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## New York Amends Prompt Payment Act: Retainage Above 5% in Private Construction Contracts Now Void

In 2023 New York overhauled its Prompt Payment Act. The [2023 amendments](#), largely aimed at restricting the amount of retainage that can be withheld on private projects, were unclear about whether parties could contract around the statute, as they can with other provisions of the statute. The State Legislature recently clarified that issue.

On December 19, 2025, New York enacted a new law, tightening the State's Prompt Payment Act retainage laws by amending the Prompt Payment Act under General Business Law § 757. Under § 757, the new law renders void any contract provision in private construction contracts that requires retainage in excess of 5% of the total contract sum, meaning owners cannot hold more than 5% from their prime contractors and prime contractors cannot hold more than 5% from their subcontractors.

This amendment strengthens earlier reforms that capped retainage but left a loophole allowing parties to contract around the Prompt Payment Act under General Business Law § 756 a.

Consistent with prior amendments, the new statute applies only to private construction contracts exceeding \$150,000. Notably, the law took effect upon signing on December 19, 2025.

The new amendment does not change how the Prompt Pay Act measures the cap, so parties still can withhold retainage measured against the total contract sum, not individual progress payments. For example, parties may still withhold 10% on early progress payments, provided retainage drops to 0% once 50% of the work has been completed.

General Contractors and Construction Managers should update their form subcontracts and purchase orders to remove retainage provisions exceeding 5%. Although the law voids attempts to exceed the 5% retainage cap, parties still have some discretion in aligning payment with the timing and value of work. Any alternative structures must be approached cautiously, as their enforceability under the new statute remains unsettled.

For more information, please contact [Mark Snyder](#), [Levi Barrett](#), [Patrick Murray](#), or [Skyler Santomartino](#).

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