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NEW YORK STATE
Department of Labor

PREVAILING WAGE FOR HAULING OF AGGREGATE SUPPLY CONSTRUCTION MATERIAL

Frequently Asked Questions

Q: When is prevailing wage required for work involving the delivery and hauling of aggregate supply construction materials?

A: Prevailing wage must be paid for work performed on all public work worksites, including 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 at the worksite or a central stockpile location. Additionally, prevailing wage must 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; however, prevailing wage does not need to be paid to direct employees of such supplier of aggregate supply construction materials, when making a single delivery in a given day.

Q: Which materials are considered “aggregate supply construction materials?”

A: Sand, gravel, stone, crushed stone, dirt, soil, millings, and fill.

Q: What is considered a “worksite?”

A: A worksite is the area of improvements defined within the construction contract and any surrounding areas supporting such specific project. If the contracting entity designates or provides any additional surrounding area to support the worksite, such as a staging area, vehicle parking, or safety perimeter, that area is considered a part of the worksite.

Q: What is the “central stockpile?”

A: A central stockpile is a location where materials meant only for use on a specific public work project are kept. This location is not part of the worksite, but is meant to support the worksite. This includes all dedicated sites established by a contractor for centrally stockpiling materials.

Q: How will DOL measure work performed within a 50-mile radius of the worksite?

A: DOL will measure the 50-mile radius based on the center of the worksite and extend out in a straight line on a map in all directions from such point without regard to specific routes or roads. The center of a worksite may change if a worksite moves and will be based on the nature of the individual project. DOL will consider contractors and subcontractors in compliance where such entities have made reasonable and good faith efforts to establish a 50-mile radius based on individual facts and circumstances.

Q: Do I have to pay prevailing wage when a worker is driving an empty truck?

A: If driving between a worksite and central stockpile, yes, empty truck hauls are subject to prevailing wage. Any work and travel time involved in transporting aggregate supply construction materials between central stockpiles and worksites, and on the worksite itself, including empty return hauls, is subject to the prevailing wage. This includes time driving between the two locations, as well as time spent loading or unloading, at such locations. In addition, empty return hauls made between the worksite and vendor are covered within the 50-mile radius of the worksite.

Q: Are drivers the only employees covered by prevailing wage for work related to the hauling of aggregate supply construction materials?

A: No, all laborers, workers and mechanics employed under a public work contract must receive prevailing wage for work they complete as part of the hauling of aggregate supply construction materials between a central stockpile and worksite. In addition to drivers, any employees helping load or unload aggregate supply construction materials onto, or off, vehicles at the worksite or central stockpile, must be paid prevailing wage.

Q: I am a contractor, do I have to pay my employees prevailing wage when they are picking materials from a vendor and bring them back to a worksite?

A: Any work performed within a 50-mile radius of a worksite involving the delivery or transport of aggregate supply construction materials from a vendor of aggregate supply construction materials, such as a plant or quarry, to a worksite is subject to the prevailing wage. Any travel or loading time spent outside the 50-mile radius surrounding the worksite does not require prevailing wage.

Q: I am working with an out-of-state vendor within 50 miles of my worksite. Am I required to pay prevailing wage for work performed at the vendor's location?

A: No, regardless of where the limits of a 50-mile radius may fall, any work or travel time performed outside of New York State is not subject to prevailing wage requirements.

Q: Is prevailing wage required for deliveries between a vendor and a central stockpile location?

A: No, deliveries of aggregate supply construction material from a vendor to a central stockpile are not subject to prevailing wage. Only deliveries from a vendor directly to a worksite are subject to the prevailing wage (within a 50-mile radius of such worksite).

Q: I am receiving a one-time delivery from a vendor to my worksite. Is prevailing wage required?

A: No, prevailing wage coverage does not apply to a single delivery in any given day transported by a driver who is an employee of an aggregate supply construction material vendor. This exception is intended to carve out one-off deliveries directly from a vendor.

Q: I am receiving multiple deliveries from the same vendor, but delivered by different drivers. Is prevailing wage required?

A: Yes, if there is more than one delivery in a day from the same vendor, even if a different individual driver is used, all deliveries to the worksite that day from that same vendor are subject to prevailing wage requirements.

Q: How is the prevailing wage rate determined for jobs that require travel within more than one county?

A: Employees must be paid the prevailing wage for **the county in which the worksite is located** for all relevant work performed on the worksite or central stockpile, travel between the worksite and central stockpile, and deliveries from a vendor within a 50-mile radius of the worksite.

Q: Where can I find the current prevailing wage rates for my geographic location?

A: Prevailing wage rates are set annually by the Department of Labor and must be posted at the work site. More information can be found at dol.ny.gov/public-work-and-prevailing-wage.

Q: As a public entity, am I required to pay the prevailing wage if I am receiving a delivery of materials I hope to use on a future, undetermined project?

A: No, if there is not a specific public work project involved then deliveries of aggregate supply construction materials made directly to a public entity that are being stockpiled for an undetermined future use are not subject to the prevailing wage. Additionally, deliveries of aggregate supply construction materials made directly to a public entity for a self-performed project handled by the public entities' employees are not subject to the prevailing wage.

Q: What will DOL look for when evaluating compliance with the 50-mile radius provision?

A: Compliance will depend on the nature of the individual project. DOL recognizes that, as with any new regulation, the public needs time to adapt. DOL will consider contractors and subcontractors in compliance where such entities have made reasonable and good faith efforts to establish a 50-mile radius and keep track of work taking place within such radius based on individual facts and circumstances.

Q: When does enforcement of the 50-mile radius provision of prevailing wage for hauling of aggregate supply construction material begin?

A: The Bureau of Public Work & Prevailing Wage Enforcement will begin enforcement of the 50-mile radius provision on projects solicited on or after July 1, 2024. The 50-mile radius provision was adopted as a Rule in the State Register (12 NYCRR 222.2 (c)) on May 31, 2023, but due to ongoing litigation, the provision has not been enforced. On April 11, 2024, the Appellate Division affirmed the lower court's dismissal of the lawsuit challenging the adopted rule and a stay on enforcement of 12 NYCRR 222.2(c) was lifted.