

Who Pays for Delay? How Enforceable is a No Damage for Delay Clause?

Delays are an all too common occurrence on construction projects. And they almost always cost money, points out **Eugene Polyak** on the website of **Smith, Currie & Hancock LLP**. So who pays for the increased costs caused by delays?

“This is one of the most durable issues in all of construction contract law. The answer is – it depends,” writes Polyak. “It depends first on whether the risk of delay is addressed in the parties’ contract. Owners and contractors frequently use No Damage for Delay clauses to push down the risk of delay costs. It may also depend on the law of the state where the project is performed. No Damage for Delay clauses are not uniformly enforced in different jurisdictions.”

He gives some examples of no-damage-for-delay clauses and discusses some exceptions.

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