

VILLAGE OF COXSACKIE
DEPARTMENT OF PUBLIC WORKS
APPLICATION FOR STREET/HIGHWAY EXCAVATIONS

Name of Contractor _____

Address _____ Telephone # _____

City/State/Zip Code _____

Name of Property Owner _____

Address _____ Telephone # _____

City/State/Zip Code _____

Location & Purpose of Opening _____

Size of Opening _____ x _____ = Sq. Ft. of (a) _____

_____ x _____ =Sq. Ft. of (b) _____

_____ x _____ =Sq. Ft. of (c) _____

Amount of Fee _____ \$15.00 _____

Permit Paid by: Owner _____ Contractor _____

I hereby agree to conform to the conditions of Chapter 59 of the Village Code of the Village of Coxsackie LL. No. 3-1979.

***I hereby agree to conform to the conditions of Section 224-F of the NYS Labor Law. ***

Contractor Signature Date Homeowner Signature Date

Prevailing Rate Case (PRC) #: _____

Certificate of Insurance is attached _____

WE ARE YOUR DOL



Department
of Labor

New Roadway Use & Excavation Act for Utility Work - Effective September 15, 2023



The NY Governor signed the Roadway Use & Excavation Quality Assurance Act, codified as Labor Law section 224-F effective September 15, 2023. This law subjects roadway construction work by utility company contractors and subcontractors to the prevailing wage requirements of Article 8. The utility work covered by this law is Electric, Gas, Steam, Sewer Fuel, Geothermal, Telephone, Broadband, and Internet. Additional record-keeping requirements are also established by this law. The Law applies to the excavation or use of the street to perform maintenance, restoration, or repair. The Law applies to also to all utility work in, on, or under the street, adjacent curb, sidewalk, shoulder area, or right of way.

All phases of digging, fixing, repairing, maintaining, and restoring are included and fall under this new law. Contractors and subcontractors to a utility project are now

Steve Farbent

New York State Department of Labor | Bureau of Public Work

1220 Washington Avenue Building 12, Room 134B, Albany, NY 12226

O: 518-457-2606 C: 518-319-5202

Stephen.Farbent@labor.ny.gov

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. All contractors shall provide a copy of the Prevailing Rate Schedule to their subcontractors. Such contractors and subcontractors are required to submit certified payrolls with the department of jurisdiction. The filing of Certified payroll is a condition of payment. The law does not cover direct employees of a utility company.

The **Public Contracting Agency (i.e. city, town, county)**, **Utility Agency (e.g. National Grid, Central Hudson, Con Ed, NYSEG)**, and subcontractors (e.g. ABC Excavation, Precision, DDS, Dekatherm, ABC Paving, ABC Landscaping) should collect and maintain the Certified Payroll records for a minimum of five years.



New York State Department of Labor
Kathy Hochul, *Governor*
Robert 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



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

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.



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

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.



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

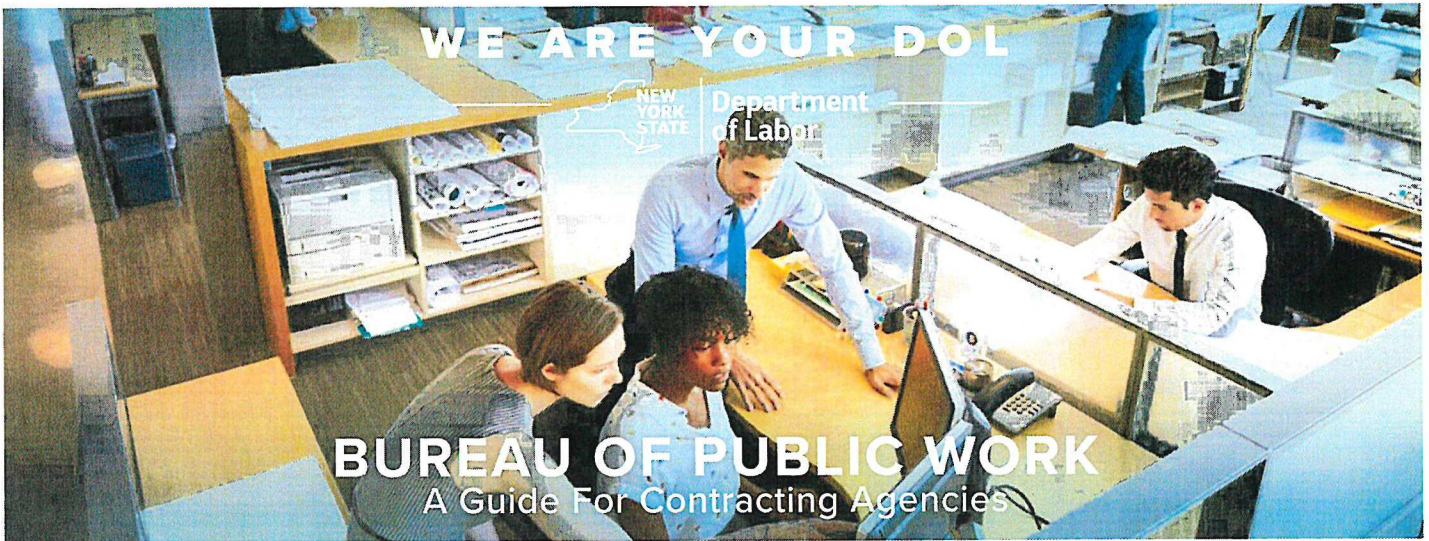
18. What if the private party/homeowner is paying the full bill, but has to go through the utility to get the work performed and the contractor is hired/paid by the utility?
 - a. Then any portion of that work performed in, on, or under the street, curb, sidewalk and right of way would be subject to 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 [NYSDOL - Prevailing Wages \(New Wage Schedule\)](#)



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

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.



RESPONSIBILITIES OF THE CONTRACTING AGENCY

A Contracting Agency (Department of Jurisdiction) includes:

- A state department, agency, board or commission
- A county, city, town or village
- A school district, board of education or board of cooperative educational services
- A sewer, water, fire, improvement and other district corporation
- A public benefit corporation
- A public authority awarding a public work contract

The Contracting Agency awarding a public work contract must obtain a Prevailing Rate Schedule listing the hourly rates of wages and supplements due the workers employed on a public work project. To obtain a schedule, submit by mail, fax, or online, a "Request for Wage and Supplement Information" form (PW-39) to the Bureau of Public Work. The Prevailing Rate Schedule must be included in the specifications for the contract to be awarded and is deemed part of the public work contract.

After the award of a contract, by law the Contracting Agency must furnish the following information to the Bureau:

- The name and address of the contractor
- The date the contract was awarded
- The approximate dollar value of the contract

To aid compliance with this provision of the Labor Law, a copy of the Department of Labor's "Notice of Contract Award" form (PW-16) is included with the original Prevailing Rate Schedule, and can also be submitted online.

The Contracting Agency must notify the Bureau of the completion or cancellation of any public work project. The Department of Labor's "Notice of Completion/Cancellation of Project" form (PW-200) is included with the original Prevailing Rate Schedule, and can also be submitted online.

HOURS

No laborer, worker, or mechanic in the employ of a contractor or subcontractor engaged in the performance of any public work project shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency.

PREVAILING RATE SCHEDULE

The Contracting Agency must provide complete copies of the Prevailing Rate Schedule to all prime contractors. They, in turn, must provide copies to each subcontractor and obtain an affidavit certifying the schedule was received.

The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1 through June 30 of the following year. All assigned Prevailing Rate Schedules automatically update to the newly determined annual rates on July 1.

Both the annual determination and the updated assigned Prevailing Rate Schedules are available on the Department of Labor web site: www.labor.ny.gov

OSHA 10-HOUR COURSE

All workers on public work projects of at least \$250,000 are required to have taken this safety course. The provisions of this requirement must be included in the bid and contract documents.

PAYROLLS AND PAYROLL RECORDS

Every contractor and subcontractor must keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury.

At a minimum, payrolls must show the following information for each person employed on a public work project:

- Name
- Social Security Number (last four digits)
- Classification(s) in which the worker was employed
- Hourly wage rate(s) paid
- Supplements paid or provided
- Daily and weekly number of hours worked in each classification

Every contractor and subcontractor shall submit to the Contracting Agency, within 30 days after issuance of its first payroll and every 30 days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury.

The filing of payrolls is a condition of payment. The prime contractor is responsible for any underpayments of prevailing wages or supplements by any subcontractor.

All contractors or their subcontractors shall provide to their subcontractors a copy of the Prevailing Rate Schedule specified in the public work contract.

The Contracting Agency is also required to collect and maintain payroll records for five years from the date of the completion of the work, as well as designate in writing an individual in their employ to be responsible to collect certified payrolls and review them for validity.

WITHHOLDINGS

The Contracting Agency is required to withhold and retain funds when directed by the Bureau. The funds may not be released until notified by the Bureau.

CONTACT INFORMATION

New York State Department of Labor
888-469-7365
www.labor.ny.gov

Steve Farbent DOL PW
518 457 2606