

# Prompt Payment Laws Protect Your Right to Timely Payment

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Prompt payment is important. Slow payment can strain the financial resources of a small business, undermining its ability to pay bills, payroll and other operating expenses. Few things can threaten the survival of a small contractor more than .slow payment on projects

Many state legislatures have tried to help by enacting prompt payment laws. Each state's laws are different, but state prompt payment laws typically specify the time when payment is due and the consequences for a failure to pay on time. More often than not, a prompt payment act will provide for a recovery of interest at a relatively high rate and attorneys' fees .for a contractor that must go to court to obtain payment

Let's look at an example. Assume the applicable state prompt payment act requires prime contractors to pay subcontractors within thirty days of receiving an application for payment. If the prime contractor fails to pay on time, the subcontractor recovers 1 percent interest per month and its attorneys' fees. This means that a sub who sues a prime contractor over an unpaid \$20,000 application for payment and wins in court one year later after spending \$5,000 for .attorneys' fees, will recover a \$27,400 judgment against the prime

Prompt payment act supporters emphasize the importance of allowing unpaid contractors to recover interest and attorneys' fees so that an owner or prime contractor who fails to pay cannot use delay and anticipated court costs to coerce the unpaid contractor into accepting much less than was owed. The right to recover interest and fees might not prevent some contractors from settling early for less, based on short-term financial pressures, but at least an unpaid contractor with the .willingness to fight may be fully and fairly paid in the end by receiving interest and attorneys' fees

Not all failures to pay are created equal. Some owners or primes have legitimate reasons not to pay promptly. For example, the pay application may overstate the work performed. It may charge for work not performed or not properly chargeable. The work reflected by the application might be defective, or incomplete, forcing the owner or prime to repair and complete the work at its costs. A prime may not have the money to pay a sub because the owner failed to pay its prime. Many state prompt payment statutes recognize these legitimate reasons not to pay and specifically allow them. An .owner or prime will not be obligated to pay promptly for defective work or to pay a false or fraudulent application

Not all contracts are created equal, either. Some owners and primes insert clauses in their standard contracts that try to circumvent prompt payment act requirements. For example, the owner may impose a list of requirements for a "proper" application for payment, including sworn certifications about the work performed and releases of liens and claims, which will excuse payment obligations if they are not met and defeat the prompt payment act, where a claim for payment is disputed. Moreover, many prime contractors employ "pay-if-paid" clauses so that the prime contractor is not required to pay subs unless and until the owner pays the prime. Some state statutes tolerate these tactics more readily than others. A contractor should review its contracts carefully and consult an attorney if necessary to assure that its contracts do not .undermine the contractor's prompt payment rights provided under the law

Familiarize yourself with any prompt payment laws in the states where you work. Know when payment is required. Know what legitimate grounds exist for refusing to pay. Know what your rights are if you are not paid. Armed with this .information, you can use the prompt payment laws to secure timely payment for your work

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