



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

ENFORCEMENT GUIDANCE

DATE: September 20, 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 Department of Jurisdiction for this law, subject to the obligations of Article 8, means the department of the state, board, or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to issue a permit to a utility company, or its contractors or subcontractors, for a covered excavation project.


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.


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 closing and 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.



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10. What utility work is covered by this law?
 - a. Electric, gas, water, steam, sewer, fuel, geothermal and telephone/telegraph.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. What if a cable television company also performs other utility work, are they covered by this law?
 - a. If the work being performed relates to a utility defined in section 2(23) of the Public Service Law, then it will be considered a utility company subject to the provisions of this law for that project.
17. What about broadband internet companies?
 - a. They are not included in the scope of Public Services Law section 2(23) and therefore not considered a utility for purposes of this law.
 - b. NOTE: Work performed to extend broadband internet infrastructure that receives certain ConnectAll funding may be subject to the prevailing wage requirements of Section 224-E.



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18. What prevailing wage rates are applicable to the different types of utility work?
- 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.
 - <https://dol.ny.gov/public-work-and-prevailing-wage-contact>
19. Who should request a PRC number?
- 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.
 - It is the responsibility of the "department of jurisdiction" to obtain a PRC number from the Bureau of Public Work.
20. Who needs to retain certified payrolls?
- Contractors and subcontractors performing covered work and the department of jurisdiction/permit issuing department.