



March 15, 2023

Honorable Members of the Legislature
Minnesota State Capitol
Saint Paul, Minnesota 55155

RE: Hear & Pass HF1859/SF1988

The Minnesota Drywall and Plaster Association (MDPA) is a non-profit trade association that advocates for the interests of Minnesota's union-signatory commercial drywall and plastering employers. MDPA members employ approximately 2,000 carpenters, drywall finishers, plasterers, and laborers in Minnesota who perform framing, drywall, plastering, and interior systems work throughout the state. MDPA prides itself on representing construction contractors that accept responsibility for paying fair wages and benefits, and abide by labor and employment standards, workers compensation laws, and unemployment insurance requirements.

MDPA supports the Construction Worker Wage Protection Act, HF1859/SF1988 as amended by the H1859A4 amendment.

The use of multiple contractors on a single project is standard practice in the commercial construction industry. Multiple contractors commonly work for a general contractor on a project. They may also work directly for a project owner, or they may work under a hybrid arrangement in which the project owner engages a construction manager to oversee the contractors with which the owner has contracts. Each of these arrangements is ordinarily lawful and legitimately structured for the use of specialized contractors to perform specific scopes of work. However, the subcontracting structure may also be exploited by unscrupulous employers to avoid various obligations, including compliance with Minnesota's employment laws.

In the traditional contracting model, a general contractor selects a specialized subcontractor to perform a specific scope of work. The subcontractor performs the work with its employees and pays them accordingly. Increasingly, however, MDPA's members find themselves competing with companies that seek to reduce their cost structures and liabilities by dissociating themselves from the traditional obligations that come with being an employer. The key to these schemes is often a contractor's willingness to characterize most or all their regular, recurring workforce as

independent contractors rather than as employees. This business model allows unscrupulous contractors to get the benefits of workers' labor while evading the costs of paying minimum wage, overtime, workers compensation and unemployment insurance for their workforce.

The traditional contracting model stands in stark contrast to models that subvert Minnesota's employment laws. Perhaps the most common problematic contracting arrangement involves the use of a "labor broker". The labor broker acts as a middleman between the upstream contractor and the workers who actually do the work on the project. Under this model, a drywall contractor is hired by a general contractor to perform a project. The drywall contractor then subcontracts the work to the labor broker. The labor broker in turn subcontracts the work to individuals who work as a crew on the project, take direction from the drywall contractor, and generally are indistinguishable from traditional employees to a casual observer. Yet each member of that crew is treated as a separate independent contractor on the project. On paper, those workers have none of the legal protections that apply to employees, and any attempt to enforce employment laws on this arrangement must first successfully prove that the workers are employees – an evidence intensive effort that often fails for a variety of reasons. Similar challenges exist with the enforcement of other laws, including but not limited to the collection of state and federal income taxes from those participating in these schemes.

The nature of the construction industry can make it difficult for government authorities to achieve meaningful enforcement against unscrupulous, cheating contractors. First, the majority of the construction industry operates on a project basis, which can have the effect of isolating risk to specific projects and the time period associated with them. Once a project is completed and a crew has been disbanded, it is difficult to investigate activity that occurred on the project. Second, the construction industry relies heavily on foreign-born workers who are especially vulnerable to nefarious independent contractor schemes that exert unlawful control over their wages and working conditions. Finally, when liability for worker exploitation is borne solely by unstable, problematic employers, it is often extremely difficult – due to undercapitalization, corporate shape-shifting, and individuals who cannot be located – to achieve meaningful enforcement even when the responsible party can be identified. Holding the upstream contractor liable for such an arrangement is a real solution to these real problems.


MDPA believes that the Construction Worker Wage Protection Act, H.F. 1859/S.F. 1988, would reduce the incidence of unlawful subcontracting arrangements in Minnesota's construction industry and the resulting harm to legitimate construction employer, construction workers, and Minnesota taxpayers.

MDPA's unequivocal support for the bill is conditioned on the H1859A4 amendment, which exempts any contractor who is signatory to a specified collective bargaining agreement from coverage of the law.

MDPA's members are signatory to collective bargaining agreements that would satisfy the language of the A4 amendment. As the amendment requires, those agreements contain provisions that offer direct recourse to an employee who alleges wage theft against their employer. Moreover, an employee working under a bona fide collective bargaining agreement has the right to union representation in any dispute with his employer. And finally, bona fide construction industry collective bargaining agreements normally contain other provisions that make wage theft issues highly unlikely to occur on a covered jobsite. These structures combine to negate the need for additional wage theft protections in a setting where a bona fide collective bargaining agreement applies.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Nesse". The signature is fluid and cursive, with a large initial "J" and "N".

John Nesse
Executive Director