Substance

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IMSCA Leadership



Billy Serbousek

Secretary

Billy Serbousek has worked for the Illinois Chapter NECA since 2004 and took over as the Executive Director in 2012. There are 8 IBEW Local Unions within the jurisdiction of the Illinois Chapter covering Bloomington/Normal, Champaign-Urbana/Steator-Pontiac, Danville, Decatur, Springfield, Jacksonville and all counties south from east to west in the state of Illinois. He currently serves as Officer or Trustee of 8 trust funds. He is also a graduate of the Institute of Organizational Management sponsored by the United States Chamber of Commerce as well as a graduate of the VOLT Academy. In addition he serves on 4 Local Labor Management Committees in their Danville, Champaign-Urbana/Streator-Pontiac, Southern Illinois, and Southwestern Illinois Divisions. Currently he is serving as the Co-Chair of the 2026 Electrical Expo of Missouri and Illinois hosted in St Charles, Missouri that is held every three years.



James T. Rohlfing

Special counsel

James T. Rohlfing is a partner in the national law firm of Saul Ewing LLP, where he is a member of the firm's Construction Practice Group. He represents subcontractors and other participants in the construction industry in resolving legal disputes and protecting his clients' rights. He is editor of the highly-acclaimed and comprehensive treatise Illinois Construction Law Manual, published by Thomson Reuters. Mr. Rohlfing is special counsel as well as the past president of IMSCA, the largest organization for subcontractors in Illinois. He is an active member of the ABA Construction Forum, the Society of Illinois Construction Attorneys (SOICA), the Chicago Bar Association's Construction Law committee, and the Association ofSubcontractors and Affiliates of Chicago. He has drafted and assisted in passing Illinois legislation critical to the Illinois construction industry and he has testified on construction law issues before committees of the Illinois Legislature.



S.J. Peters

Immediate Past President

S.J. Peters has served as Executive Director of the PCA of Greater Chicago & Plumbing Council since 2006. He previously was Communications Director for UFCW Locals 1546 & 881 for 16 years. A graduate of Loyola University Chicago, S.J. worked professionally in broadcasting, publishing and PR before launching a career in non-profits. He also currently serves on the Boards of CISCO and UAC. S.J. and his wife, Carrie, reside in Chicago's western suburbs and are the parents of two grown daughters.

Complying with Notice Provisions in Construction Contracts

By: James Rohlfing
james.rohlfing@saul.com
Saul Ewing LLP

All good commercial construction contracts, whether customized or standard forms, require the parties to provide notice to the other party to the contract about specific events and circumstances. Often, when a construction project ends up in litigation or arbitration, the outcome depends not on which party did the best job, came in under budget, and completed ahead of schedule, but instead, which party most closely adhered to the notice requirements in the contract. Experienced project managers know that completing the work is only one part of their job and that protecting their rights by generating contract compliant and timely notices is equally important. Therefore, understanding notice requirements and how to comply with them in construction contracts is one of the most important ways of protecting your rights as a subcontractor, contractor, or other participant in the building process.

What Are Notice Requirements in Construction Contracts?

Notice provisions require one party (e.g., subcontractor or contractor) to give the other party (e.g., owner or contractor) timely written notice of certain events, such as increased scope of work, increased time to perform work, delays by other parties, differing site conditions, design changes, design inconsistencies, safety incidents, insura nce claims, or claims for extra time or money. Notices are crucial to preserving contract claims, but they are not merely an annoying legal precaution; they also serve positive purposes in the construction process. Notices can clarify changes, communicate intent of design, front minor disagreements before they become major ones, and correct design or project misunderstandings before they become catastrophes. A contract-compliant, comprehensible, and timely notice can prevent months of unnecessary work, confusion, or legal battles.

The notice provision in a construction contract should address the reasons notice is required, when it must be provided, how it is to be conveyed, and what must be included in communicating the notice. The notice typically alerts one of the contracting parties to a claim or change event that might entitle the notifying party to additional time to perform or an increase in cost. The contents of the notice, when it must be provided, and how it is to be served, vary from one contract to another.

Common Reasons For Notice

1. Differing site conditions – A differing site condition is an unexpected condition on a construction site that deviates from the expected condition or the condition indicated in the contract documents. They often lead to project delays and increased costs.
2. Design errors and omissions – If drawings are incomplete or conflicting, contracts often require prompt notice and a request for clarification before proceeding. A notice could alleviate the risk to the party executing the work that it proceeded in a manner inconsistent with the intent of the contract documents.
3. Delays and disruptions – Delays are a common occurrence on jobsites that can result from a variety of causes, including supplier issues, owner actions, weather, or government interference. A related issue is when one party requests the other party to accelerate its performance to recover lost time but does not explicitly and formally agree to pay for the acceleration. Even if the delay is caused or acceleration is initiated by the party to whom notice must be given, failure to provide a clear and timely notice can result in an otherwise innocent party being on the hook for the cost of a delay or being unable to recover its costs for acceleration.
4. Change directives and extra work – Change orders or change directives should be communicated in writing rather than merely orally. Often it is obvious that a change is outside the original scope of work and that it will entail an added cost, but without a written notice, the party performing the work may be unable to recover its costs.



When To Provide Notice

Notice provisions in contracts usually set forth a specific time frame within which to provide notice of a claim or change event. Usually the period of time is measured from when the party required to give notice knew or should have known of the event giving rise to the notice requirement. The contracting parties can agree to any time period and often the time will be longer for the party with leverage in negotiating the contract and shorter for a party without leverage. Common notice periods can be as little as three days or as long as 30. A short time period can make it difficult for the party furnishing notice, especially if the notice must provide details as to why the change will impact the schedule or contract price. An important and impactful event might at first seem inconsequential, and only later be recognized as an event for which notice must be given. Shorter time periods favor the owner or other upstream party because events might not be immediately recognized as requiring notice and because compiling supporting information in a short period will be more burdensome. Longer notice periods favor the contractor or other downstream party by allowing them time to evaluate impacts, gather supporting documentation and then furnish a timely notice. Often subsequent or follow-up notices must be provided after an initial notice as more information becomes available.

What Should Be included In A Typical Notice?



1. The notice must be in writing;
2. It must be served on a specific individual and frequently in a specified manner, such as by personal delivery;
3. It should describe schedule and work activities affected by the event(s);
4. The notice should provide details of the effects or anticipated impacts of the event and describe the relief requested;
5. It should describe what, if any, schedule relief or contract price adjustment is requested;
6. It should include supporting documentation if available, or provide the documentation in a follow up notice; and
7. If available, it should identify sections of the contract supporting the request for relief.

Notice Requirements Construed By Courts

Court cases arising from construction disputes often discuss whether less than full and complete compliance with a contract's notice provisions will suffice or whether something less is acceptable, especially if the party entitled to notice knew of the event for which notice was required. Courts may also consider whether the parties' conduct amounted to waiver of strict notice provisions, or whether the contract includes a general "no waiver" provision. Occasionally, arguments that the party entitled to notice was verbally advised of the event, or that they were on the jobsite and must have known of the event, are ultimately successful. Often, such arguments are rejected by the courts or arbitrators who adhere to the established legal principle that if the contract contains a strict notice requirement that must have been what the parties intended, and it is the responsibility of the courts to enforce contracts willingly entered by the parties. In any event, many cases construing whether notice was sufficient require an in-depth analysis by a judge, jury, or arbitrator of the relevant facts, laws, and contract provisions in an effort to achieve an outcome consistent with the law, fairness, or both.

Courts frequently consider whether a notice was timely, whether the contract language mandated a more detailed notice than the one provided, whether the parties waived notice requirements, and so on. Some states are stricter in enforcing notice requirements, while other states take a more "equitable" approach and only foreclose recovery if the party complaining of inadequate notice shows it was prejudiced by the lack of notice. Moreover, some states require that notice follow precisely the timing and content requirements in a contract, while others look to adherence to the general intent of the parties. For example, in a recent case based on Illinois law, the U.S. 7th Circuit Court of Appeals overturned a District Court ruling on the issue of whether a notice was proper. The appellate court returned the case to the trial court for a jury to determine factual questions related to whether a notice from a subcontractor to a contractor complied with the contract's notice provisions. The Court wrote: "Nothing in the agreement said Boldt had to label its notices using specific terms or that notice could not be sent in response to another letter." Boldt Co. v. Black & Veatch Constr., Inc., No. 25-2003, 2026 WL 1968063, at *9 (7th Cir. July 8, 2026). One lesson from this case for project managers is that, although notices should be as specific and timely as possible, any notice is usually better than no notice, and courts will examine the specific facts surrounding the giving of notice with attention to both common sense and contract enforcement.

Preserving Rights Versus Preserving Relationships

Considering that most construction disputes are resolved by negotiation before a final court or arbitration decision, a party who has an opportunity to provide notice to enhance their negotiation position should always do so. A contractor would not want to risk prevailing on a meritorious claim by failing to comply with contract notice requirements. A party may be reluctant to provide a notice of claim or notice of an event for fear of antagonizing a good customer. In such situations, a clear-eyed business analysis is in order to evaluate the risks and benefits from either course of action. One solution might be to provide a notice worded in a friendly manner with informal language but still covering the notice requirements in the contract. Most sophisticated owner representatives should appreciate that contracts require notices under certain circumstances and that good contractors are in the habit of complying with contract requirements. The content of a notice need not be confrontational or argumentative. Instead, it should serve as an opportunity for both parties to understand an actionable event and to work together to evaluate their positions and advance the project.



Conclusion

Notice provisions in construction contracts can be complex, confusing, and sometimes burdensome, but they should not be ignored. The best approach for notice compliance is to set simple rules for every project:

1. Document impacts as they develop;
2. Track deadlines;
3. Know what the contract says about notice;
4. Maintain an accurate and contemporaneous paper trail;
5. Send notices early even if impact is unclear;
6. Avoid inflammatory or adversarial language; and
7. Follow the notice format required by the contract.

In an increasingly sophisticated and complicated construction industry, there is an avalanche of information about activities on a complex project. Sharing information with the project team in real time is increasingly important. Whether a party furnished a contract-compliant notice is too frequently the determining factor in who wins and who loses a construction dispute, when it should instead be determined by who was truly at fault for an adverse event. Subcontractors and contractors who comply with notice provisions in their contracts greatly increase the likelihood of a successful construction project, and when claims occur, are more likely to resolve claims in their favor. ■