

Construction One-Minute Read: Illinois Restricts Retainage on Private Construction Projects

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Every private construction project in Illinois will be affected by a new law, effective immediately. The Contractor Prompt Payment Act (815 ILCS 603/1, et seq.) was amended to restrict the use of retainage on construction projects. Specifically, no construction contract may withhold more than 10 percent in retainage prior to 50 percent completion of the contract. When a construction contract is 50 percent complete, retainage must be reduced to no more than 5 percent and remain at no more than 5 percent until the contract is completed. This new amendment will apply to all construction contracts, i.e., those between an owner and a contractor and those between a contractor and subcontractors.

Although the law is effective as of August 20, 2019, it is silent as to its retroactive effect. In other words, if a project is currently underway and is more than 50 percent complete, must the contractor immediately pay out to its subcontractors all retainage in excess of 5 percent? If a project is less than 50 percent complete and the owner is holding more than 10 percent in retainage, is the owner required to pay the excess to the general contractor without delay?

Every construction project is unique, yet owners and contractors should consider reviewing their contracts for compliance with the 10 percent/5 percent rule.

The Prompt Payment Act exemptions for publicly funded projects, single-family residences, and multiple-family residences of 12 or fewer units still apply.

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