

CLIENT ALERT



California Limits Contractor Retention to Five Percent

OCTOBER 6, 2025

Traditionally, construction contracts provide for retention of progress payments of ten percent. The purpose is to incentivize the contractor to complete its job timely without distractions from other jobs that the contractor may have. California now joins several other states in limiting retention in private works of improvement to five percent of the progress payment, commencing with contracts entered into in 2026 under Senate Bill 61 adding Section 8811 to the California Civil Code. This brings private works of improvement in California in line with public works, which have limited retention to five percent since 2012. The new rule does not apply to a residential project if the project is not mixed-use and does not exceed four stories.

This limitation applies to the owner's payments to its direct contractors and to contractor and subcontractor payments to their subcontractors at all levels. Additionally, if there is a lower retention rate for direct contractors, then that lower rate acts as a limitation for all subcontractors at each level.

Advocates for the new rule claim that it will reduce financial hardships on contractors and particularly smaller subcontractors. Since this new limitation dilutes the protection of owners against contractors' and subcontractors' non-performance, owners may seek other methods of mitigating these risks, such as more payment and performance bond requirements. This, of course, may increase the cost of construction in California.

Winston will continue to monitor developments and provide updates as they become available. Please contact your Winston relationship partner should you have any questions or to request further information.

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