

Not-So-Independent Contractors



In September 2023, Minnesota Attorney General Keith Ellison created the Advisory Task Force on Worker Misclassification with the goal “to gather the best thinking about the problem [of worker misclassification] and make practical, workable recommendations to the Legislature, State agencies, other levels of government, industry, nonprofit organizations, and

advocates about how we can put an end to the problem.” This Task Force included members of state agencies responsible for enforcing worker misclassification, non-profits focused on worker rights, business groups, academics, and members of the Building and Construction Trade Unions.

In February 2024, the Task Force issued its recommendations covering government investigations and enforcement of worker misclassification. These included creating an interagency partnership between various state agencies on worker misclassification, and modifying the misclassification statute to promote efficient enforcement, strengthen penalties, and allow for successor liability and a private right of action. Further, the Task Force recommended modifying the contractor registration system to make it simpler.

During the 2024 Minnesota Legislative Session, several amendments to the MN misclassification statutes were passed into law. These included

the creation of an intergovernmental agency misclassification enforcement and education partnership, clarifying the prohibited activities related to worker classification, as well as expanding the misclassification statute relevant to construction workers.

Specifically, the Legislature expanded the test to determine if a construction worker is appropriately classified as an independent contractor from nine factors to 14 factors, as well as requiring that a worker meet all 14 factors to be legally classified as an independent contractor. Although this expansion of the test for construction workers was passed during the 2024 legislative session, and all other modifications became effective on July 1, 2024, the expansion of the test for construction workers does not go into effect until March 1, 2025. Even though this expanded protection for construction workers has not gone into effect yet, there is already a push to weaken the protections by only requiring that the worker meet a “substantial majority” of the factors to be classified as an independent contractor.

FCF will continue to monitor the ongoing changes to worker misclassification statutes. We will advocate for ironclad worker protections that support our union Building Trades members and their high-road signatory contractors against the policies that allow low-road contractors to misclassify their workers as independent contractors.



Industry Driven Standards Rely on Commitment

Minnesota’s unionized construction industry is one of only a few regions in the country where all of the construction trades and many of their contractor partners drive industry regulation. It should be no surprise that the leading participants and high-quality entities in an industry care about standards. For example, a leading French drugmaker, a Danish pharmaceutical and the U.S. giant Eli Lilly all recently announced a lowering of insulin costs. Each of these companies acted alone and for the betterment of the medical industry. They drove the standards that will now be a model goal for a broader industry. Although pricing is not enforcement, it is an investment in standards.

A better example might exist with the National Insurance Crime Bureau (NICB), a non-profit organization representing more than 1,200 property-casualty insurance companies, car rental companies, finance companies, and their strategic partners. At inception, NICB was dedicated exclusively to fighting insurance fraud and crime by using Big Data and various intelligence sources. As the methods and consequences of fraud have changed, NICB has grown over time to support a dynamic industry. This includes developing curriculum and providing training opportunities to law enforcement officers, investigators, and intelligence analysts, as well as policy development, communication, and advocacy. Clearly, organizations like FCF and NICB have similar goals – to identify and challenge fraud for the betterment of the industry. NICB’s focus is insurance; FCF’s is public construction. FCF intends on meeting with NICB to learn new strategies that will be make us more effective in achieving our respective goals.

We also plan to meet with DLI’s expanded staff as well as the investigators at the Commerce Fraud Bureau, following Special Agent Jonathan Ferris’s career change. Both of these enforcement bodies have proven invaluable in FCF’s fight against fraud. Our cultivation of these relationships enhances evidence requirements and credibility.

Everyone at FCF is committed and enthusiastic for the new year. It brings yet another season of working with partners to keep Minnesota’s construction industry as the premier standard bearer.



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Bill McGuire, owner of the Minnesota United FC, stands in front of the new 33-foot-tall, 25-ton statue he purchased named “The Calling.” It’s located outside of Allianz Field at the corner of Snelling and University Avenues. Other plans for that site include a new hotel, office building and restaurant pavilion.

Shown at left, Chris Baxter and Luther Miller, Cement Masons Local 633, finish the sidewalk in front of “The Calling”.



A Productive Legislative Biennium for State Labor Standards

The 2023 and 2024 legislative sessions saw a flurry of activity around enhancing labor standards for many state-funded construction programs. As we approach the start of the 2025 session, it is worth taking stock of these accomplishments. Here are some of the major changes that have gone into effect:

HF 5247 – Attaches prevailing wage requirements to projects receiving Low-Income Housing Tax Credits (LIHTC) after Jan. 1, 2025. The bill also



Photo Credit: FCF-Vince Muzik

requires recipients to verify they are using responsible contractors and creating wage theft prevention plans before work begins.

HF 5247 – The Public Utilities Commission will require prevailing wages for site or route permits for transmission lines, power generation plants, storage systems, and wind energy conversion systems.

SF 3035 – The 2023 Construction Worker Wage Protection Act (CWWPA) creates upstream liability for higher-tier contractors for labor violations by their subcontractors of any tier. It also gives workers a private right-of-action to file a lawsuit against their employer for unpaid wages and benefits.

HF 2310 – The 2023 Climate, Energy and Environment Omnibus Bill attaches prevailing wage requirements to many new programs, including: capital construction grants awarded by the Legislative-Citizen Commission on MN Resources (LCCMR), projects funded through the Renewable Development Account, Community Solar Gardens over 1MW, the Solar for Schools grant program, and the Public Buildings Solar grant program.

HF 7 – This 2023 bill sets Minnesota utilities on course to achieve 100% carbon-free electricity generation by the year 2040. It will streamline the permitting process, give preference to projects that hire local workers or in communities most affected by the retirement of fossil fuel facilities, and require prevailing wages on new and retrofitted power generation facilities.

When the union construction industry works with state lawmakers, we can ensure that investments in critical infrastructure not only benefit taxpayers and communities, but also workers and their families.



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Annual MN Prevailing Wage Reminders



Minnesota Highway/Heavy (H/H) prevailing wage (PW) rates were certified on Nov. 18, 2024. H/H rates are certified by region and not county. Those rates will be in effect until sometime in November 2025.

Commercial PW rates were certified on Dec. 23, 2024. They will be in effect until sometime in December 2025. You have 30 days from the date of certification, which is Jan. 22, 2025, to request a rate review from MnDLI.

Understanding how the published Minnesota PW rates are calculated can be a challenge. We have had several questions recently about interpreting the published PW rates. If a union rate sets the prevailing wage, the rate published is not exactly the rate that was most prevalent on the survey. It is an adjusted CBA rate. The reason the CBA rate is adjusted to determine the PW rate is because any fringe benefit that is not a direct benefit to the employee is excluded from the certified PW rate. If you want to learn more about the details regarding certified PW rates, call FCF at 651-797-2726. We can schedule time to review your CBA rates and how they relate to the certified PW rates. Understanding where the certified PW rates come from is important.

Important websites related to PW in Minnesota can be found by going to FCFMN.ORG and then selecting the Resources menu and look at '[Minnesota State Websites Including Prevailing Wage Sites](#)'.

As always, contact FCF if you have questions related to PW at 651-797-2726.

Federal Davis-Bacon Rates vs. Minnesota Prevailing Wage Rates

As you may know, on June 7, 2024, the USDOL adopted Minnesota Prevailing Wage rates as the federal Davis-Bacon Prevailing Wage rates for Building and Highway/Heavy construction. USDOL did **not** adopt residential rates and so there will continue to be federal surveys in the future to determine the Davis-Bacon **residential** rates.

Davis-Bacon residential rates that are union rates get updated on the federal website throughout the year, so it continues to be important for organizations to send in residential CBAs to USDOL after their rates change.

Call FCF if you have any questions regarding state or federal prevailing wage rates.



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2024 Compliance Highlights

Since opening its doors in 2011, FCF's investigation and compliance efforts have resulted in nearly \$5 million in wage recoveries, fines, and penalties. In 2024, FCF recouped more than \$150,000 in wage recoveries going to workers who were shorted their owed and earned prevailing wages. In addition, we currently have 95 open complaints with various government agencies regarding prevailing wage violations, misclassification, payment of wage violations, overtime violations, and licensing and registration issues. In 2024, we filed 38 complaints for probable violations of law.

Some highlights of our 2024 compliance efforts include:

- FCF filed a complaint with the Minnesota Department of Labor & Industry (MNDLI) against Bisbee Plumbing & Heating for apparent underpayment of prevailing wage to pipefitters performing work on a project in Granite Falls, MN. In June, FCF learned that MNDLI recovered **\$6,935.29** in back wages owed to four workers.
- With support from the Northwest Task Force group, FCF filed a complaint with MNDLI against All Finish Concrete for apparent failure to pay the correct prevailing wage rates due to miscoding various classifications of work on the Homestead Pedestrian Trail project in Moorhead, MN. In May, we learned that MNDLI recovered **\$7,639.48** in back wages owed to 36 workers.
- FCF filed a complaint with the Labor Compliance Unit (LCU) at MNDOT against NTKK, Inc. for apparent miscoding of workers performing operator scopes of work and probable underpayment of

prevailing wage on a guard rail improvement project in Pine County. The LCU recovered **\$14,985.82** in back wages owed to seven workers.

- In coordination with the Southwest Task Force group, FCF filed a complaint with MNDLI against Gerald Johnson Plastering (GJP) for apparent miscoding of carpenters as laborers, and for probable failure to pay overtime. These apparent violations occurred on a project at the Luverne National Guard Readiness Center. In November, FCF learned that MNDLI recovered **\$8,761.72** in back wages owed to seven workers who performed work on this project.

In addition to wage recoveries and penalties, there were other forms of compliance successes. For example:

- The Laborers' Union provided FCF with leads on possible violations on a project at the Twin Cities Army Ammunition Plant (TCAAP) site, which was supposed to meet Davis-Bacon requirements. Through our complaint process FCF learned there was a mistake with the project specifications and the Davis-Bacon requirements were inadvertently excluded. The contracting agency for the project is working on issuing back wages amounting to several thousand dollars to each of the 20 workers who performed work on this project.

FCF would like to recognize and thank the contractors, business agents, organizers, and workers who bring violations to our attention and diligently monitor state and federal prevailing wage rates. We are more effective because of their vigilance.



Photos Credit: FCF-Vince Muzik

Our Mission

The Fair Contracting Foundation promotes prevailing wage law education, compliance and enforcement. It advocates for practices, policies and laws that ensure fair government contracts, a strong local industry and protection of the public interest. We're here to help. Give us a call at 651-797-2726 or toll-free at 1-844-777-0606.