The Work Week

Bassford Remele Employment Practice Group

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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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The Risky Business of Hiring Independent Contractors

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With the rise of the gig economy, businesses are turning to independent contractors to reduce costs and increase flexibility. 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. This week we will cover misclassification minefields and the Minnesota Supreme Court's decision in *Alonzo v. Menholt* last month, which opened the door for claims against companies who hire independent contractors.

I. Misclassification Minefield

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

At the federal level, the Fair Labor Standards Act ("FLSA") ensures minimum wages are paid to employees. Courts and administrative agencies enforcing the FLSA have long-toiled with classifications of independent contractors and employees. In January, we discussed the Department of Labor's Final Rule for determining a worker's status – employee or independent contractor. Although the authoritativeness of the Final Rule is uncertain following the superseding of the *Chevron* doctrine, it provides solid guideposts for companies assessing whether a worker is an independent contractor or employee.

Every state has its own law governing worker classification, including Minnesota. In our 2024 Legislative Update, we discussed changes to Minnesota's worker classification statutes, including the substantial changes to classifying workers in the construction industry. We also revisited the framework for classifying workers, other than those in the construction industry.

II. Independent Contractor Negligence Quagmire

After safely navigating the worker classification minefield, companies face another quagmire – mitigating risk related to an independent contractor's negligence. Before July 2024, the case law in Minnesota was unclear as to whether a company who hired an independent contractor could be held responsible for harm caused by the independent contractor's negligence while performing the contracted-for services. In July, the Minnesota Supreme Court removed all doubt in *Alonzo v. Menholt*, 9 N.W.3d 148, 158 (Minn. 2024), when it formally recognized negligent selection of an independent contractor as a cognizable claim in Minnesota.

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

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

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

Eventually, case law will develop the continuum for investigating independent contractors. Until then, Bassford Remele's team is available to traverse the independent contractor negligence quagmire as well as the misclassification minefield.

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