MINNESOTA

Defense

ISSUE III 2025

MISCLASSIFICATION BY DESIGN: MINNESOTA'S NEW ERA FOR CONSTRUCTION LABOR, ENFORCEMENT AND DEFENSE

MINNESOTA'S NEW JUNK FEES LAW – ANOTHER OBSTACLE FOR MINNESOTA RESTAURANTS COMPOUNDING OTHER EMPLOYER MANDATES

DISABILITY ACCOMMODATIONS: WHY THE A.J.T. V. OSSEO AREA SCHOOLS DECISION GOES BEYOND SCHOOLS

The Editorial Committee welcomes articles for publication in *Minnesota Defense*. If you are interested in writing an article, please contact the Chief Editor or call the MDLA office at 612-750-8606.

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JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

If you would like to join a committee's distribution list, please update your member profile on mdla.org specifying the appropriate committee under the "Practice Type" section. You will be automatically added to the distribution list.

To learn more about an MDLA committee, please visit www.mdla.org. Meeting times and dates for each committee are listed online.

Committees available include:

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- Diversity
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- Employment Law
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- Americans with Disabilities Act
- Minnesota Human Rights Act

If you would like to participate in planning events for this committee, please contacl Lisa Mortier, MDLA Executive Director

THE PRESIDENT'S COLUMN

Stephanie Angolkar

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I am honored to serve as your MDLA President this year. We kicked off our MDLA year with the Trial Techniques Seminar in Duluth in August, where the theme was "A Legacy of Advocacy." "Legacy" is a word that carries weight. For some, it is a subject to discuss when estate planning. For some, it may carry special membership status. But here, at MDLA, a legacy is a lasting impression and influence on who we are and who we are striving to be.

Just after we hold an opening reception for the Trial Techniques Seminar, MDLA past-presidents, board members, and seminar speakers gather together for the President's Dinner. We traditionally hold the dinner at Duluth's historic Kitchi Gammi Club. I confess I wish I attended Hogwarts, and the closest I can get is enjoying a dinner in one of the Kitchi Gammi Club dining rooms that only needs some floating candles to resemble the Great Hall at Hogwarts. This fellowship each year celebrates the countless contributions and service to the organization by our past leadership, as well as our future leaders. Each of our Past Presidents has left a legacy and impact on us, whether they served more than 60 years ago, when MDLA was founded, or more recently.

At this year's dinner, we took a moment to honor our first female President, Rebecca Egge Moos ("Becky"), who had just passed away. Becky was also the first female attorney inducted into the American College of Trial Lawyers, and she also served as the first female Chief Executive Officer at Bassford Remele, where she was also hired as the firm's first female attorney. http://www.bassford.com/news/in-remembrance-rebecca-egge-moos-becky. Becky paved the way for me and other women serving leadership roles in MDLA and in the legal profession. What a legacy!

At our annual meeting, Elizabeth Sorenson Brotten was presented with the gavel and DRI award recognizing her service to MDLA, as Liz completed her service as President of MDLA. Liz and others worked to form the Women in the Law Committee just a few years ago. Liz has served as managing partner of her firm Foley Mansfield and remains very active in DRI and the Women in the Law Committee, as well as a continuing resource to the MDLA Executive Committee as Past-President. Liz continues to make an impact on MDLA and DRI, and it is a privilege to be part of her evolving legacy on these organizations. The Women in the Law Committee continues to host one of the most popular annual events, the Women in the Law Breakfast. The Breakfast is held each July, and we have the fortunate problem of needing to find a bigger space again to accommodate the outstanding attendance! I hope you will join us at future Women in the Law events—everyone is welcome!

Another part of our evolving legacy is one of the first for our organization. When Liz served as President, we had the first-ever Executive Committee made up entirely of women attorneys. Many of us can recount stories of being the only woman in the room for some of our cases, so this has been impactful. Rest assured, as fiercely feminist as I am, I am not seeking a legacy of MDLA becoming a sorority. Our strength is in our diversity, and I want to assure our members that we welcome all civil defense attorneys to apply to the Board of Directors and to take on Committee Chair roles!

But the juxtaposition to honoring a legacy of the first

SAVE THE DATES

January 23-25, 2026 - Mid-Winter Conference - Grandview Lodge - Nisswa, MN

May 20, 2026 - Diversity Seminar

July 30, 2026 - Women in the Law Breakfast

female President of MDLA to our now majority women in the Board of Directors and Executive Committee is a moment in MDLA's legacy that I think deserves a pause, a reflection, and an appreciation for how much this organization's legacy has evolved. And perhaps for how our legal profession has evolved.

I continue to be inspired by our Committee leadership that also works to improve this organization's legacy, such as our outstanding Diversity Committee. The Committee organizes and hosts an annual seminar addressing significant topics and inviting meaningful dialogue, all while earning some great CLE credits. The Committee also works tirelessly to expand the pipeline of diversity, equity, inclusion, and belonging in our organization through law student sponsorships to our seminars, as well as our annual summer clerkships with participating law firms. If your law firm has participated in this program, I hope you find the value in it and know how much we appreciate your participation. Indeed, this outstanding programming has earned our organization awards from DRI, and I hope this legacy of leading the development of the defense bar nationwide will continue.

We also have several substantive law committees busy organizing events to keep the dialogue going on many changes in the law and new developments. In conversations with those attending the Trial Techniques Seminar, I enjoyed hearing reflections about the strong friendships developed through committee memberships and attending seminars like the Trial Techniques Seminar and the Mid-Winter Conference. A common theme I heard was how impactful it was for members to get involved and meet other attorneys through committees and these seminars as newer attorneys. These relationships continue decades later, and sure, it has led to business referrals. But more importantly, I heard about how impactful it was for professional development of the attorney, even if it did not initially lead to a new file or business. I hope as we reflect on the impacts we each make on this profession, we consider how we can welcome a new face at a committee event or seminar, and we highlight the long-term return-on-investment in the development of a newer attorney getting involved in a bar organization like MDLA. I hope that MDLA will continue to be part of your evolving legacy.

PASS THAT GAVEL!

DISABILITY ACCOMMODATIONS: WHY THE A.J.T. V. OSSEO AREA SCHOOLS DECISION GOES BEYOND SCHOOLS

By Chasse Thomas

Introduction

Go back in time to when you were in school. No, not to the fun days of college, but more like middle school. Just like every other teenager, you wanted to get through your classes, blend in, and be with your friends. Being a teenager had its rough spots, and you just wanted to fit in. What if your school denied you the ability to participate just like everyone else? You probably would seek legal action and argue that the school denied you a fundamental right under federal law. But what happens when your claim is dismissed based on the sole reason that the school's denial of your requested accommodation was not done in "bad faith"? This was precisely the dilemma presented to the United States Supreme Court ("SCOTUS") arising from a disabled student's request for accommodation to Osseo Area Schools.

SCOTUS ruled that public school students claiming disability discrimination face the same burden of proof as other plaintiffs under the Americans with Disabilities Act ("ADA"). The Court's unanimous opinion in *A.J.T. v. Osseo Area Schools, Independent School District No. 279* overrules an Eighth Circuit precedent and establishes that the ADA and the Rehabilitation Act of 1973 do not require students with disabilities to satisfy a higher "bad faith or gross misjudgment" standard for seeking accommodations.

This case goes beyond just public schools. It is confirmation that all individuals claiming disability against private or public entities, arising from a denial of an accommodation or modification, are subject to the same standard. This notion is heavily reinforced by the Court's unanimous opinion and affects all types of industries. Moving forward, it is critical that any public or private entity engage in an interactive and detailed process for disability accommodations.

I. Early History of the ADA

Before the enactment of the ADA, people bringing disability discrimination claims sought relief under several different statutes that did not provide unified requirements or protection. Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 et seq. (applying to programs or entities that receive federal funding); Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-19, 31 (applying to housing). To combat this, Congress enacted the ADA in 1990 to create a "clear and comprehensive national mandate" for disability civil rights. 42 U.S.C. § 12101(b)(1)-(2). The ADA is split into three titles. Title I applies to employment, Title II applies to public entities, programs, services, and activities, and Title III applies to places of public accommodation. *See generally* 42 U.S.C. §§ 12111 *et seq.*, 12131 *et seq.*, 12181 *et seq*. While the ADA includes three titles, the ADA's requirements for accommodations and modifications are applied to all three.

The ADA provides that a person with disabilities should receive the same ability to participate in all aspects of society without prejudice of society's failure to remove barriers, physical or not. *See* 42 U.S.C. § 12101(a)(2). To enforce these principles, the ADA codified disabled persons' right to seek reasonable accommodation(s) or modifications from their employer, school, public entity, and/or a place of public accommodation. *Id.* §§ 12112(a), 12132, 12182(b)(2)(A). This is the notion for all titles of the ADA, including Title II that applies to public entities, such as schools, government, or services. The ADA was meant to have broad application, but this was challenged early on.

II. SCOTUS' Early Application of the ADA

By the late 1990s, challenges to the ADA were frequently presented to the Court. *E.g., Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999). SCOTUS mandated a stricter interpretation

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of the ADA regarding who was disabled, whether they were substantially limited from performing a major life activity, and what was required for accommodations. *Id.* at 487; *US Airways, Inc. v. Barnett,* 535 U.S. 391 (2002). This made it difficult for plaintiffs to bring claims that were intended to be within the ADA's broad coverage.

Specifically for accommodations, SCOTUS was tasked to decide whether an entity must reassign a disabled employee to a position as a reasonable accommodation when there is another employee entitled to hold that position under a seniority system. *Barnett,* 535 U.S. at 393-94. In Barnett, an employee was injured on the job and was transferred to a less physically demanding position. *Id.* at 394. Two other employees, more senior than the plaintiff, sought the same position. *Id.* The plaintiff asked the employer to make an exception to the seniority system so that the plaintiff could keep his position; the employer denied such request and the plaintiff lost his job based on the employer's seniority policy. *Id.* The disabled employee sued his employers, eventually to SCOTUS, alleging that he was discriminated against on the basis that his employer did not provide a reasonable accommodation.

SCOTUS concluded that the ADA does not give preferential treatment for accommodations. *Id.* at 398. The Court reasoned that the ADA

> requires preferences in the form of 'reasonable accommodations' that are needed for those with disabilities to obtain the same workplace opportunities that those without disabilities automatically enjoy. By definition any special 'accommodation' requires the employer to treat an employee with a disability differently, i.e., preferentially. And the fact that the difference in treatment violates an employer's disability-neutral rule cannot by itself place the accommodation beyond the Act's potential reach.

Id. at 397. The Court further concluded that any requested accommodation cannot present an undue hardship, and that both undue hardships and reasonable accommodations must be viewed in a practical lens. *Id.* at 400-02. While the Court enforced a measurement for accommodations, it did not mention any "intent" required to prove a discrimination claim for failure to accommodate. *See generally id*. While Congress amended the ADA in 2008 to provide broad protection of the ADA, repudiating SCOTUS precedent, the reasonable accommodation framework was left alone, and many courts continue to cite the reasoning in *Barnett.* ADA Amendments Act, Pub. L. No. 110-352, 122 Stat. 3553 (effective January 1, 2009); see, e.g., *Tobin v. Liberty Mut. Ins. Co.*, 553 F.3d 121, 137 (1st Cir. 2009) (citing to *Barnett* post 2008 Amendments). Based on this, it logically follows that courts would apply this accommodation principle uniformly, right? Well, not quite.

III. The *A. J. T.* Ruling

The ADA and its applicability for accommodation claims came to a head in *A. J. T. by & through A. T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279,* 605 U.S. 335 (2025). In this case, a student from Osseo, Minnesota, suffered from epilepsy and experienced severe seizures that delayed her attendance at school. *Id.* at 335, 340-41. Her parents requested the school provide night instruction so that she could have a similar class day to other students. *Id.* at 341. The school denied her request, and the parents sued the school district but lost in both district court and the Eighth Circuit Court of Appeals. *Id.* at 342.

The plaintiff ran into a special issue in the Eighth Circuit: a split on the applicability and interpretation of the ADA's discrimination standard. *Id.* at 343 (citing and discussing the Eighth Circuit Opinion in 96 F. 4th 1058 (2024)). Case law in the Eighth Circuit identified that a different standard applied to education claims under Title II: to be liable for a violation, a school must violate a student's rights under the ADA and other applicable law, relating to disability discrimination, in bad faith. *Id*. The Eighth Circuit, while citing precedent and affirming those principles, interestingly questioned its own decision, speculating regarding why there were heightened standards for these claims. *A. J. T.*, 605 U.S. at 343. It then went on to cite several other cases that do not require a "bad faith" or "bad intent" standard. *Id*.

In its unanimous ruling, SCOTUS held that this heightened standard was not supported by the text of the ADA and the Rehabilitation Act. Chief Justice John Roberts noted that

> educational services should be subject to the same standards that apply in other disability discrimination contexts. Nothing in the text of [the] ADA or Section 504 of the Rehabilitation Act suggests that such claims should be subject to a distinct, more demanding analysis. The substantive provisions of [the ADA and Section 504], by their plain terms, apply to qualified individuals with disabilities. There is no textual indication that the protections of either disability discrimination statute apply with lesser force to certain qualified individuals bringing certain kinds of claims.

Id. at 345 (citations and internal quotations omitted). Any other reading to construe the rights of students would "limit the ability of children with disabilities to vindicate their independent ADA and Rehabilitation Act rights." *Id*. at 348. The case was vacated and remanded for further proceedings with this reinforced, and reaffirmed, standard. *Id*. at 351.

The Court's decision looked at the text of the ADA and,

based on its plain text and amendments, concluded that nothing within the text or ammendments warranted a higher burden for any claim of disability discrimination for failure to provide a reasonable accommodation.

IV. Future Considerations

While this decision applied in the context of Title II cases with public schools, the holding broadly impacts all accommodation claims. Moving forward, employers, schools, governments, and applicable entities should:

- Ensure that requests for reasonable accommodations are addressed through a detailed and interactive process on a case-by-case basis;
- Seek additional information from the requester (including whether the accommodation sought is needed for a specified timeframe);
- Check that employees and staff receive updated training on ADA and Section 504 compliance;
- Consider alternative accommodations if it is not possible to provide the requested accommodation;
- Not assume an accommodation cannot be provided;
- Review neutral policies and ensure that these policies are uniformly applied; and
- Maintain detailed and specific documentation of accommodation requests, assessments, and decisions relating to any person seeking accommodations under the ADA.

Keeping up to date on policies and procedures plays a pivotal role in ensuring compliance with the ADA.

V. Conclusion

The Court's decision unifies disability discrimination claims across the board—especially those brought in Minnesota federal court. The ADA and the Rehabilitation Act do not require a plaintiff to prove "bad faith" to claim disability discrimination for failure to accommodate. Moving forward, compliance must be proactive, accommodations must be interactive with clear guidelines, and neutral policies must be assessed for compliance. While this is not news for many attorneys, it makes clear that while the Court may weaken other statutes or rights, the right to seek relief from discrimination on the basis of disability is not one of them.

SAVE THE DATE
WOMEN IN THE LAW
BREAKFAST
JULY 30, 2026

WOMEN IN THE LAW

The mission statement of the Women in the Law Committee is to connect the more than 200 women who are MDLA members by:

- Providing opportunities to develop and strengthen relationships, facilitating business growth and professional development;
- Supporting women's career advancement by providing a forum for leadership and professional development; and
- Raising awareness about issues of interest to women lawyers.

For more information, email committee chairs: Ashley Ramstad - ashley□iversonlaw.com, Vicky Hruby - VHruby□jlolaw.com.

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Professional Liability
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Shayne Hamann

Arthur Chapman is proud to have a shareholder on the MDLA Board of Directors. Shayne focuses her practice in the areas of automobile and general liability litigation, No-Fault and insurance coverage.

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MISCLASSIFICATION BY DESIGN: MINNESOTA'S NEW ERA FOR CONSTRUCTION LABOR, ENFORCEMENT, AND DEFENSE

By John Greniuk

How Minnesota moved from theory to coordinated practice on wage theft and misclassification, and what defense counsel need to know and do about it.

From Efficiency to Arbitrage: The Global Rise of the "Independent Contractor" Model

"Independent contractor" labor models have proliferated across developed economies over the last four decades as firms outsourced risk, shifted fixed labor costs off balance sheets, and chased just-in-time flexibility. The model's legitimate use—specialized vendors providing discrete services—coexists with widespread misclassification, in which workers function as employees but lack basic wage, overtime, insurance, tax withholding, and benefits. Removal of the economic "safety net" endangers workers and passes costs on to government entities while simultaneously depriving them of trillions in revenue that employers and employees contribute to these programs. The rise of the COVID-19 "gig economy" exacerbated these economic pressures and prompted governments to re-focus on the issue, particularly in those industries where misclassification is prevalent.

Construction has always been structurally suited to independent contracting and exemplifies both the utility of the model and its consequent dangers. Because construction work is project-based, easily parceled by trade, and commonly priced by the piece or unit, independent contractors provide flexibility and cost reduction. The industry's reliance upon a multilayered workforce encourages "subs of subs of subs," which often amounts to "1099 crews" loosely managed by de facto labor brokers, blurring responsibility for wages, taxes, safety, and insurance. In this inherently dangerous industry, the tradeoff for reduced prices often amounts to a roofer without fall protection.

In the United States, legal fragmentation coupled with inconsistent or piecemeal enforcement fuels arbitrage. The Fair Labor Standards Act (FLSA) governs wage and overtime; tax and benefit regimes apply different tests; states add their own rules for unemployment, workers' compensation, licensing, and public procurement. Many U.S. jurisdictions have layered civil, administrative, and criminal tools atop these regimes, yet bad actors continue to exploit the seams. In Minnesota, legislators and state agencies have endeavored to place the state at the leading edge of wage theft and misclassification reform with a comprehensive and concerted program aimed at policing labor practices across the economy, specifically targeting the construction industry, where misclassification is rife.

Federal Framework: The FLSA and Economic Reality

The FLSA does not define "independent contractor." Instead, federal courts and the U.S. Department of Labor apply a totality-of-the-circumstances 'economic reality' analysis that asks whether a worker is in business for themself or economically dependent on the putative employer. In 2024, the Department finalized a rule reaffirming a holistic six-factor framework. Those factors include: (1) opportunity for profit or loss based on managerial skill; (2) relative investments; (3) degree of permanence; (4) nature and degree of control; (5) whether the work is integral to the potential employer's business; and (6) skill and initiative. No single factor is dispositive.

This federal lens influences state enforcement because it articulates the core dependence-versus-enterprise distinction. Key Supreme Court precedents emphasize that labels and form contracts do not control; what matters is economic reality. Courts look past 1099s and 'contractor agreements' to examine control, integration, and dependence. Although the FLSA governs minimum wage and overtime, the federal analysis influences state agencies and courts considering parallel wage, recordkeeping, and contractor-liability statutes, especially where state law presumes employee status and demands robust documentation to sustain independent-contractor (IC) classification.

Minnesota Transforms its Statutory Architecture Wage Theft and Upstream Liability (§ 181.165)

Minnesota's 2019 wage theft law strengthened the Department of Labor and Industry (DLI) authority to enter

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and inspect worksites, privately interview workers, compel records within 72 hours, share enforcement outcomes with licensing and contracting authorities, and impose liquidated damages and civil penalties for repeat or willful violations. The statute renders a contractor jointly and severally liable for a subcontractor's unpaid wages on covered construction contracts, reducing incentives to outsource compliance risk. Indemnity provisions that purport to evade the obligation are ineffective against workers' claims, though a contractor may seek reimbursement from the responsible sub. This provision, paired with agency tools and procurement rules, theoretically forces contractors to reevaluate bidding math and compliance procedures. These expanded powers and penalties enabled notable enforcement successes against violators in the agricultural industry, but the most significant prosecution in the construction industry illuminated the need for misclassification-specific reform coupled with the wage theft architecture: In 2020, the former owners of Merit Drywall were convicted and sentenced for a scheme hinging on misclassifying employees as independent contractors to evade workers' compensation premiums and pay workers cash "under the table" at piece rates, enabling lowball bids. Statements from union groups at sentencing identified the core issue: practices like these had become widespread in the industry and ubiquitous in certain trades, forcing contractors to choose between cutting costs using the same methods or going out of business because they were unable to offer competitive bids.

Deliberate, Comprehensive, & Concerted Reform: The Task Force

In July of 2023, The Minnesota Attorney General's office established an Advisory Task Force on Worker Misclassification, bringing together legislators, state agencies, academics, and labor leaders to study the issue and its impact, analyze enforcement gaps, identify best practices from other jurisdictions, and ultimately propose comprehensive regulatory and enforcement policy reforms. Worker-centered investigations and legislative auditing in Minnesota documented persistent wage theft and misclassification throughout the construction industry: underpayment of wages, off-the-books cash, billions in unpaid taxes, workers compensation and unemployment premiums, intimidation of immigrant workers, and multi-tier subcontracting on subsidized projects, especially multifamily housing. This public-spending angle amplified pressure for statutory fixes that could safeguard state money and reach through vertical contracting chains. Internal analysis of enforcement efforts across state agencies revealed significant deficiencies: fragmented investigations, siloed data, slow timelines, penalties too low to deter, and a construction-specific test that was straightforward but difficult to enforce in practice, especially across multi-tier subs and labor brokers.

The task force recommended a comprehensive suite of reforms, including a coordinated, multi-agency, enforcement partnership, stronger enforcement mechanisms, substantial increases in document production requirements and potential penalties, a private right of action and whistleblower incentives for misclassified workers, owner and successor liability for violators, and modernizing the independent contractor test for construction. DLI spearheaded these efforts, endorsing a comprehensive suite of interrelated statutory reforms intended to put Minnesota at the leading edge of misclassification enforcement.

Wage Theft, Misclassification, and Statutory Integration

The Minnesota Legislature substantially adopted virtually all the task force's recommendations, codifying a comprehensive wage theft & misclassification reform package with the tumultuous passing of the 2024 omnibus bill. The suite of reforms included overhauled statutes on misclassification generally and construction in particular (§ 181.722 & § 181.723, respectively), establishment of the multi-agency "Inter-Governmental Misclassification Enforcement and Education Partnership" (IMEEP), with data-sharing, cross-referrals, and stop-order authority (§ 181.724-725), as well as numerous amendments expanding DLI's information procurement and enforcement powers and interweaving the misclassification-specific statutes with the enforcement architecture previously established in connection with the 2019 wage theft reforms (Notably §§ 175.20, 177.27, 177.30, 181.03, 181.032, 181.101; see June 2019 DLI summaries). These earlier provisions created the enforcement "pipes" to theoretically enable coordinated investigations across agencies and contractors on both public and private projects, but only with the misclassification statutes were state agencies enabled to combat misclassification and its complexities in concerted fashion.

Misclassification and Documentation (§ 181.723, § 177.27, & Related Provisions)

The centerpiece of Minnesota's 2024 reforms for the construction industry, § 181.723 effectively redefined independent contractor status by expanding and refining its long standing nine-point checklist into a fourteen-point list focusing on genuine business independence rather than paperwork formalities. The law presumes workers on construction sites are employees unless the contractor can substantiate all applicable criteria. The criteria reflect the common law and federal "economic reality" model: separate business presence and registration; control over the means and manner of work; meaningful opportunity for profit or loss; multiple clients or the realistic ability to seek them; substantial investment in tools and equipment; ability to hire and pay helpers; and freedom from day-to-day supervision. In addittion, expanded documentary

requirements and prohibitions allow DLI to exercise broader discretion regarding denial or revocation of IC status. DLI may enter worksites, privately interview workers, and demand records with short deadlines. If records are missing or noncompliant, DLI may compute wages due based on the best available evidence, assess liquidated damages equal to unpaid wages, and impose civil penalties. Orders are shared with licensing and contracting authorities, which creates collateral consequences such as responsible-contractor ineligibility. Public works add certified payroll duties that, when reconciled against bank and timekeeping records, expose discrepancies quickly. DLI can determine back wages where records are insufficient, impose liquidated damages equal to unpaid wages, and assess willful-violation penalties up to $10,000 per misclassified individual, plus per-day, per document, penalties for incomplete or missing records. Virtually any business owner, manager, or employee in the subcontracting chain who "knew or could have known given the exercise of reasonable diligence" about violations can be held personally liable, again tying the economic reality fundamentals to the enforcement mechanisms. The only way to break the liability chain is to demonstrate compliance with all applicable tests through documentation. Failure to meet any applicable criterion weighs heavily toward employee status and exposes upstream entities to wage theft liability under § 181.165.

The construction statute also cross-links to the contractor registration system (§ 326B.701). Registration is required before performing construction services, and lack of registration triggers an employee presumption.

Altogether, these refinements provide state agencies with a central database from which to investigate claims or discrepancies, the authority to requisition extensive documentation in order to determine status, and the ability to make violators subject to wage theft and associated charges by declaring their subcontractors *de facto* employees. The fourteen-point litmus test became effective in March of 2025, along with DLI commissioner powers to issue immediate stop-work orders to violators.

Cross-Agency Coordination: IMEEP (§ 181.724-725)

The Inter-Governmental Misclassification Enforcement and Education Partnership (IMEEP) formalizes collaboration among the Attorney General, Department of Labor and Industry (DLI), Department of Revenue, Department of Employment and Economic Development (DEED), and the Department of Commerce. The partnership, effectively an official galvanization of the parties to the AG's task force, enables shared intake, coordinated inspections, data sharing, and consistent determinations of worker status. In practice, IMEEP accelerates cases, reduces evidentiary loss, and supports multi-front remedies: wage orders, tax assessments, UI contribution findings, licensing consequences, and - where supported - criminal charges. Enforcement collaboration enables Revenue to investigate tax fraud where DLI suspects misclassification or prompts Commerce to investigate workers' compensation fraud where DEED has uncovered Unemployment Insurance discrepancies. The "Enforcement" component of the partnership functions in tandem with second collaborative function, "Education," focusing on continued study of the issues and outreach to contractors and workers alike through member agencies. Most importantly, outreach programs directed toward workers facilitate the harvesting of complaints ranging from safety violations to unpaid overtime. Agency leaders have repeatedly indicated, beginning in the early stages of the task force, that they will be heavily relying on anonymous reports of violations and "whistleblower" complaints to initiate investigations.

Case Studies: Evolution of the Playbook Advantage/PMC

In 2023, DLI issued a comprehensive Compliance Order against Advantage Construction and a related labor-supply entity after investigating multiple projects. The order alleged joint employment, off-the-books cash pay, missing earnings statements, unauthorized deductions, and overtime violations across numerous jobs. DLI relied on interviews, bank subpoenas, timekeeping reports and jobsite records; where employer records were deficient, the agency reconstructed hours and wages. The matter proceeded to the Office of Administrative Hearings, exemplifying how record demand authority and joint-liability theories are used in multi-tier construction chains.

Newell/Integrated Painting Solutions. In 2025, Hennepin County obtained Minnesota's first felony wage-theft conviction arising out of a publicly funded project. The prosecution rested on prevailing-wage underpayments, discrepancies between certified payrolls and actual pay, and corroborated worker testimony. The sentence included probation and restitution, and the case signaled a willingness to criminally charge wage theft where the project is publicly funded and documentation conflicts are pronounced.

John Choi Heralds the New Normal. In September of 2025, Ramsey County Attorney John Choi announced wage theft, insurance fraud, and tax evasion charges against a MN contractor and family members connected to a publicly funded roofing and gutter project. Allegations include cash day-rates far below prevailing wage, falsified or misleading reporting, and instructing workers to misstate pay. The investigation began with complaints to St. Paul Police about unsafe practices such as the lack of fall protection, then reports of unpaid wages prompted IMEEP agency investigations. The initial complaint details charges predicated on data from Commerce, DEED, and Revenue.

Choi effectively summarized the enforcement game plan and its execution in this case as the new model:

> The criminal charges today are possible because of the long-term investments we have made in building up

> our investigative and prosecution capacity, fostering strategic partnerships between multiple investigative agencies, and developing trust with victims and advocates to properly and comprehensively investigate wage theft in Ramsey County. . . The first step was the biggest, which was to intentionally treat theft of wages as a crime rather than as a civil matter. Because of this multi-agency approach, we were also able to uncover alleged crimes involving unemployment and workers' compensation insurance fraud and serious underreporting and non-payment of taxes owed to the State of Minnesota.

That declaration aligns with the statutory environment and express intent: DLI and IMEEP have the tools to demand extensive records, determine that nominal independent contractors are in fact employees under § 181.723's fourteen-point analysis, and apply § 181.165 to shift liability upstream while opening multiple charging avenues identified in § 177.27 and related criminal provisions. Just as advertised.

Together, these cases show a progression: administrative enforcement with joint-employer theories and liquidated damages; insurance-fraud prosecutions for premium evasion; first-in-state felony wage-theft convictions; and now a county-level criminal prosecution on a publicly funded project. With IMEEP operational and DLI's rapid response capacity funded and coordinated, the enforcement aperture is wide. Or, as Choi put it: "This will not be the last case. We have many, many more that are in the pipeline."

The ABC challenge to § 181.723. Associated Builders and Contractors (ABC) brought a legal challenge to Minnesota's construction misclassification statute, § 181.723. While the pleadings and posture continue to evolve, the challenge raises core questions that recur in similar litigation nationwide: whether the statute is preempted in whole or part by federal labor policy, whether its criteria are impermissibly vague, and whether certain compliance obligations burden interstate commerce. ABC also questions whether the state's criteria improperly displace common-law tests or the federal economic-reality standard.

Minnesota's response emphasizes that § 181.723 codifies a sector-specific framework within the state's traditional police powers over wages, hours, and worker protection; that its fourteen-point criteria are objective and administrable; and that the statute operates alongside, not in conflict with, federal tests that answer different questions under different laws. Judicial willingness to entertain a constitutional challenge to the sprawling omnibus bill's obvious violation of Minnesota's "single subject and title" clause may prove a more viable avenue for repeal or legislative reform than expected.

For practitioners, the practical takeaway is straightforward: unless and until a court enjoins the statute, counsel should assume the fourteen-point analysis governs construction work classification in Minnesota. That means building or auditing files against each criterion, training field supervision to avoid day-to-day control cues, and aligning subcontractor onboarding with documentary requirements.

Where This is Headed: A Realistic Risk Assessment

Minnesota has invested in coordinated enforcement and rapid response, promising a durable enforcement regime based on heightened scrutiny, multiple avenues of investigation, and the determination to pursue felony wage-theft filings. Choi's public declaration that many wage theft/misclassification cases are already in the pipeline is borne out by recent filings.

Public money equals public expectations. As researchers note, robust reporting on subsidized work reduces misclassification opportunities; expect more jurisdictions and agencies to tie public dollars to certified payrolls, contractor transparency, and debarment pathways.

The Advantage/PMC record shows how administrative subpoenas and wage computations based on "available evidence" create a record that can be repurposed for fraud and wage-theft theories, especially where certified payrolls or tax returns contradict worker accounts.

Policymakers are experimenting with more targeted tools, but for now, counsel must assume clients either build compliant cost structures or eventually litigate under severe leverage.

The "Elephant in the Room": Labor Scarcity, Immigration, and Market Distortion

Construction faces a chronic dearth of skilled labor, particularly in high-risk exterior trades such as roofing, framing, drywall, and painting. Many skilled workers available for these roles are undocumented. That reality, alongside thin margins and project-by-project volatility, helped incubate the labor-broker model: crews operate under LLCs, general contractors reduce I-9 exposure, and costs shift away from payroll. Recent federal immigration enforcement efforts depress jobsite participation and discourage cooperation with investigators, even as Minnesota agencies focus on protecting vulnerable workers and regularizing payrolls. The result is a conspicuous policy crosscurrent: state efforts to stabilize wage standards can be undermined by federal actions that make the workforce less visible and less likely to report abuse.

Compliance is expensive, and the policy tension is obvious. Fully loaded bids with payroll taxes, overtime, unemployment insurance, workers' compensation, and newly enacted benefits like Earned Sick and Safe Time (ESST) and Paid Family and Medical Leave (PFML) will dramatically exceed bids floated by labor brokers ignoring the rules. Proposals to require transparent contractor lists

and certified payrolls promise to shrink the shadow market but would also shrink the labor pool. Unless enforcement is consistent and procurement rules reward compliance, good actors risk pricing themselves out while exploitative actors underbid and proliferate. Minnesota has begun to close that gap by funding rapid-response investigations, formalizing IMEEP, and expanding misclassification criteria - but persistent labor scarcity keeps pressure on margins.

Conclusion

Minnesota has moved beyond debating misclassification into building joint-enforcement machinery that reaches across payroll, insurance, taxes, and procurement. The federal FLSA framework, reset in 2024, bolsters a fact-intensive inquiry that state actors now operationalize through IMEEP. For contractors, the message is unambiguous: get your house in order or expect liquidated damages, civil penalties, procurement consequences, and, on subsidized projects, criminal exposure. For worker-side counsel, the toolkit has become larger and the tools sharper.

The harder policy problem remains: the exterior trades need labor Minnesota presently lacks, and federal immigration enforcement often undercuts state worker-protection goals. Until those currents align, lawyers must help clients navigate a landscape where documentation is destiny and "independent contractor" is a conclusion the evidence must earn, not a label to be stapled to a crew. Section 181.723's strengthened reporting requirements shift the focus from labels to facts; § 181.724's IMEEP architecture operationalizes joint enforcement; § 177.27's record powers give DLI teeth; and § 181.165 ensures upstream accountability. Add publicly funded projects with certified payrolls and engaged prosecutors, and the risk calculus changes. For contractors who truly need flexible expertise, independent contracting remains viable—but only when the evidence shows real independence. For everyone else, trying to win bids by pretending employees are businesses is less a strategy than an invitation.

This is not a passing moment. Funding for DLI and IMEEP's rapid-response work, plus county-level willingness to charge felony wage theft on subsidized projects, has reset expectations. The message to the market is not subtle: formal labels will not protect arrangements that function as employment. For contractors who truly need flexible expertise, independent contracting remains viable when it reflects economic reality. For everyone else, the cost of pretending is going up.

JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

EDITORIAL COMMITTEE

MDLA's Editorial Committee is responsible for publication of its triannual magazine, Minnesota Defense. If you would be interested in publishing in the Minnesota Defense or serving as an editor, please contact us at director@mdla.org.

For more information, email committee chairs Rachel Beauchamp - rbeauchamp@cousineaulaw.com or Ryan Paukert - rpaukert@larsonking.com

GOVERNMENT LIABILTY

Attorneys who work with municipalities on a wide range of government liability issues. The Committee typically meets quarterly with a CLE type format. An annual update regarding recent case law decisions, focusing on issues that pertain to cities, counties and other municipalities, is given in the winter at the League of Minnesota Cities in St. Paul. Other meetings rotate among the firms. The December holiday party is always enjoyable.

- Quarterly CLE
- Winter Annual Update of Case Law Decisions
- Representing Cities
- Representing Counties
- Representing other Municipalities
- Annual Holiday Party

For more information, email committee Co-Chairs Jordan H. Soderlind - jhs@ratwiklaw.com or Julia Kelly - julia.c.kelly3@gmail.com

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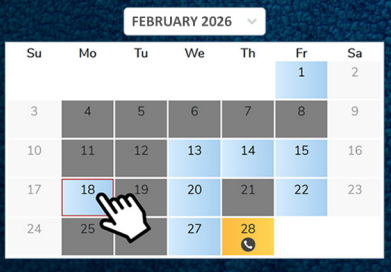

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MINNESOTA'S NEW JUNK FEES LAW – ANOTHER OBSTACLE FOR MINNESOTA RESTAURANTS COMPOUNDING OTHER EMPLOYER MANDATES

By Sarah Chaoui & Paul Magyar

Beginning on January 1 of this year, a new state law requiring price transparency went into effect here in Minnesota. Commonly referred to as the "junk fees law", the legislation has been touted as increasing price transparency and making it easier for consumers to accurately compare prices. The new law attempts to achieve this goal by requiring that the offered price for goods or services include all mandatory fees and surcharges in the listed price offered to the consumer. Minnesotans who testified before the Minnesota Legislature, and lawmakers while debating the legislation, expressed shared frustrations with going to purchase something, such as a concert ticket, and expecting to pay the listed price, only for that price to increase significantly as a result of fees added on at the end of the transaction. Even so, both lawmakers and Minnesotans raised concerns with how the broad language in the bill would affect a number of different industries in Minnesota, including the restaurant industry.

In order to help retain employees and respond to the unique challenges the Covid-19 pandemic brought upon the restaurant industry, many restaurants in the state had been adding service fees or health and wellness fees to provide employees with healthcare or help the restaurant close the pay gap between the front of the house and back of the house employees. Even before the Covid-19 pandemic and ensuing inflation, Minnesota restaurants already faced some unique challenges. Minnesota is one of only four states that does not allow for tip pooling. Restaurants in most other states can use tip pooling to help equalize pay differences that can arise between front-of-house staff and back-of-house staff, so that tips do not only go to employees directly interacting with customers, such as servers and bartenders, but to all employees involved in the customer's dining experience, including cooks, hosts, bussers, and dishwashers. Adding a service charge or a health and wellness fee was one way that some restaurants chose to address the pay inequity between back and front-of-house staff that arose in part due to other employer mandates and which increased in intensity during the pandemic response and ensuing inflation. But under the new junk fees law in Minnesota, those added costs must be included in the price listed on the menu, requiring Minnesota restaurants to pivot once again.

Minnesota's New Junk Fees Law

Minnesota's junk fees law was passed in May of 2024 and went into effect on January 1, 2025. The new law was codified as part of the Minnesota Deceptive Trade Practices Act ("MDTPA"), Minn. Stat. § 325D.44, subds. 1a, 1b (2024). Under the new law, most Minnesota businesses that offer, advertise, or display, a price for goods or services must include all mandatory fees and surcharges in the price that is displayed. The purpose of the law, according to its authors and advocates in the Minnesota Legislature, as well as the Office of the Minnesota Attorney General who is tasked with enforcing the law is to enable businesses to fairly compete on price. The law tries to accomplish that purpose by requiring that the listed price for a good or service includes all mandatory fees or surcharges that must be paid in order to purchase the good or service.

Specifically, the law prohibits displaying a price for a good or service and then charging the customer more to purchase that good or service, if that additional fee is required to purchase the good or service. A fee is mandatory if it is one that: (1) must be paid to purchase the good or service; (2) cannot be reasonably avoided by the consumer; or (3) is one that a reasonable person would expect to be included in the purchase of the good or service that is being advertised. Thus, some fees may not be required to be included in the price of a product or service if the consumer can reasonably avoid paying the fee. For example, a business can likely

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Paul Magyar is an associate in Foley Mansfield's Minneapolis office, where he practices primarily in the areas of employment law, commercial litigation, and product liability litigation. He helps employers fight a range of labor and employment-related claims, defends product manufacturers, suppliers, and installers in high-risk product liability and toxic torts cases, and assists companies with business-related disputes.

continue to charge a consumer a surcharge for using a credit card, so long as the business allows the consumer to avoid that surcharge by paying with another common form of payment, such as cash or debit card. Of course, a business charging such a fee must also make sure it complies with other laws governing such surcharges. *See* Minn. Stat. § 325G.051.

Codified as part of the MDTPA, the law can be enforced by both the Attorney General as well as private litigants. The Attorney General's Office has announced that it is focused on working with businesses and individuals to obtain voluntary compliance with the new law, including educating both consumers and businesses about the new law. However, a business that does not comply can be investigated by the Attorney General, and the Attorney General can file a civil enforcement action in court and seek injunctive relief as well as restitution, disgorgement, civil penalties (up to $25,000 per violation), and costs and disbursements, including investigation costs and reasonable attorneys' fees. As with other provisions of the MDTPA, "[a] person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable." Minn. Stat. § 325D.45, subd. 1. Proof of monetary damage is not required for a private party to seek or be granted an injunction. While costs are allowed to the prevailing party unless the court directs otherwise, an award of attorneys' fees requires proof that either "(1) the party complaining of a deceptive trade practice has brought an action knowing it to be groundless, or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive." *Id*. subd. 2.

While the irritation expressed by consumers regarding junk fees arose in the context of fees associated with online ticket sales and similar fees, the new law is much broader in scope. Under the law, some businesses might be required to combine charges together that they might otherwise list separately, at least if the particular business offering the good or service requires the consumer to pay both charges in order to receive the good or service. For example, golf courses often display one price to play a round of golf at the course, and then separately list the cost of renting a golf cart to use for that round of golf. So long as the player has the option to walk the course instead of renting a golf cart, listing the price for a round of golf and the price for renting a golf cart separately complies with the new law. However, if a golf course requires anyone playing a round on that course to rent a golf cart, as a condition of playing a round of golf on that course, then the price of the golf cart would need to be included in the listed price of that round of golf because payment of the golf cart rental fee is required in order to play the round of golf the consumer purchased. While the golf course can identify that the $60 price for the round of golf includes a $28 charge for cart rental, the golf course could not advertise that a round of golf only costs $32, and then require anyone paying for that round of golf to also pay for renting a golf cart in order to actually go out on the course and play the round of golf they just purchased. Businesses in almost all industries should examine their pricing to ensure they are in compliance with the new law, as the law can apply beyond the type of fees or charges that first come to mind when junk fees are discussed.

The law also includes a number of exceptions applicable to particular industries that either excuses compliance with the new law, or details what is required for compliance in that industry. Affected industries include delivery platforms, auctions, broadband internet and cable service providers, and public utilities. Additionally, the law contains exceptions for certain type of fees, including postage and shipping fees, an automatic and mandatory gratuity charged by a food or beverage establishment, fees charged by a motor vehicle dealer for the purchase or lease of a motor vehicle, and fees for settlement services for real estate transactions. And, the law does not apply to services where the total cost of the service is determined either by consumer selections and preferences, or where the cost relates to distance or time—so long as the business discloses: the factors that determine the price, any mandatory fees associated with the transaction, and that the total cost may vary. Taxes imposed by the government "on the sale, use, purchase, receipt, or delivery of the goods or services" are also not mandatory fees and a business can still collect those taxes at the end of a purchase. Also, the new law does not prohibit a business from offering discounts on the offered price.

The restaurant industry is the beneficiary of one of the exceptions, which allows "[a] food or beverage service establishment, including a hotel," to charge a mandatory and automatic gratuity, so long as "every offer or advertisement for the purchase of a good or service that includes pricing information . . . includes a clear and conspicuous disclosure" of the percentage of the automatic gratuity. Minn. Stat. § 325D.44, subd. 1a(h). This exception allows restaurants to apply automatic gratuities if they are properly disclosed, which can help tipped employees. However, the exception does not help restaurants address the disparity in pay between front-of -house and back-of -house employees. While the Covid-19 pandemic and ensuing inflation affected all industries in one way or another, Minnesota restaurants already faced unique pressures regarding gratuities under the Minnesota Fair Labor Standards Act and rules promulgated thereunder regulating gratuities.

Minnesota Fair Labor Standards Act and Gratuities

The Minnesota Fair Labor Standards Act ("MFLSA") includes several provisions governing gratuities that impact how Minnesota restaurants pay their employees, and along with other pressures, contributed to the decision of some restaurants to begin adding a health and wellness fee or service fee during and after the Covid-19 pandemic. The MFSLA provides that any gratuity received by an employee

or left at a place of business for services rendered by the employee is the sole property of that employee. Employers are also prohibited from requiring employees to contribute or share those gratuities with other employees, and sharing or pooling gratuities cannot be made a condition of employment. Minn. Stat. § 177.24, subd. 3; Minn. R. 5200.0080, subpart 4.

Gratuities, for purposes of the MFLSA, are "monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered." Minn. Stat. § 177.23, subd. 9. A gratuity

> includes an obligatory charge assessed to customers, guests or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge is not the property of the employee.

Prior to the effective date of the new junk fees law, a restaurant could charge an obligatory fee and it would not be considered a gratuity so long as "clear and conspicuous notice" was given "that the charge is not the property of the employee." Regulations further define the clear and conspicuous notice standard by requiring font be a minimum size and that notice be included on certain materials given to the customer, with courts evaluating violations under an objective reasonable person standard that focused on the context of the notice.

While the prohibition on employers requiring tip pooling does not prevent voluntary tip pooling or voluntary sharing of gratuities with other employees, employees must agree to share gratuities without coercion or participation by the employer in tip pooling. By statute, an employer is authorized to safeguard and disburse shared gratuities to those participating in the agreement (at the request of the employees) and report the amounts received for tax purposes. Employers may also post a copy of the statutory provision on sharing gratuities.

MFLSA regulations also allow tip pooling in situations where multiple employees provide service to customers, which includes situations such as banquets or weddings where more than one server collectively provides service to a large group of diners, or at coffee shops or similar establishments where tips are left in a shared tip jar. Minn. R. 5200.0080, subpart 6, 8. However, the regulation only authorizes tip pooling among direct service employees, which are employees who perform direct service for the customer, and does not authorize those shared tips to be distributed to indirect employees, which include hosts, bussers, dishwashers, and cooks. The District of Minnesota has held that this exception fills a gap that is not addressed by the tip pooling statute, as the tip pooling statute covers standard restaurant service, while the divided gratuities rule covers situations where a group of employees provide direct service to a group of customers. Further, shared tips are only authorized to be shared among the direct service employees who were working at the time when the tip was earned or left. The District of Minnesota has also held that server assistants did not qualify as direct service employees under the rule because while they may provide some direct customer service, their main role was to assist the servers, and they were therefore indirect service staff. Because the divided gratuities rule also does not authorize tip sharing with indirect service staff, the only option for tip sharing with indirect service staff is a voluntary, employee-created agreement to share gratuities.

Another way the MFLSA affects restaurants in Minnesota differently than restaurants in most other states is that Minnesota does not allow employers to apply gratuities toward payment of the minimum wage set by either state or federal law. Minn. Stat. § 177.24, subd. 2. While most states and federal law allow employers to pay a lower direct minimum wage to tipped employees, so long as the employee earns at least the standard minimum wage when tips and direct wages are combined, Minnesota law prohibits a tip credit for gratuities and requires that the direct wage a tipped employee is paid meet the state minimum wage. In Minnesota, the state minimum wage for 2025 is $11.13 an hour, and in 2026 it will be $11.41 an hour. Minneapolis and St. Paul have higher city minimum wages and do not allow a tip credit to be applied to the payment of the city minimum wage.

The restrictions in Minnesota on tip pooling and the lack of a tip credit towards state minimum wage requirements led to an inequity in pay between the front-of-house staff and back-of-house staff. Some restaurants added a health and wellness charge or service fees to help close that pay gap, which under already existing law were required to be clearly and conspicuously displayed for customers. But with the new junk fees law, restaurants that previously assessed a service charge or a health and wellness fee must either discontinue the fee or must now include the amount of that fee directly in the price listed on their menu. And as of August 1,2024, employers are also required to pay employees the full amount of a gratuity that is received "through a debit, charge, credit card, or electronic payment," meaning that employers must cover the portion of the fee charged by the processor for card and electronic methods of payment that is for the tip portion of the total charge. Minn. Stat. § 177.24, subd. 3a (b). While the new junk fees law still allows a business to charge a surcharge for a customer using a credit card or debit card, restaurants must either charge such a fee, increase their prices to cover the additional cost, or take a further reduction to their profit margins in an industry that already operates on thin margins.

New Federal Regulation of Junk Fees

Minnesota is not the first to contemplate taking action on junk fees. Back in 2022, the Federal Trade Commission ("FTC") requested public input on a rule addressing

unfair and deceptive pricing tactics. The FTC then announced a proposed rule in October 2023 and invited more comments. After reviewing and considering public comments on the proposed rule, on December 17, 2024, the FTC announced the Final Rule on Unfair or Deceptive Fees, which prohibits "bait-and-switch" pricing and other tactics used to misrepresent or conceal total prices and fees. The new FTC rule went into effect on May 12, 2025. In accordance with the FTC rule, businesses that sell or advertise live-event tickets and short-term lodging, including third-party platforms, resellers, and travel agents, are covered under the FTC rule. The FTC rule requires that covered businesses disclose the total price upfront. Additionally, the FTC rule requires that the business displays the total price more prominently than other pricing information and discloses previously excluded charges, avoiding vague phrases such as "processing fee" or "convenience fee."

Notably, restaurant fees, including large-party service fees, delivery fees, and credit card surcharges, are excluded from the FTC rule banning junk fees. In 2023, when the FTC rule was proposed, restaurants were among the businesses that were to be covered by the proposed FTC rule. The proposed FTC rule would have required menu prices to be inclusive of any mandatory fees, including mandatory service fees that served as a substitute for tips. Restaurants that implemented these types of fees could have complied with the proposed rule by maintaining their regular menu prices and returning to the traditional tipping model, or, alternatively, increasing their menu prices to incorporate the mandatory service charge and continue operating on a no-tipping-expected model.

Benefits articulated by the FTC in relation to the application of the proposed rule to restaurants include (1) reduced deadweight loss in the current market equilibrium, (2) reduced psychological costs to consumers caused by surprise fees, (3) increased transparency regarding the purpose of fees, and (4) increased ability of consumers to make informed choices. However, the National Restaurant Association and other industry advocates successfully lobbied to have restaurants excluded from the FTC rule, collecting over 4,600 comments from restaurant operators.

Opponents of the proposed FTC rule being applied to restaurants argued that the restaurant industry has faced economic challenges since the pandemic, and disallowing restaurant-related fees would cost an already struggling industry upwards of 3.5 billion dollars. Restaurants argued that the proposed FTC rule would disrupt their ability to use these fees to provide equitable compensation to kitchen staff, although the FTC noted that many of the comments have misunderstood the proposed rule, believing it would ban fees altogether instead of requiring their disclosure as part of the total menu price.

Rather than targeting specific industries, which is the ultimate approach taken by the FTC and was urged by opponents of Minnesota's new junk fees law, Minnesota enacted a broader statute and added exceptions for certain industries. Unfortunately for many restaurant operators, the junk fees law in Minnesota did not exclude the restaurant industry. And while proponents of the law point out that it is not an outright ban on fees because the law does not limit how much can be charged for a good or service, it has the effect of necessitating most restaurants further increase their prices, reduce employee pay or benefits, or reduce already thin operating margins. For an industry that was one of the most affected by the Covid-19 pandemic and which already has to grapple with state laws and regulations on gratuities that increase the cost of doing business, the new junk fees law is one more hurdle to clear in order to find success in an industry where success is notoriously challenging to achieve.

DRI CORNER

By Tony Novak, Larson King
MDLA DRI State Representative

Greetings from DRI! I hope you all had a wonderful holiday season and took some time off to recharge. As I write this, I'm looking ahead to MDLA's Mid-Winter event at Grandview Lodge. One of my favorite events of the year. I'm also looking forward to the North Central Regional Meeting in San Antonio in February. That meeting always allows great collaboration and idea-sharing among the different state defense organizations. I'm sure the MDLA leadership team will come away from that meeting with new ideas and plans for the organization. I can also share, from personal experience, how complimentary the other state organizations are when talking about MDLA, its committees, events and initiatives.

Finally, I encourage all of you to take some time, as you begin a new year, to map out your networking and business development plans. And I hope you will take a moment to look at dri.org to find a Seminar or Event that could benefit your practice. I also hope you can join us for DRI's Annual Meeting in Washington D.C. The Annual Meeting is DRI's biggest event of the year and takes place October 21-23, 2026 – a beautiful time of year to visit the nation's capital. Planning is underway for that Meeting, and I'm confident DRI will put on a spectacular event.

As always, if you have any questions about DRI or are considering becoming a member (or renewing an old membership), please let me know.

JOIN A COMMITTEE

MOTOR VEHICLE ACCIDENT

MDLA's Motor Vehicle Accident Committee consists of attorneys who primarily represent insurance carriers and their insureds in the defense of motor vehicle accident related claims. The attorneys associated with this committee typically defend claims involving no-fault, property damage, bodily injury and wrongful death issues. We focus on providing members with relevant speakers and regular updates on developments in this practice area. We also provide the members with a committee-specific listserv for communicating about relevant and emerging topics involving this practice area.

For more information, email committee chair Angela Miles ANGELA_L_MILES@progressive.com or Vice Chair Jeff Grace jagrace@arthurchapman.com

DIVERSITY & INCLUSION COMMITTEE

Seeking to promote diversity within its membership and the law firms in which its members work. We appreciate and embrace that our legal community and clientele come from a rich variety of diverse cultures, beliefs, perspectives and backgrounds. Through an open and inclusive membership, we hope to achieve a better understanding of the broader issues of diversity, as well as the cultural similarities and differences within our society, so that we may better serve the legal community and the people we represent.

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For more information, email committee Chair, Chasse Thomas, Larson King - cthomas@larsonking.com

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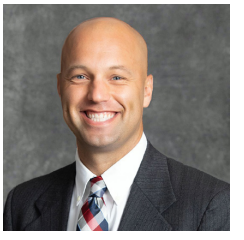

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