

NEWS & INSIGHTS

Suspension and termination rights under CASPA

INSIGHTSARTICLE

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When payment is slow, most contractors and subcontractors begin looking for options to either suspend work or terminate the contract. However, it is common for contracts to require contractors and subcontractors to keep working if a dispute arises. Improperly suspending work or terminating can result in a breach even though the contractor or subcontractor has not been paid. Determining whether to suspend or terminate work is complicated because various factors affect the rights of the parties: the contract terms, the facts and circumstances, and the statutory payment laws that might apply.

In Pennsylvania, contractors and subcontractors may suspend work under CASPA

Pennsylvania's Contractor and Subcontractor Payment Act (CASPA) provides for certain remedies when payment is untimely. CASPA was amended in 2018 to strengthen contractors' and subcontractors' rights by (1) prohibiting waiver of any of CASPA's provisions; and (2) explicitly providing the right to suspend work without penalty. Thus, CASPA provides an unwaivable right to suspend work for untimely payment. There are certain notices and procedures that a contractor or subcontractor must follow prior to suspending work, so each circumstance must be analyzed thoroughly before suspending work. Because of CASPA, a contract provision requiring contractors or subcontractors to continue working indefinitely during a payment dispute is likely unenforceable.

Related article: [Mixed-use projects and the Pennsylvania Contractor and Subcontractor Payment Act](#)

CASPA does not provide the right to terminate a contract

CASPA does not specifically state, however, whether a contractor or subcontractor can terminate if suspension of work has been ongoing due to lack of payment. Thus, termination rights will arise from the contract or common law. If the contract provides for specific termination rights, then, depending on the circumstances, the contract rights for termination are likely enforceable, even if allowing for termination prior to the suspension period. If the contract is silent on termination for payment, the right to terminate under common law will likely come down to the specific facts of the dispute. The best approach would be to first suspend work pursuant to CASPA. Then, depending on the circumstances, there may be a right to terminate.

What about my situation?

Suspending or terminating work due to lack of payment is a critical decision with significant financial impacts. It is best to consult with your legal counsel prior to termination to ensure that best practices are used to enforce your rights. Saxton & Stump [Construction Law](#) attorneys [Ron Pollock](#) and [Matt Chabal](#) are available to discuss both your short and long term business goals and provide legally-sound advice on how to address payment disputes, structure contracts or any address any of the many legal decisions that impact your bottom line.

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