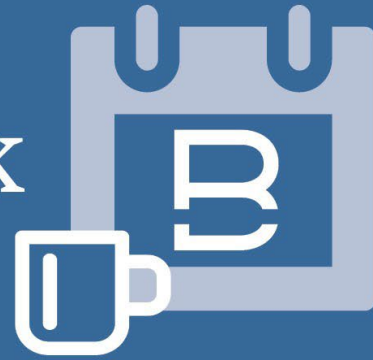


# The Work Week

Bassford Remele Employment Practice Group



February 17, 2025

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## What Makes an Independent Contractor

[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 are about to become more complicated for employers in the construction industry specifically. Starting March 1, 2025, construction employers will be 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 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.

At Bassford Remele, we closely monitor these developments in Minnesota employment law and regularly counsel employers on evolving compliance issues. Feel free to reach out if you need assistance in this continually evolving landscape!

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