

Navigating the New CASPA Requirements

PUBLISHED ON
June 13, 2018

Gov. Tom Wolf on Tuesday signed an amended bill into law as Act 27, which amends the [Contractor and Subcontractor Payment Act](#) (CASPA) of Pennsylvania and takes further steps to protect the fees of contractors and subcontractors.

CASPA has been in effect since 1994 to ensure contractors and subcontractors are paid for work they perform on a construction project. But construction industry officials said the law needed updates to provide clearer timelines and provisions for collecting overdue bills on work that already had been done.

Some of the changes included in the amended version of CASPA are as follows:

Suspension of performance: If project bills go unpaid for too long, a contractor can walk off a job. Contractors and subcontractors are still free to negotiate their own payment and work suspension terms into a contract, and if the owner fails to adhere to those terms, contractors and subcontractors may stop performance of the work. However, Act 27 adds a default protection for contractors and subcontractors whose contracts do not contain a suspension of work clause by capping the amount of time a contractor or subcontractor may go unpaid without suspending work at 70 days beyond the unpaid bill. The new law provides that the contractor or subcontractor may stop work after providing two separate, 30-day notices that work will be suspended and one final 10-day notice of when the work will be suspended without payment, and owners are expressly prohibited from contracting beyond this 70-day timeframe in their contracts.

CASPA is required: Previously, certain timing provisions of the act could be modified by contract, but CASPA was unclear or silent as to whether the provisions could be waived. CASPA can no longer be waived, except where the act specifically allows waivers.

Good faith reasoning: If an owner isn't paying for the work being done, a written explanation of good faith reason for the withholding due to a deficiency item must be given within 14 days of the contractor's invoice and the amount withheld by the owner must be reasonable. Similarly, if a contractor or subcontractor is withholding payment due to a deficiency item, the withholding must be justified in writing within the time period specified in the construction contract or, if a time period is not specified, within 14 days of notice of the deficiency item. Failure by an owner, contractor or subcontractor to provide the good faith reasoning in the time periods required by the act is considered a waiver of basis to withhold, requiring full payment. Further, any amount due for items satisfactorily completed under the construction contract must be paid. Interestingly, Act 27 does not limit the amounts contractors and subcontractors may withhold, but owners are only permitted to withhold reasonable amounts. Additionally, while owners are required to give a good faith reason within 14 days of the invoice, contractors and subcontractors may provide the reason in accordance with their construction contract or within 14 days.

Some kind of payment must be made during a cost dispute: CASPA has already provided that an owner, contractor or subcontractor who notices a discrepancy or error in an invoice, such as an overcharge, must give written notice of the discrepancy or error within 10 working days of receiving the invoice. However, under Act 27, the recipient of the erroneous invoice now must still pay the correct amount on the invoice due date.

Retainage: It can be released before completion of a project by posting a maintenance bond with approved surety for 120 percent of the amount of retainage. If retainage is held more than 30 days after final acceptance of the work, written explanation must be given for withholding. Failure to provide the written explanation is considered a waiver of basis to withhold and payment in full must occur.

These new changes to CASPA are scheduled to take effect October 10. Although the changes may increase the negotiation power of contractors and subcontractors, the changes also increase the obligations of owners and contractors to maintain clear payment records. Owners, contractors and subcontractors withholding payments, and owners holding retainage in particular, should be aware of their respective obligations to give a good faith reasoning for the withholding of payment or the continued holding of retainage within the appropriate time frames set forth in the act.

Anyone in the construction industry that has questions about all of the ramifications of the amendment can [contact me](#) or any member of the [Barley Snyder Construction Industry Group](#).

:



Reilly S. Noetzel

Partner

Tel: (717) 399-1561

Email: rnoetzel@barley.com