

Hauling of Aggregate Supply Construction Materials:

Paragraph f of Section 220(3-a) of the NYS Labor Law has been amended as follows:

f. Prevailing wage shall be paid for work performed on a public works worksite pursuant to this section for any work involving the delivery to and hauling from such worksites of aggregate supply construction materials, as well as any return hauls, whether empty or loaded and any time spent loading/unloading.

RULE:

A new Part 222 is added to Chapter III of title 12 NYCRR and reads as follows:

Part 222 - Hauling of Aggregate Supply Construction Materials

§ 222.1 Definitions

For the purposes of Section 220 of the Labor Law:

(a) "Worksite" means the area in which the improvements associated with a specific project, as defined in the construction contract, and any surrounding areas supporting that specific project.

(b) "Central stockpile" means a location of centrally stockpiled materials solely dedicated for use on a public work project that is not part of a worksite but intended to support the worksite.

(c) "Aggregate supply construction materials" means sand, gravel, stone, crushed stone, dirt, soil, millings, and fill.

§ 222.2 Application

For the purposes of Section 220 of the Labor Law:

(a) Prevailing wage shall be paid for work performed at a worksite involving the delivery of aggregate supply construction materials to such worksite.

(b) Prevailing wage shall be paid for work performed involving the hauling of aggregate supply construction materials from a worksite to a central stockpile, as well as any return hauls, empty or loaded, time spent loading or unloading at a worksite, and time spent loading or unloading at a central stockpile related to hauls from or to a worksite.

(c) Prevailing wage shall be paid for work performed within a 50-mile radius of a worksite involving the delivery of aggregate supply construction materials from a vendor of aggregate supply construction materials, such as a plant or quarry, to a worksite, except prevailing wage shall not be paid to direct employees of a supplier of aggregate supply construction materials, when making a single delivery in a given day.

The rule was adopted and published in the State Register on May 31, 2023. A lawsuit challenging the adopted rule has been dismissed.

A stay of enforcement was in effect with respect to 12 NYCRR 222.2(c),-therefore the 50-mile radius provision has not been in effect or enforced to date.

All other sections of the law and rules are in effect and shall be enforced on all projects solicited on or after November 15, 2023.

UPDATE: On April 11, 2024, the Appellate Division affirmed the lower court's dismissal of the lawsuit challenging the adopted rule and the stay on enforcement of 12 NYCRR 222.2(c) has been lifted. Therefore, the Department will begin enforcing the 50-mile radius provision of 12 NYCRR 222.2(c) on all projects solicited on or after July 1, 2024, to coincide with the annual publication of the prevailing wage schedule.

Further guidance on compliance with Labor Law Section 220(3-a)(f) as clarified by 12 NYCRR 222.2 will be published soon.