

NY Prompt Pay Act for Private Construction Caps Retainage at Five Percent

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New York's Prompt Pay Act, which sets the standards that govern private commercial construction contracts exceeding \$150,000, was amended effective November 17, 2023. The Amendment known as Senate Bill 3539 provides two significant changes which advance the timing of payments from the owner to the contractor. First, Section 756-a now permits a contractor to submit its final invoice for payment to the owner upon substantial completion (as "such term is defined in the contract or as it is contemplated by the terms of the contract"). Failure to release retainage as required by the law will subject the party holding retainage to interest of one percent per month from the date the retention was due and owing. Under the prior version of the law, a contractor had to complete performance of all of its contractual obligations before submitting a final invoice for payment. Second, Section 756-c now provides that no more than five percent retainage may be retained by the owner, contractor, or subcontractor and, in no case, shall retainage exceed the actual percentage retained by the owner. The prior law set no limits for retention and allowed the owner, contractor, or subcontractor to withhold retainage of a "reasonable amount of the contract sum." The new law applies to all contracts entered on and after November 17, 2023.

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