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NEW LAWS AFFECTING CONTRACTORS

AN OVERVIEW OF THE 2023
MINNESOTA LEGISLATIVE SESSION

NORTH RISK WEBINARS | 2023

PRESENTER

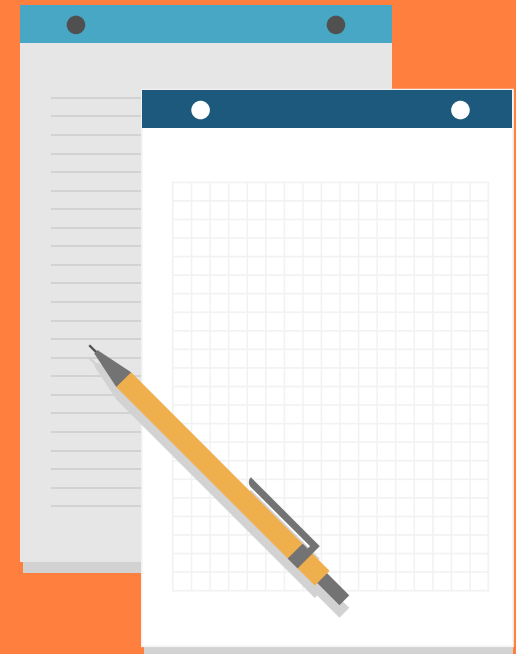


Blake Nelson

Attorney & Construction Law Group Chair
HELLMUTH & JOHNSON

AGENDA

- Legislative Session Overview
- Subcontractor Employee Wage Claims
- Duty to Defend Law Change
- Non-Competes Banned
- Earned Sick and Safe Time
- Paid Family Medical Leave
- Adult Use of Recreational Cannabis
- OSHA Fine Increases
- Bonding Bill



SESSION OVERVIEW

- January 3 - May 22, 2023
- On May 24, 2023, Gov. Walz signed the “One Minnesota Budget”
 - Most bills introduced in a year (6,700+)
 - Largest budget ever passed (\$71.5 billion in FY 2024-25)
 - Near complete allocation of the largest surplus (\$17.5 billion)
 - Largest bonding bill (\$2.6 billion including cash allocations)

SUBCONTRACTOR WAGES

Effective: August 1, 2023

- A general contractor is responsible for a subcontractor's failure to pay employee wages.
- The subcontractor must provide payment information within 15 days.
- A general contractor may recoup from a subcontractor once the unpaid wages are paid.

SUBCONTRACTOR WAGES

EXCEPTIONS

1. If the general contractor and subcontractor are union contractors subject to a collective bargaining agreement.
2. If the project involves prevailing wages.
3. If the project involves residential remodeling or home improvements for one or two-family dwellings.
4. If the work involves residential new construction of ten or fewer one or two-family dwellings on one project site annually.

DUTY TO DEFEND CHANGE

Effective Date: May 25, 2023

- A defense provision is enforceable only to the extent loss or damage is attributable to your negligent acts or omissions
- Required to defend upstream parties?
 - Not for their own acts; not just for being on the Project
 - Yes - to the extent of your own fault or negligence
- Duty to defend does not eliminate defense, it outlaws unfair and one-sided provisions
- “Project Specific Insurance” loophole closed

NON-COMPETES BANNED

Effective Date: July 1, 2023

- Applies equally to employees and independent contractors.
- Non-Compete Agreements prior to July 1, 2023 remain valid.
- Non-Solicitation Agreements still enforceable.
- Non-Competes related to business sales still enforceable within a reasonable geographic area and for a reasonable length of time.

EARNED SAFE AND SICK TIME

Effective Date: January 1, 2024

- Employees will earn paid sick and safe time -
 - 1 hour for every 30 hours worked
 - Up to 48 hours per year with a
 - Cap of up to 80 hours over multiple years
- There is a CBA optional waiver and current plans that meet/exceed the statutory minimum are permitted/excepted.

PAID FAMILY MEDICAL LEAVE

Effective Date: January 1, 2026

- State-run insurance program (like unemployment insurance)
- Employees may apply for up to 12 paid weeks of leave for themselves or a family member (after employed for 90 days).
- Multiple leaves may be taken; limit of 20 weeks per year.
- Funded via payroll tax of .07% that may be split between employer and employee.
 - Employers must pay a minimum of 50%
- More negotiations with unions might be needed.

ADULT USE OF CANNABIS

Adult Use Cannabis - Numerous effective dates

- 21+ may use and possess cannabis effective Aug. 1, 2023;
 - Cannabis is still illegal on federal property and related to federal licenses (such as a CDL).
- Lower-potency THC hemp edibles continue to be legal.
- 21+ can grow 8 plants at home for personal use.
- 10% cannabis tax (in addition to state and local sales taxes).
- Tax revenue - split 80% for the state & 20% for local gov.
- Local Gov can limit retailers - 1 for every 12,500 residents.

ADULT USE OF CANNABIS

"Safety-sensitive positions"

Employers may treat cannabis like any other "drug" and therefore may:

1. Test applicants for cannabis if applying to work in a safety-sensitive position.
2. Continue to mandate random drug testing (including cannabis) if the employee is in a safety-sensitive position.
3. Drug test if there is a reasonable suspicion that an employee:
 - a. Is under the influence of drugs, alcohol, or cannabis; or
 - b. Has violated the employer's written drug and alcohol policies prohibiting the use, possession, sale, or transfer of drugs, alcohol, or cannabis while the employee is:
 - i. Working on the employer's premises; or
 - ii. Operating the employer's vehicles, machinery, or equipment

OSHA UPDATES

- Maximum OSHA Violation Fees increased - 2X and tied to inflation.
- Employers excluded from employee interviews.
- OSHA citation become public data 20 days after employer receipt.
- Non-serious contested citations do not run until the order becomes final.
- All employers required to have an AWAIR program, and if more than 25 employees must have a safety committee.

BONDING BILL

- \$1.5 billion in general obligation bonds and \$1.1 billion in cash.
- Dollars are allocated to state agencies, counties, cities, universities, and non-profits to acquire land, build roads, and make important capital improvements.
- Under state constitution all funds must be for a public purpose.
- Projects are expected to achieve a legitimate public goal or benefit, even if private interests also benefit.



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QUESTIONS?

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