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## TRENDS IN WAGE THEFT ENFORCEMENT

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Wage theft has remained an active hot topic in the construction industry. However, it remains to be seen whether enforcement of wage theft laws, by way of criminal convictions or civil cases, has been or will continue to be an actual priority for government authorities in Minnesota and nationally. We thought it worthwhile to examine such enforcement so far, and provide a brief overview as to where enforcement may be trending.

As a refresher, in general, Minnesota defines "Wage theft" as occurring when any employer, with intent to defraud:

- (i) 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, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater;
- (ii) 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;
- (iii) 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; or
- (iv) 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.

Minn. Stat. § 609.52 Subd. 1(13). Wage theft encompasses unpaid overtime, misclassifications of employees, off-the-clock work, unlawful deductions, and failure to pay prevailing wages.

In recent years, federal, state, and local officials have intensified their oversight through investigations, steep penalties, and other forms of more creative accountability. But while national enforcement efforts for wage theft in the construction industry has been robust, locally, in Minnesota, enforcement so far has been either limited or focused on other sectors. Below is a layout of what we have seen nationally, compared to local enforcement trends in Minnesota, as well as some suggestions for preparations should enforcement intensify in the construction industry in the future.

### *National Enforcement Landscape*

The National Institute for Workers' Rights reports that over \$15 billion is stolen from workers by their employers across all industries, and that less than 3% of that amount is recovered by the affected workers. Its no wonder then, why enforcement authorities (government bodies, agencies,

or officials with the legal jurisdiction to ensure compliance, investigate violations, and enforce laws, regulations, or rules), across the country have expanded both the scope and tools of wage theft enforcement.

You may have heard of a number of new stories illustrating this point. In December of 2025, the Office of the Attorney General for the District of Columbia secured a \$1.5 million settlement from a construction company called Brothers Mechanical, Inc. (including \$500,000 in pay to workers and \$1 million in penalties), after the company and its subcontractors misclassified hundreds of workers as independent contractors, depriving them of wages and benefits. The State of California Department of Industrial Relations reported that in August of 2025, it issued citations totaling more than \$2.3 million to multiple developers and affiliates who were operating construction projects at four different sites in Los Angeles. In that case, it was reported that workers were denied overtime pay to which they were entitled, paid below the minimum wage, and received multiple pay stubs for separate corporate entities despite working for the same supervisor on the same projects for each entity. The Texas Workforce Commission claims it has ordered employers to pay more than \$49 million for wage theft claims between 2020 and 2025. These are just a few examples.

Some have noted an increase in coordination among state labor departments, state attorneys general, and tax authorities to address payroll fraud and misclassification, a heightened focus on subcontractors, an increased use of criminal referrals and enhanced civil penalties, and targeting of certain subsectors that authorities have deemed to be high-risk, such as framing, drywall, roofing, and concrete.

### *Enforcement in Minnesota*

You may be familiar with Minnesota's statutory and enforcement framework for addressing wage theft. It includes, among other things:

- Defining wage theft as a criminal offense, Minn. Stat. § 609.52 Subd. 1 (13), 2 (a)(19);
- Strengthening recordkeeping and notice requirements. See Minn. Stat. Ann. § 177.30(a);
- Enacting construction-specific misclassification statutes and enforcement. See Minn. Stat. Ann. § 181.72
- Extending liability for unpaid wages, fringe benefits, penalties, and liquidated damages by a subcontractor or other third party to the general contractor and creating mechanisms for enforcement under the Construction Worker Wage Protection Act (CWWPA), Minn. Stat. Ann. § 181.165 Subd. 2, 3.
- Encouraging coordination among the Minnesota Department of Labor and Industry, the Minnesota Attorney General's office, as well as county attorney's offices.

With such a wide range of tools at their disposal, it would appear initially, at a minimum, that agencies and stakeholders in Minnesota have prioritized wage theft prevention and enforcement in the construction industry. Theoretically, that could mean enhanced or additional investigations of trades considered high-risk for wage theft, more scrutiny of certified payrolls on public works, or a greater focus on the role of labor brokers and the use of staffing agencies.

However, we have not seen that come to fruition. So far, the Minnesota Department of Labor and Industry and the Minnesota Attorney General's office have seemed to focus their efforts in wage theft enforcement in other sectors, such as agriculture, or not at all. For instance, you may recall that the Attorney General filed a lawsuit against Evergreen Acres Dairy, a Minnesota dairy farm, alleging that it stole at least \$3 million in wages, while also charging its workers for living in crowded, squalid conditions. That suit was eventually settled, and the farm paid \$250,000 and would become liable for another \$250,000 if it did not comply with strict remedial measures.

In April of 2025, the owner of a painting company became the first individual to be convicted of felony wage theft in Minnesota. In May of 2025, the Hennepin County Attorney's Office filed felony charges of wage theft and theft by swindle against Bishop Harding Smith, President and Founder of the nonprofit Minnesota Acts Now, for failing to pay his employees the required wage under the terms of his contract with Hennepin County. That matter is scheduled for a jury trial in March. A search of Minnesota Court Records reveals that there has been only one other criminal conviction for wage theft in Minnesota, and that conviction was for a misdemeanor in May of 2022, and was in retail. Overall, it appears that criminal prosecution under Minnesota's wage theft statutes remains a rare occurrence.

### *Practical Compliance Considerations in Minnesota*

Despite what appears to be a downturn in wage theft enforcement in Minnesota, business owners should still be fully prepared for any type of elevated scrutiny. General contractors and subcontractors operating in Minnesota should consider implementing the following measures to control their risk and avoid incurring liability or other penalties as a result of alleged wage theft:

- **Construction Contracts:** Include wage compliance representations and warranties, audit rights, and flow-down obligations to all parties of a construction contract, and/or condition payments on the submission of verified payroll or some method of verification of compliance. Require prompt corrective action and indemnification for wage violations from subcontractors and sub-subcontractors.
- **Payroll and Recordkeeping:** Implement easy-to-use and reliable timekeeping systems, and make sure your employees are properly trained on how to use those systems. Maintain complete records of hours, rates, classifications, deductions, and fringe benefits that can be easily reconciled with your certified payrolls and underlying time data. Perform a review of all worker classifications on your ongoing projects and clearly document each individual or entity that is an independent contractor and the reasons for their classification as such.
- **Site-level Oversight:** Conduct site visits and worker interviews to independently verify that your employees are doing what they say they are doing. Monitor subcontractors and their staffing sources. Establish clear reporting channels for workers and ensure that no retaliation occurs for the reporting of potential classification violations.
- **Connect with Local Agencies:** Prior to any issues, do not be afraid to be proactive and reach out to connect and establish a relationship with local agencies. This way, if problems arise, you have a definite point of contact whom you trust. Conversely, the person at the agency may be assured that you are committed to cooperation and correcting any errors.

- **Remediation:** If issues arise regarding misclassification or the payment of wages, investigate those issues promptly, and, if necessary, correct any errors and issue back pay with liquidated amounts as soon as possible. Document the steps you take to remediate any issue, and preserve any documents or records involved, and produce those records promptly in response to audits or investigations.

### *Conclusion*

Wage theft enforcement in construction will remain an active hot topic in Minnesota and nationally, but enforcement so far appears to be minimal. Education on this topic and preparation for any issues that arise is key in this environment. If you need any additional assistance with these issues or further information, the professionals in Bassford Remele's Construction & Real Estate Group remain willing and ready to assist.

### **About the Authors**



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2/19/2026