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The Law of
Changed
Circumstances

CONSTRUCTION LAW:
The Ripple Effect of
Skilled Trade Shortages
in Michigan

Where Does It All
Begin (in Michigan
Commercial Leases)?

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CONSTRUCTION LAW: The Ripple Effect of Skilled Trade Shortages in Michigan

By John D. Gwyn

In the past five years, the construction industry in Michigan has faced formidable business challenges, including a severe shortage of skilled tradespeople. This phenomenon is having a ripple effect across the entire sector and has impacted contractors, subcontractors, and developers, as well as the attorneys who represent them. New immigration and tariff policies, as proposed at the federal level, may further fuel a perfect storm that could profoundly affect the existing labor shortage moving forward.

From a historical perspective, the COVID-19 pandemic presented challenges for employers, including absenteeism and material shortages. Since then, the construction industry has also experienced a wave of retirements among experienced tradespeople. With baby boomers reaching retirement age, a wealth of knowledge and skill has been exiting the industry at a rapid rate. Simultaneously, a decline in participation in vocational training programs has left a widening gap in the pipeline of new talent. Some of this is a result of not effectively informing younger workers of the opportunities that exist in the profession. As a result, the trades have struggled to attract this sector of workers due to misconceptions about low pay, limited opportunities, and difficult working conditions. There is no doubt that construction work can be physically demanding and working conditions are not always the best, making it a less attractive trade for some. However, employers are getting more creative by building in extra time for delays, paying higher wages, and putting more effort into finding the skilled workers who fit their needs.

PROJECT DELAYS AND THE DOMINO EFFECT

For construction lawyers, the impact of this labor shortage is multifaceted for their clients. It most directly leads to a surge in project delays and cost overruns. Construction contracts, meticulously drafted to outline project timelines and budgets, are now routinely tested. Force majeure clauses, once treated as an academic concept, are becoming a frequent topic of negotiation. The shortage can exacerbate prevailing tensions among project stakeholders, including outside investors and lenders, increasing the likelihood of disputes and litigation. The Associated General Contractors of America reported that 71% of Michigan construction firms have had trouble filling craft positions since 2021. Some construction companies stated that they had turned down projects because they couldn't find enough workers. Also, the average cost of construction projects in the Detroit area increased by about 10% during that time, and labor shortages were a large factor.

However, there are a few initiatives that have happened on a national and state level recently that are encouraging. The federal Infrastructure Investment and Jobs Act, signed into law in 2021, is a bipartisan \$1 trillion bill that substantially increased funding to address these problems. The legislation funds new construction projects including roads, bridges, and energy grids and, in doing so, creates demand for construction workers. Recently, on a state level, Gov. Whitmer announced a \$3 billion initiative to fix Michigan's aging transportation infrastructure. As always, funding is a concern, but the state intends to pull



revenue from our current gas tax and collected recreational marijuana funds and possibly even change the Michigan corporate income tax.

LEGAL IMPLICATIONS FOR CONTRACTORS, SUBCONTRACTORS, AND DEVELOPERS

Many attorneys in our area report that their general contractor clients are increasingly finding themselves in a precarious position. They are bound by contractual obligations to deliver projects on time and within budget; however, labor shortages hinder their ability to do so. This tension can lead to disputes over contract enforceability, insurance coverage, and even potential claims of negligence. Some subcontractors also face similar challenges, as delays and cost increases may strain their financial resources. This can lead to payment disputes and, in some cases, the need to file mechanic's liens to secure payment. The complex web of relationships on a large construction project means subcontractors may find themselves caught in the middle of disputes between contractors and developers. As a result, the trades may be forced to initiate a lawsuit to enforce the liens, pursue bond claims, and secure payment within the parameters of the Michigan Construction Lien Act.

Ultimately, developers and project owners bear the most financial risk and will be included as necessary parties in this type of litigation. While a case is pending, if the project remains unfinished, the delays can disrupt timelines, impact financing, and even jeopardize the viability of completing the job. The parties' legal counsel are tasked with navigating a complex landscape, including contract interpretation and insurance claims. In Oakland County, there has been a trend to engage in alternative dispute resolution, and most of our local facilitators are experienced lawyers or retired judges who are very familiar with these issues and do a great job of narrowing

the issues for trial if the matter does not resolve during the mediation process.

A CALL TO ACTION FOR CONSTRUCTION LAWYERS

The skilled trade shortage is a complex issue with no easy solutions. However, construction lawyers can still play a pivotal role in mitigating its impact. Attorneys have to be creative in finding ways to protect our clients' interests. Maybe that means suggesting alternative project designs that require less specialized labor or even recommending delays to start the project when the market's more stable. It's crucial for legal counsel to get language into contracts that protects clients in these kinds of labor issues.

By understanding the root causes of the shortage, anticipating potential legal issues, and proactively advising clients, attorneys can assist in navigating these turbulent waters. Beyond traditional contract review and dispute resolution, attorneys must now serve as strategic advisers, helping clients anticipate potential pitfalls, negotiate creative solutions, and mitigate risks in a volatile labor market. This might involve crafting more flexible contract clauses, exploring alternative dispute resolution methods, and advising clients on workforce development strategies.

CONCLUSION

The legal profession plays an important role in addressing the root causes of the shortage. Supporting initiatives that promote vocational training, improve the perception of trade careers, and address the skills gap is not just good business; it is an investment in the future of the industry. By working collaboratively and proactively, legal professionals can help the Michigan construction industry navigate these shifting sands and build a more resilient and sustainable future. 42



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