



New York State Department of Labor
Kathy Hochul, *Governor*
Roberta Reardon, *Commissioner*

ENFORCEMENT GUIDANCE

DATE: December 1, 2023
FROM: Shaun McCready, Director of Public Work
RE: Roadway Excavation Quality Assurance Act, Updated Guidance
TO: All

On August 16, 2023, The Governor signed the Roadway Excavation Quality Assurance Act (A.5608/S.4887), codified as Labor Law section 224-F (separate from 224-F; Wage requirements for certain climate risk-related and energy transition projects). It is effective as of September 15, 2023 and shall be enforced on all contracts for construction solicited on or after the effective date, or in the event there was no solicitation or contract it shall be enforced on all work performed pursuant to a permit issued on or after the effective date.

This law subjects certain roadway construction work by utility company contractors and subcontractors to the prevailing wage requirements of Article 8. Covered work, defined as a “covered excavation project,” means construction work for which a permit may be issued to a contractor or subcontractor of a utility company by the state, a county, or a municipality to use, excavate, or open a street. The law does not cover direct employees of a utility company.

The Fiscal Officer is the Commissioner, except for covered excavation projects performed pursuant to a permit issued by New York City, in which case it shall be the New York City Comptroller.

A Utility Company shall have the same meaning as in the Public Services Law, which excludes cable television providers subject to Article 11 of the PSL. The law also specifically excludes from coverage work for the Long Island Power Authority.

This law also imposes certain requirements upon government entities before they may issue permits for covered excavation projects. Such permits may not be issued until an agreement confirming the payment of prevailing wages has been contractually mandated and filed with the department of jurisdiction. All such permits issued after the effective date of shall include a copy of this law.

Additional record keeping requirements are also established by this law. Contractors and subcontractors to a utility are now always required to keep records of the payment of prevailing wages, not just when a local law or ordinance requires them as a condition of issuing a permit to excavate, use or open a street. Such contractors and subcontractors are required to submit certified payrolls with the department of jurisdiction pursuant to Article 8.

Please see the FAQ on the following pages for additional information. This FAQ has been amended to reflect additional questions that have arisen and will be updated further soon to clarify some additional points.

Director
Bureau of Public Work



Frequently Asked Questions

1. What if an open ended or long-term contract for covered excavation projects was signed or solicited prior to the effective date of September 15, 2023?
 - a. Then any specific project (specific location/scope of work specified in a permit) under that contract that is already underway, or for which a permit was already obtained or applied for is not subject to this law.
 - b. Any new project/location under that contract which requires a new permit, applied for on or after the effective date, will be subject to the law.
2. If a general contract has already been awarded, but the subcontracts have not been by the effective date, will the subcontracts be subject to this law?
 - a. No, the general contract controls the applicability of the statute to the project.
 - b. If the general contract was long-term or open ended, see the question above.
3. Does this law only apply to “excavation”?
 - a. No, projects requiring a permit to excavate, open, or otherwise use a street to perform utility work are covered by this law.
4. Is only the opening/excavation of the street covered by this law, or all work performed on the project?
 - a. All the utility work in, on, or under the street is covered, as well as the temporary closing and final patching of the street.
5. What about boring projects that go entirely underneath the street?
 - a. If a permit is required to access the street or the ground below it, then the work is covered.
6. Is work performed adjacent to the street for which the permit was issued to open/excavate/use also subject to prevailing wage?
 - a. Work in, on, or under the adjacent curb, sidewalk, shoulder area or right of way is covered if a permit was required for the excavation, opening or *use* of the street.
 - b. Work performed on private property past the curb or right of way is not subject to this law.
 - c. NOTE: If the project costs are in excess of \$5 million dollars and it received public funding greater than or equal to 30% of the project costs, then Labor Law section 224-a may apply.
7. What is defined as a street?
 - a. A “street” means any highway, road, avenue, lane or alley which the public has a right to use.
8. Is the “contract” date the date of issuance of the permit by the public entity or the date the contract between the utility and contractor was signed?
 - a. A contract date is the date an actual contract between the utility and contractor was signed.
9. What if the work performed required a permit, but no permit was obtained?
 - a. The work is still covered.
10. What if the work performed did not require a permit?
 - a. The work is not covered by this law.



11. What utility work is covered by this law?
 - a. Electric, gas, water, steam, sewer, fuel, geothermal, telephone/telegraph, and broadband/fiber optic internet.
12. What is a “utility contractor?”
 - a. A contractor hired by a company performing covered utility work.
13. Why is broadband/fiber optic internet covered when the prior FAQ said it was not?
 - a. While internet service is not specifically enumerated in the Public Services Law Section 2(23), further review of the statute, the intent behind it, and the practicality of enforcement, dictates that broadband/fiber optic internet service be considered a utility.
 - b. Environmental Conservation Law Section 9-2103(1)(d) specifically includes broadband within the definition of “public utility line”, making the Department’s inclusion of broadband within utility work that is covered under this law consistent with statutory definitions.
 - c. Enforcing this statute on telephone/telegraph and not broadband/fiber optic would lead to some telecommunication work being covered while some is not. Additionally, some companies do both types of work and making a distinction is impractical for timekeeping and the performance of the work.
 - d. At this time, given the widespread adoption of videoconferencing and telecommuting policies, the overall interconnectivity of the world via the internet, and the recent expansions of NY prevailing wage law in ways that would cover broadband infrastructure, broadband internet is as vital a utility as telephone/telegraph.
14. What is considered a cable television company?
 - a. Pursuant to the Public Service Law: "Cable television company," shall mean any person owning, controlling, operating, managing or leasing one or more cable television systems within the state.
 - b. "Cable television system" shall mean any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television or radio stations or any other programs originated by a cable television company or by any other party, and distributing such programs by wire, cable, microwave or other means, whether such means are owned or leased, to persons in one or more municipalities who subscribe to such service. Such definition does not include: (a) any system which serves fewer than fifty subscribers; or (b) any master antenna television system.
15. What if a cable television company also performs other utility work, are they covered by this law?
 - a. If any electric, gas, water, steam, sewer, fuel, geothermal, telephone/telegraph, or broadband/fiber optic internet work, requiring a permit to use, open or excavate a roadway, is being performed by a contractor hired by a utility, then that contractor’s workers are entitled to prevailing wage for that work under this law.
16. If a private party/homeowner hires and pays a contractor directly for a utility hookup or repair, but it requires a permit to excavate, open or use a street, is that covered?
 - a. No, that would not be subject the prevailing wage requirements of this law.
17. What if the private party/homeowner has to hire from a list of utility approved contractors?
 - a. No, that would still not be subject the prevailing wage requirements of this law.



18. What if the private party/homeowner is paying the full bill, but has to go through the utility to get the work performed and the contractor is hired/paid by the utility?
 - a. Then any portion of that work performed in, on, or under the street, curb, sidewalk and right of way would be subject to prevailing wage. Any work on the private property past the right of way would not be, as outlined in question 6 above.
19. What if the private party/homeowner receives a grant or some form of public funding to have the utility work performed?
 - a. The applicability of this law is the same as in questions 11 through 13 above. If the contractor is hired and paid directly by the private party/homeowner, then the law does not apply. If the contractor is hired and paid by the utility, then it does apply.
20. What if a permit is issued simply for utility contractor workers/vehicles to traverse a roadway or right of way to access private land for private construction work?
 - a. If the work in question in no way relates to the roadway/right of way or the area above, on, or below it, then the prevailing wage requirements of this law will not apply.
 - b. Depending on the size, nature, and funding sources for such work, it may be subject to the prevailing wage requirements of Labor Law Sections 224-a ("Public Subsidy Law"), 224-d (Wage requirements for certain renewable energy projects), 224-e (Wage requirements for certain broadband projects), or 224-f (Wage requirements for certain climate risk-related and energy transition projects)
21. Is emergency work covered by this law?
 - a. Yes, if the contractor would be required in non-emergency conditions to obtain any kind of permit to use, open, or excavate a roadway to be permitted to perform that work in that location, then it is subject to this law.
22. Are flaggers/traffic control workers entitled to prevailing wages under this law?
 - a. Yes, if they work for a utility contractor at the site of work being performed that required a permit to use, open, or excavate the roadway.
23. What prevailing wage rates are applicable to the different types of utility work?
 - a. If you are unsure what wage rates are enforced for specific utility work in your region, please contact your nearest Bureau of Public Work district office to inquire.
 - b. <https://dol.ny.gov/public-work-and-prevailing-wage-contact>
24. Who should request a PRC number?
 - a. The PRC number is the prevailing rate case number assigned to a public work project, covered private project, or any other project subject to prevailing wages pursuant to Labor Law Articles 8 and 9.
 - b. The entity letting a project should apply to the Bureau of Public Work for a PRC number. Instructions on how to do so can be found at <https://dol.ny.gov/public-work-and-prevailing-wage>. The request form itself can be found at [NYS DOL - Prevailing Wages \(New Wage Schedule\)](#)



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25. Who should retain certified payrolls?

- a. Contractors and subcontractors performing covered work must retain a copy of certified payrolls for a period of six years.
- b. Certified payrolls should be submitted to the contracting utility company within thirty days of the issuance of the first payroll and every thirty days thereafter.