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NEW YORK
STATE OF
OPPORTUNITY.

Department
of Labor

OCTOBER 2023

OVERVIEW OF THE PREVAILING WAGE AND BUREAU OF PUBLIC WORK

BY SHAUN McCREADY
DIRECTOR OF PUBLIC WORK

ARTICLES 8 AND 9

- In 1894, legislation created the concept of prevailing wages on Public Work projects.
- Workers right to prevailing wages made a part of state constitution in 1938.
- Articles 8 and 9 of the NYS Labor Law are commonly known as New York State's prevailing wages statutes.
- They require employers to pay workers fair wages and benefits.
- This prevailing wage is set by law on public work projects and certain private projects receiving public funding.

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THE PREVAILING WAGE

- The rate of wages and supplements that must be paid to:
 - Laborers, workmen or mechanics on public works projects and covered private projects.
 - Building service workers for service contracts with public entities.
- The "prevailing rate of wage," for the intents and purposes of this article, shall be the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum* of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed.

***The majority of Article 9 rates are currently set through the use of research and statistics.**

- The rate is set annually by the Commissioner of Labor and NYC Comptroller (for NYC) and takes effect July 1st of each year.

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ARTICLE 8

- **Commissioner of Labor enforces the prevailing wage requirements on contracts let by the state and its political sub-divisions except for contracts let by the City of New York, for which the New York City Comptroller is responsible for enforcement.**
- **Applies to public work contracts that involve construction, reconstruction, renovations, maintenance, abatement and repair. This can include inspections, surveying and heavy cleanup as well.**
- **Beginning in 2022, private construction projects in excess of \$5 million dollars with 30% public subsidy funding, may also be subject to paying the prevailing wage. Certain types of funding and projects are exempted from coverage.**

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PUBLIC WORK

What is Public Work?

A three-prong test is applied to determine whether a particular project is public work and subject to the prevailing wage requirements of Labor Law § 220 and article I, § 17 of the State Constitution.


- 1) A public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics.**
- 2) The contract must concern a project that primarily involves construction-like labor and is paid for by public funds.**
- 3) The primary objective or function of the work product must be the use or other benefit of the general public.**

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REQUIRED POSTINGS

- Wage Schedule
- Public Work Poster 
- Workers Compensation Poster
- Disability Benefits Poster
- Unemployment Insurance Poster
- Fair Play Act Poster

 New York State Department of Labor
Bureau of Public Work

Attention Employees

THIS IS A: **PUBLIC WORK PROJECT**

If you are employed on this project as a worker, laborer, or mechanic you are entitled to receive the prevailing wage and supplements rate for the classification at which you are working.

Your pay stub and wage notice received upon hire must clearly state your wage rate and supplement rate.

Chapter 629 of the Labor Laws of 2007: **These wages are set by law and must be posted at the work site. They can also be found at: www.labor.ny.gov**

If you feel that you have not received proper wages or benefits, please call our nearest office.*

Albany	(518) 457-2744	Patchogue	(631) 687-4886
Binghamton	(807) 721-8005	Rochester	(585) 258-4505
Buffalo	(716) 847-7159	Syracuse	(315) 428-4056
Garden City	(516) 228-3915	Utica	(315) 793-2314
New York City	(212) 775-3568	White Plains	(914) 997-9507
Newburgh	(845) 568-5398		

* For New York City government agency construction projects, please contact the Office of the NYC Comptroller at (212) 669-4443, or www.comptroller.nyc.gov – click on Bureau of Labor Law.

Contractor Name: _____

Project Location: _____

PIW 101 (05/20)

All Available on Website

PUBLIC SUBSIDY LAW (LL §224-a)

- **Deems certain private projects as “covered projects” subject to the prevailing wage requirements of LL §220.**
- **“Covered projects” are defined as construction work done under a contract which is paid for in whole or in part out of public funds, where:**
 - **The aggregate amount of all such public funds is 30% or more of total construction projects costs, and**
 - **Total project costs are over \$5 million dollars.**
- **In effect for all contracts signed on or after 1/1/22.**

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PUBLIC FUNDS

- **Payment of money by a public entity, or third-party to the contractor, subcontractor, developer or owner that is not subject to repayment.**
- **Savings from fees, rents, interest rates, or other loan costs or insurance costs that are lower than market rate.**
- **Savings from reduced taxes as a result of credits, abatements, exemptions or increment financing.**
- **Savings from payments in lieu of taxes.**
- **Savings from reduced, waived or forgiven costs due to public entity.**
- **Money loaned by public entity to be repaid on contingent basis.**
- **Credits applied by public entity against repayment of obligations.**

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EXEMPTED PUBLIC FUNDS

- **Some sources of public funds are specifically exempted by the law from counting towards the 30% threshold:**
- **Benefits under Real Property Tax Law 421-a.**
- **Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be covered by §224-a.**
- **Funds used to incentivize or ensure the development of a comprehensive sewer system.**
- **Tax benefits, the length and value of which cannot be determined at the time work is performed.**
- **Tax benefits related to brownfield remediation.**
- **Funds provided pursuant to Education Law 2853(3) (Charter Schools)**
- **Any other sources the Public Subsidy Board exempts.**

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EXEMPTED PROJECTS

- Some projects are specifically excluded from being “covered projects.”
- Contracts with a not-for-profit as defined in Not-For-Profit Corporation Law 102, with two exceptions:
 - NFP formed exclusively to hold title to property and collect income
 - NFP has gross annual revenue and support of less than \$5 million.
- Construction work performed under a pre-hire collective bargaining agreement with a bona fide building and construction trade labor organization, labor peace agreement, or project labor agreement.
- Installation of renewable energy, heating or cooling, or energy storage systems with capacity of 5MW or less.*
(*LL 224-d may still subject project to Prevailing Wage)
- Construction work on space to be used as a school under 60,000 sq/ft pursuant to a lease from private owner to NYC Dept. of Education and School Construction Authority.
- Projects that receive Tax Law benefits related to Historic Rehabilitation.

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PUBLIC SUBSIDY BOARD

- Oversight for the expansion of prevailing wage to covered private projects will be vested in a public subsidy board comprised of 13 members appointed by the Governor with the Commissioner as the chairperson. As of today, 10 members have been seated.
- The board may issue binding determinations as to whether a project is in fact covered by the new requirements and will have the power to hold hearings, take testimony and make recommendations regarding the law's thresholds and exemptions.
- The Bureau will support the board in the execution of its duties, investigate underpayment allegations and enforce the prevailing wage requirements of Article 8 on covered projects.
- Regular quarterly meetings

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Public Subsidy Board



Board Webpage: <https://dol.ny.gov/public-subsidy-board>

There you can find:

- Meetings Schedule and Agendas
- Information on How to Attend Meetings
- Recordings of Past Meetings
- Board Procedures
- Prior Board Determinations

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CERTIFICATION FORM (PW39a)

Available at:
<https://dol.ny.gov/public-work-and-prevailing-wage-forms>

Bureau of Public Work
State Office Building Campus
Building 12 – Room 130
Albany, New York 12226

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Official Use Only

Date received: _____

PRC No. previously issued: _____

Certification For Covered Project

Request For Wage and Supplement Information

Submit this form to certify if a project is covered by LL 224-a or to request a Public Subsidy Board covered project determination. May be mailed to above address or emailed to: labor.sm.5184851870Fax@labor.ny.gov

Complete Fillable Fields or Form Must be Typewritten Submitted By: Owner Developer

A. Contract to be let by:

- Name: _____
Complete Address: _____
Telephone: _____ Fax: _____
Email: _____
- Send Reply to:
Complete Address: _____
Telephone: _____ Fax: _____
Email: _____
- Contract Date: _____
Construction Start Date: _____
(may be approximate if no specific date)
Contract Name or ID Number: _____
- Prime Contractor(s): _____
List Known Sub-contractors: _____

B. Project Particulars

- Project Name: _____
Description of Work: _____
- Location of Project: _____
Address: _____
- Nature of the Project (check all that apply):
 New Construction Heavy/Highway
 Addition to Existing Structure Sewer/Water Line
 Demolition, Abatement Renewable Energy
 Reconstruction, Maintenance, Repair, Alteration Thermal Energy Network
 Other: _____
- List All Subsidies and Source: _____

Total Project Cost: \$ _____ Total Amount of Subsidies: \$ _____

Subsidies Equate to _____ Percent(%) of Total Project Costs

- Name and Title: _____
Signature: _____

REQUIREMENTS OF ARTICLE 8 SECTION 224-a OF THE NEW YORK STATE LABOR LAW

Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law.

- Is the Owner a minority, women, and/or service-disabled veteran owned business? _____
- Is the Developer (if different from owner) a minority, women, and/or service-disabled veteran owned business? _____
- List all Contractors and Sub-Contractors who are minority, women, and/or service-disabled veteran owned business: _____

CERTIFICATION / REQUEST FOR DETERMINATION

As of _____ and for a certain project, entitled _____,
(Date) (Project Title) (Name of Certifier)
_____, certifies under penalty of perjury pursuant to NYS Labor Law 224-a.8.a. that
(Title of Certifier)

- It is unknown if this project is subject to the provisions of NYS Labor Law 224-a and a binding determination from the Public Subsidy Board is hereby requested.
- This project is subject to the provisions of NYS Labor Law 224-a
- This project is not subject to the provisions of NYS Labor Law 224-a
(if not subject, check all that apply)
 - Total construction project costs are under \$5 million dollars.
 - Total aggregate public funding equates to less than 30% of total construction project Costs.
 - The project is exempted by one of the provisions of Subdivision 4 of NYS Labor Law 224-a.
Please specify: _____
 - The public funding is exempted by one of provisions of Subdivision 3 of NYS Labor Law 224-a.
Please specify: _____

Signature: _____ Address of Certifier: _____

Date: _____

The certification should be signed by members of management who are responsible for and knowledgeable, directly or through others in the organization, about the matters covered by the assertion.

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PUBLIC SUBSIDY BOARD

Procedure:

- **A project potentially covered by LL 224-a is identified via:**
 - **Certification Form Submission**
 - **Self Reporting**
 - **Third Party Referral**
 - **Worker Complaint**
- **Bureau of Public Work conducts preliminary investigation into the project's funding and delivers a report to the Public Subsidy Board.**
- **The Board discusses the project during an executive session at the next Board meeting and issues a determination or schedules and conducts a hearing to gather additional information.**
- **Once a Board determination is made, the Board Secretary/Director of Public Work sends notifications of the determination to the owners/developers of the project and any public entities involved in the project (own the land or provided funding), which states that it is binding upon the Bureau in its enforcement of 224-a.**

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AGGREGATE HAULING

- LL §220.3-a(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.
- Proposed Rule was published 9/14/22 and adopted May 31, 2023.*

***Enforcement Delayed**

AGGREGATE HAULING

§ 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.

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AGGREGATE HAULING

*****Enforcement of Aggregate Hauling Law Delayed*****

The proposed rule has been adopted and was published in the State Register on May 31, 2023. A lawsuit has been filed in New York State Supreme Court challenging the adopted rule and regulation. At this time, enforcement of the rule has been stayed by the Court. Therefore, the Bureau of Public Work shall not enforce Section 220.3-a(f) as clarified by Part 222 of 12 NYCRR until the stay is lifted. Updates will be posted to the Bureau's website as they become available.

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ARTICLE 9

- **Covers building service contracts with a public agency in excess of \$1500.**
- **The Bureau has jurisdiction on contracts let by the state and political subdivisions with the exception of cities, for which the enforcement falls to the comptroller or analogous officer.**
- **At the start of the 2022 fiscal year, large NYC condominiums and cooperatives seeking a tax abatement under real property tax law § 467-a will be required to pay their building service workers the Article 9 prevailing wage.**

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PREVAILING WAGE SCHEDULES

- **Are produced annually for both Article 8 and 9.**
- **Effective from July 1st to June 30th of the following year.**
- **Must be made part of the specifications prior to advertising for bids.**
- **Must be made part of the awarded contract.**
- **Must be posted on the jobsite by the contractor**

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PREVAILING WAGE SCHEDULES

Laborer - Building

JOB DESCRIPTION Laborer - Building

ENTIRE COUNTIES

Nassau, Suffolk

WAGES

WAGES

Per Hour:

07/01/2019

Building Laborer

\$ 39.40

Asbestos Abatement Workers
(Re-Roofing Removal see Roofer)

36.00

SUPPLEMENTAL BENEFITS

Per Hour:

Building Laborer

\$ 29.56

Asbestos Abatement Worker

16.45

OVERTIME PAY

See (B, E, Q) on OVERTIME PAGE

See also(H)for Fire Watch on OVERTIME PAGE

Asbestos Worker See (B, H)

HOLIDAY

Paid:

See (1) on HOLIDAY PAGE

Overtime:

See (5, 6, 25) on HOLIDAY PAGE

Asbestos Worker see (5,6,8 & 28)

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DEPARTMENTS OF JURISDICTION

A Contracting Agency (Department of Jurisdiction) can be a:

- **State department, agency, board, commission**
- **County, city, town or village**
- **School district, board of education or board of cooperative educational services**
- **Sewer, water, fire, improvement and other district corporation**
- **Public benefit corporation**
- **Public authority awarding a public work contract.**

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DEPARTMENTS OF JURISDICTION RESPONSIBILITIES

- Request PRC# and wage schedule (online at DOL website)
- Include project wage schedule in bid packet and awarded contract
- Submit a notice of award (PW-16 form) to BPW
- Notify BPW in writing of who will be responsible for collecting and reviewing certified payrolls and post said designation in a conspicuous location at the project site.
- Collect and review certified payrolls
- Submit a notice of completion/cancellation (PW-200 form) to BPW when project is completed or cancelled

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OSHA

All workers on a Public Work contract over \$250,000 must be certified as having completed a course in Construction Safety and Health as approved by OSHA that is at least ten hours in duration.

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PREVAILING WAGE SCHEDULES

https://dol.ny.gov/public-work-and-prevailing-wage

Public Work and Prevailing Wage

TOP ^ Public Work and Prevailing Wage

SHARE

SECTIONS

- Overview
- New Legislation
- Prevailing Wage
- Video: How to Request a Prevailing Wage Schedule**
- Required Postings
- Frequently Asked Questions
- NYS Debarment List

Video: How to Request a Prevailing Wage Schedule

Requesting a Prevailing Wage Sc...
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NEW YORK STATE Department of Labor
How to Request a Prevailing Wage Schedule Online

[Requesting a Prevailing Wage Schedule Online](#)

NEXT SECTION Continue ↓

Required Postings

3:00 PM 9/19/2022

CERTIFIED PAYROLLS – Article 8 Public Works

- **Must be collected every thirty (30) days after issuance of contractor's first payroll.**
 - **Willful failure to file payrolls in a timely manner constitutes a class E felony and is subject to a civil penalty of up to \$1000 per day.**
- **Must be maintained for five (5) years after project completion.**
- **Must be signed and sworn to, under penalty of perjury, by the contractor or their agent.**
- **Must list the name, address, hours and days worked, classification work performed, hourly rates of wages and supplements paid or provided, and last 4 of SSN and classification of workers.**

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CERTIFIED PAYROLLS – Article 8 Public Works

- **Contractors are required to pay prevailing wages to all laborers, workers, or mechanics on a public work or covered private project in order to receive payment for the work performed.**
- **If a contractor submits a certified payroll showing additional prevailing wages are owed, or fails to submit a certified payroll at all, the department of jurisdiction is legally entitled to withhold payment from the contractor for the benefit of the laborers, workers, and mechanics. Departments of jurisdiction should make the filing of certified payrolls an explicit condition for a contractor to receive payment.**
- **If the Bureau of Public Work issues a notice of withholding to the department of jurisdiction, then they are legally required to withhold payment from the contractor in the amount specified.**

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CERTIFIED PAYROLLS – Article 9 Building Service

- **Must be signed and confirmed by the contractor as true, under penalty of perjury**
- **Must show the hours and days worked, the craft, trade or occupation, and the wages paid.**
- **Must include a record of supplemental benefits and to whom they are paid on behalf of the worker. A copy of the agreement under which such payments are made and all payments made thereunder must be maintained as well.**
- **Required to be maintained on the site of the work during all of the time that work under the contract is being performed.**
- **Must be maintained for three (3) years after project completion.**

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ENFORCEMENT

- **Commissioner (or Comptroller) has the authority to conduct compliance investigations.**
- **Acting in a judicial capacity, has the right to issue subpoenas, administer oaths, and examine witnesses.**
- **May issue withholdings**
- **May issue stop work orders (with a right to a hearing)**
- **Issue orders and determinations after hearing and may enter settlements/stipulations.**

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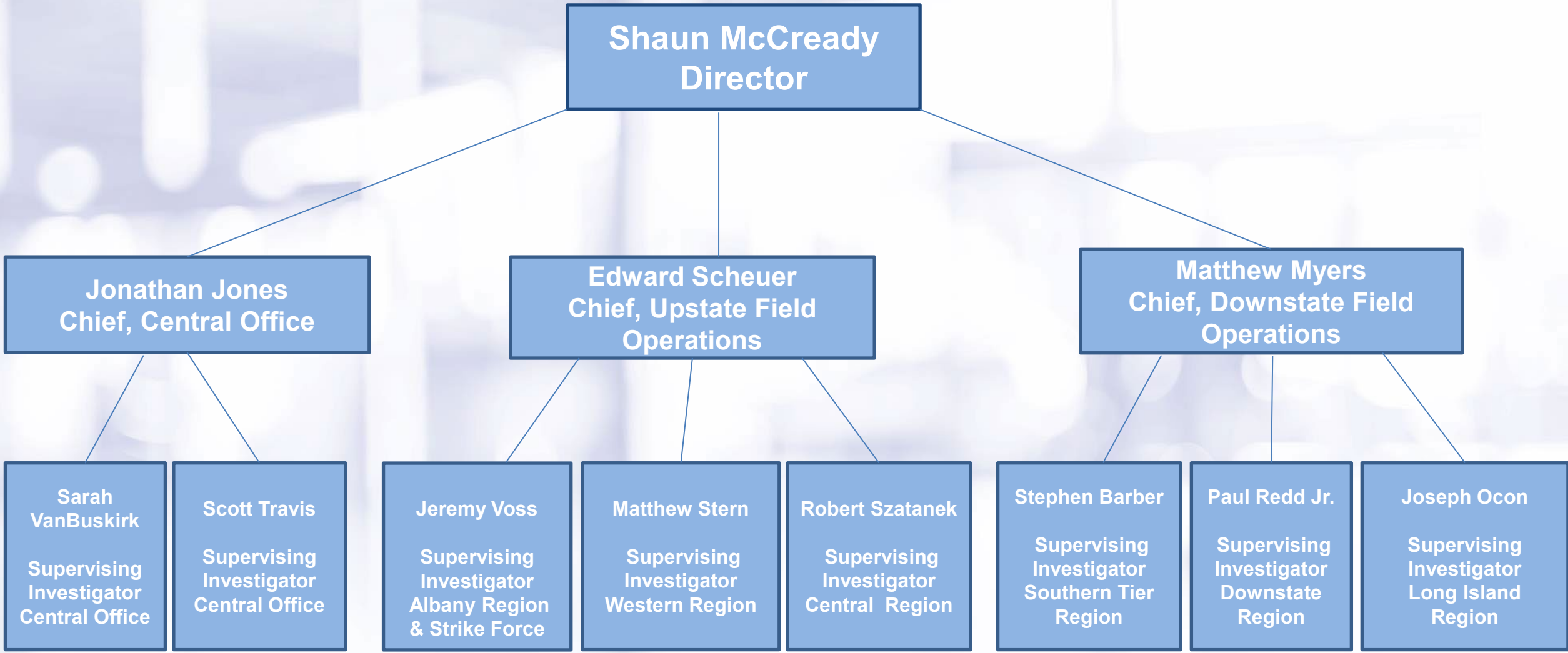
BUREAU OF PUBLIC WORK

Acting on behalf of the Commissioner, the Bureau of Public Work (BPW) consists of thirteen offices:

- **Central Administration and Strike Force based in Albany**
- **11 Statewide District Offices in Albany, Binghamton, Buffalo, Garden City, Newburgh, New York City, Patchogue, Rochester, Syracuse, Utica and White Plains**

The Bureau of Public Work is the largest state sponsored prevailing wage enforcement unit in the nation.

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DUTIES AND RESPONSIBILITIES

- **Check for compliance with Article's 8 and 9 and the WICKS Law**
- **Visit work sites/interview workers**
- **Conduct investigations/issue violations**
- **Pursue violating employers both administratively and criminally**
- **Collect and disburse wage underpayments to workers**
- **Assess and collect interest and civil penalties from violators**
- **Bar egregious violators from being awarded public contracts**
- **Prepare the Prevailing Wage Schedules**
- **Educate public owners, employers, workers, labor organizations and other involved parties on the law**

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WICKS LAW

- **Section 135 of the NYS Finance Law and Section 101 of the General Municipal Law**
- **Requires separate specifications and independent bidding for multiple prime contracts where the total cost of the public work exceeds:**
 - **\$3 million in New York City**
 - **\$1.5 million in Westchester and on Long Island (Suffolk & Nassau counties)**
 - **\$0.5 million in all other counties.**
- **The project must be divided into the following prime contracts:**
 - **General Construction**
 - **HVAC**
 - **Plumbing**
 - **Electrical**

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WICKS LAW

Exemptions:

- **Project Labor Agreements:**

- **If PLA will provide best work at lowest price it may be used and WICKS requirements waived.**
- **Contractors must participate in a DOL approved apprentice training program.**

- **Projects Below Threshold:**

- **Bidders must submit a sealed list naming each subcontractor for the HVAC, plumbing and electrical work and the amount to be paid to each.**
- **Requires department of jurisdiction approval to alter the list subsequent to awarding of the bid.**

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ENFORCEMENT

- **Educational visits or presentations**
- **Unannounced jobsite inspections**
- **Investigations of possible violations of Articles 8 and 9 may be opened by any interested party filing a claim or by Bureau staff**
- **The Bureau may negotiate resolutions with contractors who acknowledge a willful or non-willful violation and agree to repay owed wages and penalties.**
- **Cases that cannot be resolved may be referred to Counsel's Office for administrative hearing and/or a prosecuting agency for the filing of criminal charges.**

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INVESTIGATIONS

- **Conducted by Prevailing Wage Investigators**
 - **Civil Service – Public Work Wage Investigative Officer 1**
 - **Carries a badge; empowered to enter public work jobsites to inspect for required postings and interview workers**
 - **Ability to subpoena payroll and project records**
 - **May issue notices of withholding to departments of jurisdiction**
 - **Audits underpayments of prevailing wages and supplements**
 - **May negotiate resolutions with employers directly**

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COMMON TYPES OF UNDERPAYMENTS

- **Misclassifying workers as a trade with a lower prevailing rate of pay.**
- **Not paying supplemental benefits.**
- **Not paying overtime properly or at all.**
- **Paying workers as apprentices who are not in a New York State registered apprentice program and/or not following apprentice ratios.**
- **Misclassifying workers as independent contractors.**
- **Issuing checks for the proper amount and then requiring kickbacks.**

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OVERTIME

- For purposes of the prevailing wage, OT pay is typically earned after 8 hours in a day and on weekends, not just after 40 hours in a week.
- No laborer, worker, or mechanic on public work shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency.
- A dispensation to work overtime may be obtained from the Bureau by submitting the PW30.1 form found on the website.
- <https://dol.ny.gov/system/files/documents/2023/08/pw30.pdf>

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Four 10's

- **As of July 1, 2023, the Bureau of Public Work is no longer approving dispensations to work four-ten hour days in lieu of five eight-hour days in a week on public work projects.**
- **Previously issued dispensations will be honored until they expire or until to June 30, 2024, whichever comes first.**

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FAIR PLAY ACT

- To prevent worker misclassification
 - Law says a worker is an employee unless:
 - They are free from direction and control in performing their job, AND
 - They perform work that is not part of the usual work done by the business, AND
 - They have an independently established business

All three must be met to classify someone as an independent contractor.

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PREVAILING WAGES DO NOT HAVE TO BE PAID TO:

- **Legitimate independent contractors; those who meet the criteria of an independent contractor under the Fair Play Act.**
- **Volunteers (such as Americorps)**
- **Foreman or on-site administrators who do not perform any construction-like work**

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The owner or operator of a corporation, even a single person corporation, who performs the work themselves is required to be paid the prevailing wage by the corporation for said work.

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PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instz.htm)
Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



OMB No.: 1235-0008
Expires: 02/28/2018

NAME OF CONTRACTOR OR SUBCONTRACTOR: [REDACTED] ADDRESS: [REDACTED]
 PAYROLL NO.: [REDACTED] FOR WEEK ENDING: 3/23/17 PROJECT OR CONTRACT NO.: HAMPTON BAYS, NY

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (i.e., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK					
							MON	TUE	WED	THUR	FRI		SA	VA	WTH- HOLDING TAX	NTS	MED
[REDACTED]		OWNER	8 8 8 8 8	40													
[REDACTED]		LABORER	8 8 8 8 8	40	65.41	2616.40	162.21	585.00	162.64	31.94	100	948.39	668.01				
		Mason?															
		Painter?															
		Electrician?															

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "submit weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(2) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room 53502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

INVESTIGATIONS

- **Possible Resolutions**
 - **Compliance Agreement Program (CAP) Settlement**
 - **Stipulation & Order**
 - **Willful**
 - **Non-Willful**
 - **Referral to Counsel's Office for Adjudication Hearing**
 - **Criminal Referral**

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CAP

- **Negotiated with employer directly (or their counsel)**
- **Utilized for non-willful violations / honest mistakes**
- **Employer self audits all public work projects performed in past two years**
- **Direct restitution of underpayments from employer to workers with proof of payment**
- **No interest or penalties assessed**
- **No official finding of violation (willful or non-willful)**

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STIPULATIONS

- **Negotiated with employer directly (or their counsel).**
- **Contractor consents to a willful or non-willful finding.**
- **Underpayments, interest and penalties are agreed upon.**
- **Willfulness and restitution may both be stipulated to, or only one with the other determined at a hearing.**

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REFERRAL FOR HEARING

- **DOL Counsel's Office represents the Bureau of Public Work at an administrative hearing.**
- **Hearing conducted by Administrative Law Judge with preponderance of the evidence as the burden**
- **May result in a willful or non-willful violation with interest up to 16% on any underpayments and civil penalty up to 25%**

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REFERRAL FOR PROSECUTION

- **Criminal prosecution conducted by Attorney General's Office or a District Attorney's Office of the county where the work was performed or in which the employer is based.**
- **Can result in Misdemeanor or Felony Conviction against owner(s) and/or corporation**
- **Can occur in addition to or in lieu of administrative hearing process**
 - **Referral based on facts and merits of the case, never done or threatened to force civil settlement**
 - **Global settlements with criminal plea agreement and stipulation and order possible**

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PATTERNS OF FRAUD

- **If they're cheating the workers, they're probably cheating everyone else.**
- **Frequently, subjects of an investigation had unpaid UI fund contributions or omitted workers from NYS-45 in order to fraudulently lower the contributions they were required to pay.**
- **Similarly, willful violators of wage laws were often found to have committed WC policy fraud by underreporting their number of workers and work performed or misclassifying the type of work performed as a trade with a lower premium.**

APPLICABLE CHARGES

- **Submitting a false NYS-45 to the DOL or Workers Compensation policy application to NYSIF is a class E felony; Offering a False Instrument for Filing in the First Degree (PL § 175.30)**
- **Submitting a false certified payroll to a public entity (the department of jurisdiction on public work project) is a class E felony; Offering a False Instrument for Filing in the First Degree**
- **Any contractor or subcontractor who verifies under oath any statement required to be filed under Article 8 that he or she knows to be false shall be guilty of Perjury. LL § 220-c Perjury in the Second Degree (PL § 210.10) is a class E felony**
- **A Willful failure to file a certified payroll by a contractor or sub-contractor with the department of jurisdiction within thirty days of issuing the first payroll on a project is a class E felony under Labor Law § 220.3-a(a)(iii)**

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APPLICABLE CHARGES

Labor Law § 220.3(d)(i): Any person that participates in a public works project in the capacity of a contractor or subcontractor and who willfully fails to pay or provide the prevailing rate of wage or supplements and:

- (1) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, results in an amount less than twenty-five thousand dollars, shall be guilty of a **class A misdemeanor**;
- (2) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than twenty-five thousand dollars, that person shall be guilty of a **class E felony**;
- (3) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than one hundred thousand dollars, that person shall be guilty of a **class D felony**; or
- (4) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than five hundred thousand dollars, that person shall be guilty of a **class C felony**.

*New Criminal Penalties Signed into Law on September 6, 2023. More to follow.

DEBARMENT

- **Contractors (corporation and/or owner in their individual capacity) may be barred from bidding on any public work project for a period of five years if any of the following occurs:**
 - **Two willful violations within a six-year period**
 - **One willful violation that involves the falsification of payrolls or the kickback of wages or supplements**
 - **Felony conviction for a charge directly related to underpayment of wages and/or falsification of records on a public work project**
 - **Felony conviction or violation of discrimination provisions of the Workers Compensation Law**
 - **Second offense of the Fair Play Act**

DEBARMENT

- **One year ban for:**
 - **Misdemeanor conviction under the Workers Compensation Law**
 - **First offense under the Fair Play Act**

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RENEWABLE ENERGY PROJECTS

(*2022 change)

- **“Covered Renewable Energy Systems” subject to prevailing wage:**
 - **Renewable Energy Systems (as defined in PSL §66-p) with:**
 - **A capacity of one* or more Megawatts, and**
 - **Involves the purchase of renewable energy credits by a public entity, or third-party acting on behalf of and for the benefit of the public entity**
 - **Any Thermal Energy Network (as defined by PSL 2.29)**
 - **Exempts projects performed under a pre-hire CBA with a bona fide building and construction trade labor organization, labor peace agreement, or project labor agreement.**

CONNECTALL BROADBAND EXPANSION

- **“Covered broadband projects” subject to prevailing wage**
 - **Projects funded by ConnectAll Deployment Program (UDCA § 16-gg(7))**
 - **Projects funded by ConnectAll Municipal Assistance Program (UDCA § 16-gg(8))**
- **Effective April 9, 2022**

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NEW IN 2023

- **Public Subsidy Board up and running**
- **Aggregate Hauling Law; LL § 220.3-a(f) on hold**
- **EV Charging in New Parking Structures**
- **Wage Requirements for Certain Climate Risk-Related and Energy Transition Projects**
- **Roadway Excavation Quality Assurance Act**
- **Wage Theft added to Larceny Statute in NYS Penal Law**

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EV Charging Stations in Parking Structures

- **State Finance Law amended to require the private construction of parking facilities with a capacity of 50 or more parking spaces to have Electric Vehicle charging stations.**
- **Construction of those facilities is subject to the prevailing wage rules of Article 8 if the private construction of the parking facility is done under contract which is paid for in whole or in part out of public funds, as defined in section 224-a(public subsidy law)**
- **Projects exempt from prevailing wage requirements under 224-a are also exempt under this law.**
- **Effective April 1, 2023**

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Wage Requirements for Certain Climate Risk-Related and Energy Transition Projects

- A “Covered Climate Risk-Related and Energy Transition Project” subject to prevailing wage means a construction project that receives at least \$100,000 of funds from the New York Climate action fund climate investment account.
- Excludes:
 - Privately owned construction work performed under a pre-hire collective bargaining agreement with a bona fide building and construction trades labor organization.
 - Private residence one or two-family dwelling.
 - Construction work on a privately owned multiple residence where at least 25% of the units are affordable housing or at least 35% of units involve supportive housing services for vulnerable populations.

Roadway Excavation Quality Assurance Act

- **Effective 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.**
- **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.**

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Roadway Excavation Quality Assurance Act

- Extended FAQ available on Public Work Website:
 - <https://dol.ny.gov/system/files/documents/2023/09/enforcement-guidance-update-2-roadway-excavation-quality-assurance-act.pdf>
- It is a broad statute and can potentially result in work performed for an individual residential utility hookup or repair to be subject to prevailing wage requirements, even if the homeowner is footing the bill. Please see the FAQ for more detailed guidance.
- For assistance in determining what wage rates should be applied to the specific work involved in the different types of utility projects, please consult with the nearest Public Work District Office. Contact information is provided at the end of the slideshow.

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WAGE THEFT IS A CRIME (obviously)

- **Bill S2833-A / A154-A adds wage theft as a means by which the crime of larceny may be committed.**
- **Criminal law charge available for DOL's law enforcement partners (NYS OAG and County District Attorneys)**
- **“Compensation for labor or services” is added to the definition of property.**
- **Penal Law section 155.05(2)(f) is added Article 155; Larceny.**

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WAGE THEFT IS A CRIME (obviously)

- **A person obtains property by wage theft when he or she hires a person to perform services and the person performs such services and is not paid the promised wages.**
- **All underpayments to one person by the employer can be aggregated into one larceny count, even if occurring in different counties. Any DAO from one of the counties where the underpayments occurred can prosecute.**
- **It is also permissible to aggregate underpayments to an entire workforce, defined as a group of one or more persons who work in exchange for wages, into one charge, even if occurring in different counties.**

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BUREAU STATISTICS

	2020	2021	2022	2023(Thru Sep. 7)
Wages & Interest Recovered	\$5,081,571	\$6,605,439	\$5,262,652	\$4,021,675
Civil Penalties Assessed	\$297,535	\$353,538	\$244,737	\$152,881
# of Workers Recovered For	1,737	2,233	2,026	1,828
Wage Schedules Assigned	14,594	15,340	16,011	11,346

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CONTACT INFORMATION

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<https://dol.ny.gov/public-work-and-prevailing-wage>

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DISTRICT OFFICES

Albany Office (01)	State Office Bldg. Campus Bldg. 12, Rm. 134B Albany, NY 12226 Tel. (518) 457-2744 Fax (518) 485-0240	Albany, Clinton, Columbia, Dutchess, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, Washington
Binghamton Office (02)	State Office Bldg. 44 Hawley St., Rm. 908 Binghamton, NY 13901 Tel. (607) 721-8005 Fax (607) 721-8004	Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga
Buffalo Office (03)	284 Main Street Buffalo, NY 14202 Tel. (716) 847-7159 Fax (716) 847-7650	Allegany, Cattaraugus, Chautauqua, Erie, Niagara
Garden City Office (04)	400 Oak St., Suite 101 Garden City, NY 11530 Tel. (516) 228-3915 Fax (516) 794-3518	Nassau

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DISTRICT OFFICES

Rochester Office (05)	109 So. Union St.. Rm. 312 Rochester, NY 14607 Tel. (585) 258-4505 Fax (585) 258-4708	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne, Wyoming, Yates
Syracuse Office (06)	333 East Washington St., Rm.419 Syracuse, NY 13202 Tel. (315) 428-4056 Fax (315) 428-4671	Cayuga, Cortland, Jefferson, Onondaga, Oswego, Seneca, Tompkins
Utica Office (07)	207 Genesee St., Rm. 603B Utica, NY 13501 Tel. (315) 793-2314 Fax (315) 793-2514	Franklin, Fulton, Hamilton, Herkimer, Lewis, Madison, Montgomery, Oneida, St. Lawrence
White Plains Office (08)	120 Bloomingdale Rd. , Rm. 204 White Plains, NY 10605 Tel. (914) 997-9507 Fax (914) 997-9523	Putnam, Westchester

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DISTRICT OFFICES

New York City Office (09)	Adam Clayton Powell Jr. SOB 163 W. 125th St., Rm. 1307 New York, NY 10027 Tel. (212) 932-2419 Fax (212) 775-3579	Bronx, Kings, New York, Queens, Richmond
Central Office (10)	State Office Bldg. Campus Bldg. 12, Rm. 130 Albany, NY 12226 Tel. (518) 457-5589 Fax (518) 485-1870	(General Information / Wage Schedules)
Newburgh Office (11)	The Maple Bldg. 3 Washington Ctr., 4th Floor Newburgh, NY 12550 Tel. (845) 568-5287 Fax (845) 568-5332	Orange, Rockland
Patchogue Office (12)	160 South Ocean Ave. 2nd Floor Patchogue, NY 11772 Tel. (631) 687-4882 Fax (631) 687-4902	Suffolk

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