



# Meltzer, Lippe, Goldstein & Breitstone, LLP

January 18, 2024

## CONSTRUCTION PRACTICE GROUP

*The attorneys in Meltzer Lippe's Construction Law Practice Group represent clients in all aspects of litigating both private and public construction projects; including negotiating the contracts, responding to and resolving claims and disputes that may arise during the project.*

*Our attorneys have a keen understanding of the oftentimes difficult legal inter-relationships among the various and complex construction projects, the parties and partners and how the real world relationships between the parties often differ from contract language. We understand the approaches that benefit all sides.*

## LOCATIONS

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## State Legislature Passes Bill To Limit the Amount of Retainage That Can Be Withheld on Private Projects

On November 17, 2023, Governor Kathy Hochul signed Senate Bill S.3539/A.4167, which has since been referred to as the “5% Retainage Bill” (the “Bill”). Aimed at reducing the amount of retainage that can be withheld on private construction projects, the Bill amends the General Business Law to provide that no more than 5% of the contract sum can be withheld as retainage from a contractor or subcontractor on a construction project.

The Bill comes with a few important considerations:

- Retainage must be released by the owner to the general contractor no later than thirty days after the final approval of the work under the construction contract.
- Failure to release retainage as required by the Bill, will subject the owner, general contractor or subcontractor to interest of one percent per month from the date the retention was due and owing.
- The Bill applies to contracts entered into on or after the effective date of November 17, 2023.

Meltzer Lippe is well versed in legislative developments related to construction laws. Owners, general contractors and subcontractors will need a trusted advocate to help ensure compliance with the new Bill. If you have questions relative to the foregoing, you are encouraged to reach out to your Meltzer Lippe advisor or contact Manny A. Frade or Adam Wald at Meltzer, Lippe, Goldstein & Breitstone, LLP.

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