

PROMPT PAYMENT FOR

SUBCONTRACTORS

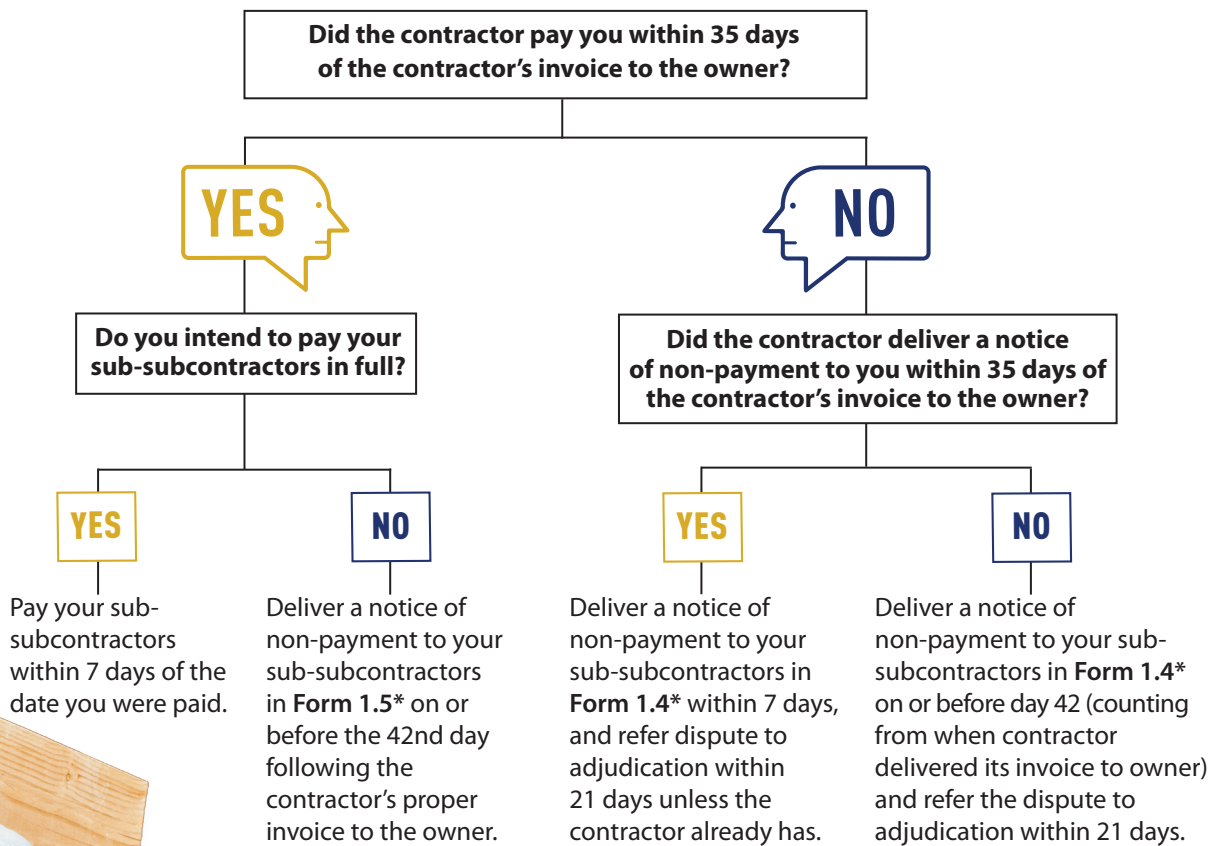
Ontario's *Construction Act* now includes timelines and rules to ensure that contractors and subcontractors are paid on time. Prompt Payment applies to construction contracts entered into on or after Oct. 1, 2019, with few exceptions. It applies to invoices you give to contractors, and invoices you receive from sub-subcontractors and suppliers.

See the fact sheet **Prompt Payment & Adjudication 101** to determine if Prompt Payment applies to your contract.

Prompt Payment Timelines

If the contractor intends to pay your invoice, it must do so **within 7 calendar days** of receiving payment from the owner. If the owner doesn't pay the contractor,

the contractor must still pay you within **35 days** of its invoice to the owner unless the contractor delivers a notice of non-payment to you.



*Notice of non-payment forms are available for download at <http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>

Did you know?

Unless you take one of these two steps, you must pay your sub-subcontractor's invoice within 42 calendar days of when the owner received the contractor's proper invoice.



Are You a Subcontractor?

The *Construction Act* defines a contractor as someone who contracts directly with the owner, and a subcontractor as anyone who contracts with someone other than the owner. A prime contractor is considered a contractor for the purpose of the *Construction Act* even if they are a trade who typically works as a subcontractor. You may be a contractor on one project and subcontractor on another project.

See the fact sheet **Prompt Payment for Contractors** for more information.

Key Facts About Prompt Payment**1. Fixed Payment Timelines**

Gone are the days when you negotiated terms of payment (i.e. 30, 60, or 90 days) with each client or supplier. Prompt Payment dictates fixed timelines, regardless of the terms of your contract or subcontracts. The timeline is triggered when the contractor delivers a proper invoice to the owner. Funds then flow from the top of the construction pyramid to the bottom, generally in multiples of seven days.

2. Proper Invoice

Your invoices to the general contractor must comply with the terms of your subcontract, but they do not have to be “proper invoices” as per the *Construction Act*. Although a subcontractor’s invoice does not need to be a proper invoice, it does need to comply with the requirements of the subcontract.

3. Limited Time to Dispute Invoices

The contractor will lose its right to dispute your invoices unless it gives you timely and proper notice of its intention not to pay your invoice. Keep in mind, the same applies to your right to dispute sub-subcontractor and supplier invoices.

4. Pay-When-Paid

Prompt Payment generally operates on a pay-when-paid basis. A contractor may refuse to pay your invoice because they have not been paid by the owner. The same applies to invoices from sub-subcontractors and suppliers.

5. Referring Disputes to Adjudication

To take advantage of the pay-when-paid aspect of Prompt Payment, you must refer your claim against the contractor to adjudication within 21 days of giving notice to your sub-subcontractors of your intent not to pay, unless the contractor has already referred the matter to adjudication.

See the fact sheet **Adjudication Basics** to learn more.

6. Right to Information

If you request the date on which the contractor gave a proper invoice to the owner, the contractor must provide you with that information as soon as possible.

7. Different rules apply to release of holdback.

See the fact sheet **Prompt Payment for Holdbacks**.

Ready to Learn More?**See our related fact sheets:**

Prompt Payment & Adjudication 101
 Prompt Payment for Owners
 Prompt Payment for Contractors
 Prompt Payment for Holdbacks
 How does the Basic Holdback Work?
 What is a Proper Invoice?
 Adjudication Basics

Other resources:

- Ontario Dispute Adjudication for Construction Contracts (odacc.ca)
- COCA Webinar on Prompt Payment and Adjudication (coca.on.ca/advocacy/prompt-payment)
- Ontario Construction Act (ontario.ca/laws/statute/90c30)



Electrical Contractors Association of Ottawa

Web: ecaottawa.ca

Phone: (613) 238-1124

Email: info@ecaottawa.ca

Disclaimer: This fact sheet is intended to provide information to the industry at large and should not be considered legal advice. Contact a lawyer to find out how Prompt Payment and Adjudication may apply in your particular circumstances.