

Pay-When-Paid vs. Pay-If-Paid: A Small Wording Difference with Big Consequences

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Payment disputes are one of the most common—and expensive—problems in construction. Two clauses that look nearly identical on paper can determine whether a subcontractor gets paid and whether the general contractor absorbs the owner’s nonpayment risk (including bankruptcy). Most contractors are familiar with “pay-when-paid.” A closely related term – “pay-if-paid” – can have a very different effect. Understanding the difference matters before you sign.

What’s the Difference?

Pay-when-paid clauses generally address *timing*: they describe when the subcontractor is expected to be paid (often after the general contractor is paid), but they do not eliminate the general contractor’s obligation to pay. **Pay-if-paid** clauses are different: they are drafted to make the owner’s payment to the general contractor a **condition precedent** to any payment to the subcontractor – meaning the subcontractor may never be paid if the owner never pays.

What the Louisiana Supreme Court Said (*Southern States Masonry v. J.A. Jones*)

In Louisiana, the distinction between these clauses was clarified in *Southern States Masonry v. J.A. Jones*, a Louisiana Supreme Court decision from 1988. Southern States was a subcontractor to J.A. Jones (the general contractor) on the Louisiana World’s Fair project in New Orleans. The project owner, Louisiana World Exposition, filed for bankruptcy without paying all of its contractors, including J.A. Jones.

The subcontract between J.A. Jones and Southern States included the following payment language:

Contractor shall pay to Subcontractor, upon receipt of payment from the Owner, an amount equal to the value of Subcontractor's completed work . . . A final payment, consisting of the unpaid balance of the Price, shall be made within forty-five (45) days after . . . final payment by Owner to Contractor under the Contract....

Southern States pursued payment from J.A. Jones. J.A. Jones had not been paid by the owner and refused to pay based on the subcontract language. Litigation followed and reached the Louisiana Supreme Court. The court held that J.A. Jones was required to pay Southern States because the clause addressed the *expected timing* of payment—not *whether* payment would ever be made. In other words, it was a **pay-when-paid** clause: it may delay payment, but it does not shift the ultimate risk of owner nonpayment to the subcontractor.

After *J.A. Jones*, many Louisiana general contractors began utilizing explicit **pay-if-paid** language. Properly drafted, a pay-if-paid clause makes the owner’s payment to the general contractor a **condition precedent** to any payment to the subcontractor.

General contractors often prefer pay-if-paid clauses because they limit exposure when an owner fails to pay. **Subcontractors generally prefer pay-when-paid clauses**, which may delay payment but do not eliminate it entirely. Put plainly: **a pay-if-paid clause is intended to shift the risk of owner nonpayment from the general contractor to the subcontractors.** That said, enforceability varies by jurisdiction and can differ on certain federal projects, so there is no one-size-fits-all solution. The most important takeaway is to understand the consequences of your contract language, and the magnitude of the risk if the owner does not pay.

Key Takeaways

- **Pay-when-paid** usually means **timing** (when payment is due), not whether payment is owed.
- **Pay-if-paid** is intended to create a **condition precedent** (payment is owed only if the owner pays).
- The difference often turns on **exact wording**, not the label used in the contract.
- Enforceability can depend on **state law** and the **project type** (including certain federal projects).

Before You Sign: Checklist

- Does the clause merely describe **when** payment will be made, or does it say payment is owed **only if** the owner pays?
- Does it use classic condition-precedent language such as “condition precedent,” “only if,” or “unless and until”?
- If the owner does not pay, do other protections exist for the subcontractor (E.g., payment bond, lien rights, or other security)?
- Is there a fallback (for example, payment due after a set number of days) even if the owner has not paid?
- Do you know whether the clause as written is enforceable in that state or under that project type?

Disclaimer

This post is for general informational purposes only and is not legal advice. Contract language and enforceability can vary based on the facts, the project, and the applicable law.

Have a pay-when-paid or pay-if-paid clause in a contract you’re reviewing? Consider having counsel review the specific language before signing so you understand how payment risk is allocated on the project.