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Minn. Trade Groups Want Worker Classification Law Blocked

By Emmy Freedman · 2025-02-13

Construction trade organizations urged a Minnesota federal court Thursday to block a state law from taking effect that would slap steep fines on companies that misclassify employees as independent contractors, saying the statute's accompanying 14-prong test to determine worker classification is too ambiguous to stand.

A Minnesota law that is scheduled to take effect March 1 specifies a 14-factor test to determine whether an individual qualifies as an independent contractor, and trade groups say the test is ambiguous.

Trade groups Builders Association of Minnesota and the Minnesota Chapter of Associated Builders and Contractors, along with construction company J&M Consulting, which is a member organization of the two trade groups, filed a motion for a temporary restraining order.

They said if the new Minnesota statute is allowed to go into effect March 1, construction firms could stand to lose tens of thousands of dollars if they run afoul of just one prong of the "impermissibly vague" independent contractor test.

"The statute upends the Minnesota construction industry by imposing a strict yet vague 14-factor test on whether construction workers qualify as independent contractors," the motion said. "The statute further imposes compensatory damages, monetary penalties, and criminal penalties for misclassification."

BAM, MNABC and JMC suedMinnesota Attorney General Keith Ellison and the state's Department of Labor and Industry on Wednesday, alleging the new state statute is preempted by the National Labor Relations Act.

In May, the Minnesota Legislature passed an omnibus bill without allowing the public to review and debate it that contains a revision to Minnesota Statute Section 181.723. The statute relates to the misclassification of construction employees, and added a 14-part test to determine whether an individual qualifies as an independent contractor.

Under the test, an individual can be classified as an independent contractor if he works independently of the person for whom the services are provided, owns or leases his own tools and other equipment, offers to perform the same services for multiple clients, and meets over a dozen other criteria.

"The 14-factor test is vague and ambiguous," the groups said in their complaint. "Some of these new or amended factors in the test will undoubtedly lead to unintended or innocent misclassifications, and worse, are impossible to decipher both when read separately, and when read in conjunction with the rest of the factors."

For example, the groups said, the state says that an individual can be classified as an independent contractor if they incur the main expenses and costs related to performing the specific services under a contract. However, the statute fails to explain what constitutes the "main expenses and costs," the groups said.

And if a company is found to be in violation of the law, the state can impose a penalty up to $10,000 for each individual who should have been classified as an employee and was not, according to the complaint. Companies can face additional $10,000 penalties for each violation of the prohibited activities outlined in the statute, and another $1,000 fine per day for any company that delays or fails to cooperate with a Department of Labor and Industry investigation, the suit said.

"Since each violation is a separate penalty, the fines stack upon each other," the groups said. "If a general contractor misclassified a subcontractor that employs 10 individuals simply because they failed to sign a contract on one project, they could be fined hundreds of thousands of dollars. In short, the fines would rapidly compound for a large employer who made one minor mistake in the 14-factor test."

MNABC and BAM added that their smaller member firms are in an "untenable position." If those companies are forced to set aside money to cover potential violations of the statute, they won't have enough funds to operate their business, the complaint said.

Given these massive, compounding fines, the statute violates the excessive fines clauses of the U.S. Constitution, the groups said.

And the statute is preempted by the NLRA, which bars states from providing their own regulatory or judicial remedies for conduct prohibited by the NLRA. The statute prohibits employers from failing to disclose employees to any person or government agency, but the NLRA already explicitly requires an employer to disclose employees to both the National Labor Relations Board and to unions, according to the complaint.

"The proper remedies for such failure to report or disclose employees to the board or a union lie solely within the province of the NLRB, and must remain within the board's grasp," the suit said.

A representative for the state declined to comment.

A representative for the groups and company did not immediately respond to a request for comment Thursday.

The groups and company are represented by Thomas R. Revnew, Kurt J. Erickson and Lehoan (Hahn) T. Pham of Littler Mendelson PC.

Counsel information for the Minnesota Department of Labor and Industry was not available Thursday.

The case is Minnesota Chapter of Associated Builders and Contractors Inc. et al. v. Nicole Blissenbach et al., case number 0:25-cv-00550, in the U.S. District Court for the District of Minnesota.

--Editing by Leah Bennett.