

# POLITICO ALERT

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**California's prompt payment laws are scattered throughout the state's Business and Professions Code, Public Contracts Code and Civil Code, and their applicability varies depending on the type of project, the type of payment, and who is paying.**

**Keeping the statutory payment requirements straight can at times become confusing. To help, below we have provided a summary of the state laws regarding payment timelines, payment withholdings and penalties.**

## Private Projects

### Progress Payments – Owners to Direct Contractors

- (1) Deadline:** An owner must pay a direct contractor within **30 days** after notice demanding payment pursuant to the contract. (Civil Code §8800)
- (2) Waivable:** Yes, waivable in writing. (Civil Code §8800)
- (3) Good Faith Disputes:** If there is a good faith dispute between the owner and a direct contractor as to a progress payment otherwise due, the owner may withhold from the progress payment up to **150%** of the disputed amount. (Civil Code §8800)
- (4) Penalty:** If an owner wrongfully withholds a progress payment it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recovery of its reasonable attorney's fees and costs. (Civil Code §8800)

### Retention Payment – Owner to Direct Contractors

- (1) Deadline:** If an owner has withheld retention from a direct contractor, the owner must pay the direct contractor within **45 days** after completion of the work of improvement. However, if a part of the work of improvement will become property of a public entity, the owner may condition payment of retention on acceptance by the public entity of the part of the work improvement. (Civ. Code §8812)
- (2) Waivable:** No. (Civ. Code §8820)
- (3) Good Faith Disputes:** If there is a good faith dispute between the owner and the direct contractor as to retention otherwise due, the owner may withhold from the retention up to **150%** of the disputed amount. (Civ. Code §8812)
- (4) Completion of Disputed Work:** If a direct contractor gives notice to the owner that work in dispute has been completed in accordance with the contract, the owner must give notice to the direct contractor of acceptance or rejection of the disputed work within **10 days**. If accepted, the owner must pay the direct contractor the retention withheld relating to the disputed work within **10 days**. (Civ. Code §8816)
- (5) Penalty:** If an owner wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8818)
- (6) Applicability to Lenders:** Does not apply to a retention payment withheld by a lender pursuant to a construction loan agreement. (Civ. Code §8822)

## Progress Payments – Direct Contractor to Subcontractors and Subcontractors to Other Subcontractors

- (1) **Deadline:** A direct contractor must pay its subcontractors, and a subcontractor must pay its subcontractors, within **7 days** after receiving a progress payment. (Bus. & Prof. Code §7108.5)
- (2) **Waivable:** Yes, waivable in writing. (Bus. & Prof. Code §7108.5)
- (3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor, or between a subcontractor and its subcontractor, as to a progress payment otherwise due, the direct contractor or subcontractor may withhold from the progress payment up to **150%** of the disputed amount. (Bus. & Prof. Code §7108.5)
- (4) **Penalty:** If a direct contractor or subcontractor wrongfully withholds a progress payment the direct contractor or subcontractor is liable for prompt payment penalties of **2% per month** and **discipline** by the California Contractors State License Board. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Bus. & Prof. Code §7108.5)

## Retention Payment – Direct Contractor to Subcontractors

- (1) **Deadline:** If a direct contractor has withheld retention from one or more of its subcontractors, the direct contractor must pay its subcontractors within **10 days** after receiving all or a portion of retention, unless the retention received is specifically designated for a particular subcontractor. (Civ. Code §8814)
- (2) **Waivable:** No. (Civ. Code §8820)
- (3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor as to retention otherwise due, the direct contractor may withhold from the retention up to **150%** of the estimated value of the disputed amount. (Civ. Code §8814)
- (4) **Completion of Disputed Work:** If a subcontractor gives notice to the direct contractor that work in dispute has been completed in accordance with the contract, the direct contractor must give notice to the subcontractor of acceptance or rejection of the disputed work within **10 days**. If accepted, the direct contractor must pay the subcontractor the retention withheld relating to the disputed work within **10 days**. (Civ. Code §8816)
- (5) **Penalty:** If a direct contractor wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8818)
- Note:** While Business and Professions Code §7108.5 (progress payments) applies to both direct contractors and subcontractors, Civil Code §§8814 *et seq.* (retention) only applies to direct contractors.

## State Public Works Projects

### Progress Payments – Public Entities to Direct Contractors

- (1) **Deadline:** A public entity must pay a direct contractor within **30 days** after receipt of an undisputed payment request. (Pub. Contracts Code §10261.5)
- (2) **Waivable:** Not addressed.
- (3) **Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §10261.5)
- (4) **Penalty:** If a public entity fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §10261.5)

### Retention Payment – Public Entities to Direct Contractors

- (1) **Deadline:** A public entity must pay a direct contractor within **60 days** after completion of the work of improvement. (Pub. Contract Code §7107)
- (2) **Waivable:** No. (Pub. Contract Code §7107)
- (3) **Disputes:** If there is a dispute between a public entity and the direct contractor as to retention otherwise due, the public may withhold from the retention up to **150%** of the disputed amount. (Pub. Contract Code §7107)
- (4) **Penalty:** If a public entity wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Pub. Contract Code §7107)

## Progress Payments – Direct Contractor to Subcontractors and Subcontractors to Other Subcontractors

- (1) **Deadline:** A direct contractor must pay its subcontractors, and a subcontractor must pay its subcontractors, within **7 days** after receiving a progress payment. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §10262)
- (2) **Waivable:** Yes, waivable in writing. (Bus. & Prof. Code §7108.5)
- (3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor, or between a subcontractor and its subcontractor, as to a progress payment otherwise due, the direct contractor or subcontractor may withhold from the progress payment up to **150%** of the disputed amount. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §10262.5)
- (4) **Penalty:** If a direct contractor or subcontractor wrongfully withholds a progress payment the direct contractor or subcontractor is liable for prompt payment penalties of **2% per month, discipline** by the California Contractors State License Board, and **termination** by the contracting agency. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §§10262, 10262.5)

## Retention – Direct Contractors to Subcontractors

- (1) **Deadline:** A direct contractor must pay its subcontractors within **7 days** after receiving all or any portion of retention, unless the retention received is specifically designated for a particular subcontractor. (Pub. Contracts Code §7107)
- (2) **Waivable:** No. (Pub. Contracts Code §7107)
- (3) **Bona Fide Disputes:** If there is a bona fide dispute between a direct contractor and a subcontractor as to retention otherwise due, the direct contractor may withhold from the retention up to **150%** of the estimated value of the disputed amount. (Pub. Contracts Code §7107)
- (4) **Penalty:** If a direct contractor wrongfully withholds a retention payment the direct contractor is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Pub. Contracts Code §7107)
- Note:** While Business and Professions Code §7108.5 (progress payments) applies to both direct contractors and subcontractors, Public Contracts Code §7107 (retention) only applies to direct contractors.

## Public Utility Projects

### Progress Payments – Direct Contractor to Subcontractors

- (1) **Deadline:** A direct contractor must pay its subcontractors within **21 days** after receiving a progress payment. (Civ. Code §8802)
- (2) **Waivable:** Yes, waivable in writing. (Civ. Code §8802)
- (3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor as to a progress payment otherwise due, the direct contractor may withhold from the progress payment up to **150%** of the disputed amount. (Civ. Code §8802)
- (4) **Penalty:** If a direct contractor wrongfully withholds a progress payment it is liable for prompt payment penalties of **2% per month**. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8802)

## California State University Projects

### Progress Payments – CSU to Direct Contractors

- (1) **Deadline:** CSU must pay its direct contractors within **39 days** after receipt of an undisputed and properly submitted payment request. (Pub. Contracts Code §10853)
- (2) **Waivable:** Not addressed.
- (3) **Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §10853)
- (4) **Penalty:** If CSU fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §10853)

## Local Public Works Projects

### Progress Payments – Local Public Entities to Direct Contractors

**(1) Deadline:** A local public entities must pay a direct contractors within **30 days** after receipt of an undisputed and properly submitted payment request. (Pub. Contracts Code §20104.50)

**(2) Waivable:** Not addressed.

**(3) Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §20104.50)

**(4) Penalty:** If a local public entity fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §20104.50)