48 hours), and the carryover requirements (up to 80 hours).

2. **Collective Bargaining Agreements Are Not a Shield:** If your workforce has a CBA in place, do not assume it exempts you from state law. The Hormel lawsuit makes it clear that a CBA's terms must, at a minimum, meet or exceed the standards of the ESST law. If your agreement's paid leave provisions fall short, you must provide supplemental benefits to comply with the statute.

3. **Proper Notice and Recordkeeping Are Mandatory:** Employers must provide employees with written notice about their ESST rights at the start of employment. Additionally, each paystub or earnings statement must show the employee's accrued and used ESST hours. Failing to meet these administrative requirements can expose a company to liability, even if the underlying leave policy is compliant.

4. **A "Wait and See" Approach is Risky:** Hormel's decision to continue its pre-ESST practices for over a year has now resulted in a significant class action lawsuit. This case demonstrates that a "wait and see" approach to legal compliance is extremely dangerous. When a new law takes effect, it is critical to implement changes promptly to avoid back-pay claims and other penalties.

This is a dynamic and high-stakes legal matter that will continue to influence how Minnesota employers manage their paid leave benefits.

BASSFORD REMELE IN THE COMMUNITY

Minnesota Real Estate Journal

Kyle Willems, Janine Loetscher and John Holper celebrating at the Real Estate Awards Event.

Twin Cities Business

The Bassford Remele Corporate Group has been named the 2025 Best Corporate Law Firm by *Twin Cities Business*!

Association of Women Contractors (AWC)

Bassford Remele was proud to sponsor the Association of Women Contractors' Golf Scholarship Event

Janine Loetscher and the AWC Board of Directors.

Beth LaCanne and Janine Loetscher at the BR Hole.

John Holper and his team.

David Dahlmeier and Jeff Mulder and their team.

Team Member Intro

BRYCE RIDDLE

Where are you from?
Big Bear City, California

What do you do in the real estate and construction industry?
I assist clients with a variety of legal needs, ranging from litigation arising out of disputes between parties related to breach of contract, construction defects, warranties, and cost overlays, to drafting and negotiating construction-related contracts in order to manage risk and avoid litigation.

How would you describe your job to a five-year-old?
I help people reach agreements, and when they cannot reach an agreement, I represent them in court to settle arguments.

First job?
I was an airplane mechanic's assistant over summers in high school.

What did you want to be when you grew up?
I wanted to be a paramedic to help people in distress.

What is the best super power?
The force from star wars. Who wouldn't want that intuition/reaction time and the ability to manipulate matter?

If you could pick up a new skill in an instant, what would it be?
I'd love to be able to play the guitar!

Have you ever met anyone famous, and who?
I met Shaquille O'Neil at a wedding. That man is huge!

You can only eat one food for the rest of your life. What is it?
I'd probably have to go with tacos—-they're versatile! If only one specific food, probably a New York Strip steak.

If you could live in any state, which state would you pick and why?
Geographically, California is really hard to beat. You've got mountains for skiing and mountain biking, lakes, deserts, and some of the best beaches in the country. Hard to go wrong with all the amenities!

Favorite place you have ever visited?
Barcelona, Spain

What is on your bucket list?
I'd like to skydive!

Favorite family tradition?
My family gets together to make "Christmas Candy" each year. The recipe is a secret, but I enjoy the family get-together and sharing the goods with friends over the holidays!

Have you had your 15 minutes of fame yet?
I hope not!

Do you collect anything?
Not specifically. If anything, I collect experiences, particularly through travel. I enjoy golf trips and traveling to countries I've not been to before.

Favorite season?
Spring. Everything is coming back to life, great weather is before us, and we can finally get to spend time outside!

Favorite thing you've bought in the past year?
A new putter.

Favorite charity you wish more people knew about?
St. Jude's. While not exactly an unknown entity, the fact that they work to find cures for childhood cancers and life-threatening diseases makes it a charity highly worthwhile!

What is one thing that people would be surprised to learn about you?
I used to competitively ski race and was on the junior Olympic race team!

BASSFORD REMELE

612.333.3000 | bassford.com

UPCOMING EVENTS

Tuesday, October 28, 2025

2025 *The Work Week with Bassford Remele:* Annual Employment Law Seminar

The Bassford Remele Employment Law Practice Group will host their third annual employment seminar, with guest presenter Whitney Harvey, Senior Director, Workforce Solutions, Minnesota Chamber Foundation, Minnesota Chamber of Commerce.

1:30-4:00—Seminar

4:00-5:00—Social

Thursday, December 11, 2025

5 Key Provisions When Negotiating Your Contract Seminar

The Bassford Remele Construction and Real Estate Practice Group will host a seminar focused on the critical issues that impact Minnesota construction contracts. This event will help you understand, negotiate, and manage contract provisions to protect your business interests.

11:30-3:30 PM—Seminar

3:30-4:30 PM—Social

Oak Ridge Country Club

Thursday, February 12, 2026

Bassford Remele 2026 Annual Construction and Real Estate Law Summit

The Bassford Remele Construction and Real Estate Practice Group will host its third annual Construction and Real Estate Law Summit. Join us for a comprehensive afternoon of insights and strategies tailored specifically for real estate and construction professionals.

11:30-3:30 PM—Seminar

3:30-4:30 PM—Social

Oak Ridge Country Club

SCAN TO REGISTER
OR REGISTER AT
BASSFORD.COM

BASSFORD REMELE CONSTRUCTION AND REAL ESTATE TEAM

Janine M. Loetscher, Co-Chair
jloetscher@bassford.com | 612.376.1658

Kyle S. Willems, Co-Chair
kwillems@bassford.com | 612.376.1604

Jeffrey R. Mulder, Co-Chair
jmulder@bassford.com | 612.376.1622

Andrew L. Marshall
amarshall@bassford.com | 612.376.1623

John C. Holper
jholper@bassford.com | 612.376.1649

Jeffrey D. Klobucar
jklobucar@bassford.com | 612.376.1639

Wynne C. S. Reece
wreece@bassford.com | 612.376.1606

Bryce D. Riddle
briddle@bassford.com | 612.376.1624

James C. Kovacs
jkovacs@bassford.com | 612.376.1676

James S. Reece
jreece@bassford.com | 612.746.1097

Shad E. Christman
schristman@bassford.com | 605.812.3064

Beth L. LaCanne
blacanne@bassford.com | 612.376.1610

Benjamin H. Formell
bformell@bassford.com | 612.376.1617

Michael J. Pfau
mpfau@bassford.com | 612.376.1672

Nicolas L. Hanson
nhanson@bassford.com | 612.376.1615

Megan L. Tilton
mtilton@bassford.com | 612.376.1664

John D. W. Kipper
jkipper@bassford.com | 612.376.1608