

TRADIE LAW FACT SHEET #30

DEALING WITH CUSTOMERS

TRADIE LAW
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LAWYERS

Top excuses regarding non-payment of invoices (that should ring alarm bells for any Trade Business)

OVERVIEW

Regrettably, the non-payment of invoices submitted for work undertaken by a trade business is a common issue that many Tradies will face during their business' life.

In most situations invoices are paid in a timely manner, however, sometimes invoices are not paid when required which can have a significant cascading effect on a business's cashflow and its ability to meet its financial obligations. This results in undue stress for the business owner.

Where late payment is an issue, we are often approached for advice and assistance to recover the outstanding debt. Often there is a history of exchanges between the parties from a few short weeks to months regarding payment.

There are several excuses that are regularly made which mask the real reason for non-payment. These excuses are rarely communicated upfront and are often tabled once a follow up for payment is made.

The top excuses for non-payment by a client (a debtor) that should cause alarm bells with any business owner are set out below with some proposed responses in red should you encounter them:

- We are waiting on a customer to pay us before we can pay you. We will pay you as soon as we receive our money.
 - What invoices/money do you have outstanding and from whom? Can you provide us with details, including emails and communications with this third-party addressing payment of this debt to give us some comfort?
- We are just waiting on a GST//Tax refund and once that is processed, we will pay you be able to pay you.
 - Can you provide us with the details of the GST/Tax refund from your accountant or the IRD so we can make an informed decision on waiting for payment? How many other parties are waiting on payment from you once the refunds become available?

- We didn't receive your invoice this month, can you please resend it.
 - Can you confirm your email address is XYZ.co.nz and physical address/PO Box is XYZ? Our system confirms it was sent and we received no bounce back or failure to deliver. The invoice is attached once again for your records; however, the payment date remains X. Can you acknowledge you have received this email and attached invoice please, failing which we will have it delivered to you personally.
- Your invoice has a couple of errors in it which we need you to amend before we can put into our system for payment?
 - Please detail these errors and explain how they impact on your ability to make payment. Why were these alleged errors not raised until after the due date?
 - If there are errors, but not the amount, please pay and we will shortly forward an updated invoice, with the same original date.
- I missed the payment date this month due to an oversight by my admin team, I will put your invoice in for payment on 20th of next month.
 - This is an oversight at your end. We require payment within two working days.
- The manager or director who approves all our creditor payments is not in today but as soon as they come in tomorrow, we will arrange for processing and payment of your invoice.
 - Can you please provide the contact details of the manager and director so I can call them to confirm payment will be made tomorrow.
- The job or contract which we engaged you to undertake has not been completed to our satisfaction.
 - Our invoice constitutes a payment claim and you have not filed a payment schedule within the timeframe under the Construction Contracts Act 2002 (CCA). Payment is required under the CCA and in accordance with our terms and conditions.
- We are currently changing banks and as soon as that is sorted, we will pay you straight away.
 - This is an issue at your end. We require immediate payment and we do not accept that your business would be without banking facilities during such a transition.
- We are currently waiting on your work which relates to the invoice to be signed off by a third party and as soon as that is sorted, we will make arrangements for payment.
 - Third party sign off was not a condition of our contract or our terms and conditions. Immediate payment is required.

Many of these excuses may be legitimate in certain circumstances, however, they are often used to manage cashflow and delay payment, particularly where a company/client cannot pay due to cashflow or solvency issues.

If you are not being paid when required and encounter these excuses you should pause, ask questions, and seek supporting evidence for the delays described.

How to prevent non-payment of invoices becoming a bigger issue:

- To protect you and your business from cash flow problems and non-payment, we recommend you consider the following:
 - Prior to any work beginning, have your terms and conditions of trade ("contracts") executed and/or acknowledged as accepted by your clients and ensure the services your business is going to provide, and the estimated cost are clearly specified prior to any work beginning.
 - Ensure your invoices for Construction Work under the Construction Contracts Act 2002 constitute a payment claim under section 20 of that Act. Ensure this invoice (payment claim) is served and received by the client. Diarise 20 working days from date of service. If no payment schedule is issued look to recovery options.
 - Ensure your terms and conditions are thorough and up to date.
 - Keep a record of quotes, invoices, receipts and communication regarding approvals or variations.
 - Regularly monitor the financial health of your clients by reviewing their payment history.
 - Conduct due diligence before entering into agreements with new clients or contractor. Undertake a credit check of the company's Directors or the company itself.

How to overcome ongoing non-payment excuses:

- Keep an eye out for warning signs such as missed payment dates, excessive delays, or excuses that lack supporting evidence.
- Write a Letter of Demand - A Letter of Demand can be sent if you have made multiple unsuccessful attempts to get a debtor to pay you. It is a more formal and forceful approach that allows you to maintain an ongoing working relationship.
- If a Letter of Demand doesn't do the trick, then consider your options for enforcement under the Construction Contracts Act 2002 (if a payment claim) or make a claim in the Disputes Tribunal or file legal proceedings for the recovery of a debt in the District/High Court.
- If non-payment excuses are ongoing and causing you or business significant stress or concerns, seek legal advice earlier rather than later.

While several businesses will accommodate a short deferral of payment, once the 20th of the month arrives without payment or an extension is agreed it is time to consider escalating your payment requirements, initially with a gentle reminder and subject to further delay and questionable excuses, consider your legal position under the contract, your terms and conditions of trade or the Construction Contracts Act 2002. Do not leave it until it's too late to act.

If you would like further advice on the above matters including how to recover unpaid invoices or enforcing payment claims please get in touch with us.

Contact:

E helpdesk@tradielaw.co.nz

W <https://tradielaw.co.nz/tradie-law/contact/>

One of our team will be in touch to assist you within 24 hours.