

## Labor Shortages In Construction: Managing Legal And Operational Risks

Written by: Meghan Douris, Partner, Seyfarth Shaw LLP

Labor shortages in the construction industry have become more than a scheduling headache – they are a legal and financial risk multiplier. As contractors scramble to meet deadlines with limited manpower, shortcuts in compliance, safety, and trade partner oversight become more likely. These gaps can expose companies to regulatory penalties, contractual disputes, and reputational damage. Understanding how workforce constraints intersect with labor laws and contractual obligations is critical to mitigating the risks and navigating these challenges without compromising compliance or project integrity.

The construction industry has faced persistent workforce challenges for years, but recent trends have intensified the problem. Factors such as an aging workforce, reduced immigration, and post-pandemic recovery pressures have left contractors struggling to find skilled labor. According to Associated Builders and Contractors, the construction workforce shortage surpassed half a million workers in 2024; in the same year, Associated General Contractors reported 88% of construction companies had difficulty finding qualified workers.

While these shortages are often viewed as operational hurdles, they carry significant legal consequences, as well. When projects fall behind schedule or budgets balloon, disputes over performance, compliance, and liability often follow – making proactive mitigation strategies essential.



When labor is scarce, contractors frequently rely on overtime or temporary workers to meet deadlines. These practices can trigger wage and hour violations, misclassification issues, and even immigration compliance risks. For example:

- » **Overtime and Wage Violations:** Extended work hours without proper compensation can lead to Fair Labor Standards Act claims. The U.S. Department of Labor reported a 12% increase in wage and hour enforcement actions in the construction sector in 2023. Penalties for violations can exceed \$10,000 per infraction, plus back wages and attorney fees.
- » **Worker Misclassification:** Using independent contractors or staffing agencies without proper vetting may result in penalties for misclassification – a trend highlighted in

recent state-level audits. For example, improper use of independent contractors can trigger audits and penalties under state laws like California's AB 5. Misclassification claims can lead to tax liabilities and exposure under workers' compensation statutes.

- » **Immigration Compliance:** Increased reliance on labor brokers heightens the risk of hiring undocumented workers, exposing contractors to federal enforcement under the Immigration Reform and Control Act, with fines ranging from \$500 to \$16,000 per violation.

Labor shortages often mean crews are overworked or inexperienced – conditions that increase accident rates. The Occupational Safety and Health Administration (OSHA) has noted that fatigue and lack of training are major contributors to workplace incidents. In fact, OSHA cited construction firms for over \$40 million in penalties related to safety violations in 2023, with many cases linked to inadequate training and supervision.

Labor shortages can ripple through every tier of a project, creating contractual exposure for prime contractors and trade partners alike. A trade partner's inability to staff projects adequately can cascade into prime contractor liability and result in claims of:

- » **Breach of Labor Sufficiency Clauses:** Many contracts require adequate staffing. Failure to comply can trigger breach claims.
- » **Delay Damages and Liquidated Damages:** Workforce inadequacy (inadequate manpower or inexperienced labor requiring work to be redone) often leads to missed milestones, exposing contractors to significant financial penalties.
- » **Termination Rights:** Owners increasingly include provisions allowing termination for chronic labor shortfalls and/or improperly trained and experienced project supervision.

As the current political climate puts heightened pressures on hiring in the industry, construction teams should embed labor risk management into both contract drafting and project executions, examining the relevant contract documents prior to execution and implementing practices during construction to mitigate the impacts.

- » **Contract Drafting:** Incorporate labor sufficiency clauses, indemnity provisions, and compliance certifications into prime and subcontract agreements. Consider labor escalation clauses and force majeure carve-outs for severe labor shortages.
- » **Compliance Audits:** Regularly review wage and hour practices, immigration documentation, and trade partner compliance. Implement digital compliance platforms for real-time monitoring.
- » **Safety Programs:** Beyond the regular toolbox talks, anticipate the inexperienced labor, beef up the safety trainings, and document all safety trainings and plans in detail.
- » **Workforce Planning:** Assess labor availability during bid preparation and include contingency plans for shortages.
- » **Monitor Wage and Hour Compliance:** Increased overtime and temporary labor can trigger violations – implement regular audits.

In today's labor-constrained market, owners, developers, contractors, and trade partners alike must assess the current market and factor contingencies for shortages into their contract documents and their bids and estimates

Labor shortages in the construction market are not going away. They are a legal exposure point that can ripple through every layer of a construction project. By anticipating these risks and embedding compliance measures into contracts, project planning, and regular project documentation, construction teams can mitigate disputes and regulatory penalties, and position themselves as reliable partners in a volatile market. 



---

### About the Author

---

Meghan Douris is a partner in the construction law practice at [Seyfarth Shaw LLP](#). She helps construction clients navigate competing pressures by focusing on smart risk allocation, early issue spotting, and practical strategies to avoid or resolve disputes.

---

### About the Article

---

Reprinted from [Construction Executive](#), March, 2026, a publication of [Associated Builders and Contractors](#). Copyright 2026. All rights reserved. Associated Builders and Contractors is a national construction industry trade association representing more than 21,000 members. Based on the merit shop philosophy, ABC helps its members develop people, win work, and deliver work safely, ethically, and profitably for the betterment of the communities in which they work.

Any views and opinions expressed in this article may or may not reflect the views and opinions of the Construction Management Association of America (CMAA). By publishing this piece, CMAA is not expressing endorsement of the individual, the article, or their association, organization, or company.