Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

Advertising Material

January 2018 www.bright-lawfirm.com

The Timing of Bond Claim Notices

Payment bonds are a contractual obligation, wherein a bonding company is promising to cover and pay for any labor or materials supplied to a project. The bond is triggered when said laborers/suppliers fail to receive payment for their work.

Not all projects have a payment bond, but they have become more popular for various reasons. On essentially all public projects (either state or federal), payment bonds are required under the Miller Act.

Private projects have seen an increase in payment bonds being required for both general contractors and subcontractors. This is because either the owner insists upon the bond, or bonds are issued as part of a system of waiving mechanics' liens—some states require payment bonds to be issued for an enforceable advance lien waiver.

Payment bonds are complex contractual obligations that exist at the intersection of suretyship law, contract law, and the law of guarantors and guarantees. **This newsletter focuses on a specific topic: Timing of notices that must be sent in order to preserve bond claims.**

The Numbers:

$12,934

- **2018 maximum OSHA penalty for serious or non-serious first time OSHA violations.**
- **The maximum penalty for willful or repeat violation is a maximum of $129,336.**
- **Each January, OSHA will be adjusting its penalties to account for inflation.**

Source(s): www.osha.gov/penalties

On federal projects the Miller Act requires all bond claimants to wait 90 days from the last date of furnishing labor and materials, before filing suit. Also, for any party that is not directly in contract with a prime contractor, the claimant must first send a notice to the general contractor *within 90 days* of the last date of furnishing labor or materials. The filed suit on the bond must be brought within one year of the last date that labor or materials were furnished.

Most states have statutes similar to the Miller Act. These are called "Little Miller Acts." In Pennsylvania, the bond law (8 P.S. 191 *et seq.*) closely parallels the Miller Act. It requires a 90 day wait period prior to filing suit. It also mandates that all claimants who did not contract with a prime contractor must first give notice to the prime contractor within 90 days of last furnishing labor or materials.

Maryland's bond law (MD Code, State Finance and Procurement, 17-101 *et seq.*) follows the same process. It dictates a 90 day waiting period prior to filing suit, and all claimants who did not contract with the prime contractor must first give notice within 90 days of last furnishing labor or materials.

Not all laborers and suppliers to a project have the right to file suit on the bond. Certain bonds only cover certain laborers and suppliers. Additionally, the specific terms of the bond may affect the coverage, claimant's rights, and the obligations of the parties.

When a payment dispute arises on a project covered by a payment bond, the legal issues are often complex. It is wise to seek legal counsel early in the process to ensure that the claim is timely preserved and pursued.

BRIGHT LAW FIRM
PLLC

313 W Liberty St., Suite 272 | Lancaster, PA 17603 | 717-212-9164
www.bright-lawfirm.com