



Illinois Imposes Retainage Limits In Construction Contracts

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The rules for drafting construction contracts changed overnight in Illinois. On August 20, 2019, Governor Pritzker signed [Public Act 101-0432](#), amending the Contractor Prompt Payment Act to limit the amount of permissible retainage that can be held on construction projects. The new limitations apply to all privately funded projects in Illinois except for residential construction of 12 or fewer units in a single building.

P.A. 101-0432, which went into effect immediately upon becoming law, requires that construction contracts limit retainage to no more than the following:

1. For any payment made prior to the completion of 50 percent of the contract, retainage may not exceed 10 percent of payments made
2. Upon achieving 50 percent completion, the withheld retainage must be reduced to no more than 5 percent
3. Following 50 percent completion, no more than 5 percent of subsequent payments may be held as retainage

Retainage limits have been introduced in one form or another in every

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session of the Illinois General Assembly dating back to at least 2005. In August 2018, Governor Rauner vetoed the latest iteration of these acts, [S.B. 3052, raising concerns](#) that enacting this law “could potentially discourage economic growth, harm existing businesses, increase financing costs, and leave owners with no recourse to address performance issues on construction projects.” The law enacted last week was identical to S.B. 3052.

Owners and general contractors must now take immediate steps to evaluate their business practices in light of P.A. 101–0432. As the Amendment to the Contractor Prompt Payment Act is now in full force and effect, construction contracts must be reviewed immediately to confirm compliance with the new restrictions on payment withholding. Owners and general contractors should review prequalification procedures and reassess bonding requirements to reduce risks that would traditionally have been mitigated by retainage.

Project participants will also need to negotiate who is liable to finance retention payments to subcontractors in the inevitable scenario where subcontractors performing early work reach 50 percent completion on their subcontracts, but the general contractor is still subject to 10 percent retainage.

The new retainage limits also reinforce the importance of filing claims in a timely manner and ensuring that payment procedures strictly comply with the Illinois Mechanics’ Lien Act. Under the new payment procedures, it is less likely that there will be sufficient retention to cover end-of-job issues.