

NEW YORK STATE CREATES A SYSTEM FOR PUBLIC ENTITIES AND CONTRACTORS TO COMPLY WITH PREVAILING WAGE REQUIREMENTS THROUGH THE DEPARTMENT OF LABOR WEBSITE

For many years Article 8 of the Labor Law has required public entities including fire districts to make certain that contractors and sub-contractors that work on their public works projects comply with the obligation to pay workers on the public works projects based upon prevailing wages and benefits set by the New York State Department of Labor. This rule applies to all public works projects and does not establish a dollar threshold for application of the requirement.

We are all familiar with the competitive bidding rules provided for under General Municipal Law §103. That statute sets a dollar threshold of \$20,000 for purchases of goods and \$35,000 for purchases of public work. In other words, the statutory requirement to competitively bid the contracts does not apply to purchases below those dollar thresholds.

Contrast that with Labor Law §220 on prevailing wages. It provides no dollar thresholds. In theory prevailing wage rules apply to all public works contracts. Some may consider this an onerous imposition placed on public entities, but it is the law.

In recent years the State Legislature has sought to strengthen prevailing wage laws by applying them to more aspects of public work and by setting a regulatory framework within which public entities, contractors and subcontractors must operate. In the past year prevailing wages were applied to services related to hauling asphalt and concrete and certain work done to prefabricate materials used on public works projects.

Public entities such as fire districts are required to make the payment of prevailing wages part of the terms and conditions of their public works projects. The State Legislature has taken steps to require participation by public entities by requiring that they register each project on the Department of Labor website as a public works project. When a fire district decides to contract to have public work performed it must go to the Department of Labor website at <https://apps.labor.ny.gov/wpp/showPublicNewProject.do?method=showIt> and register the public works project.

This is not a new requirement. It has been in place for several years.

This registration assigns a project number to the fire district project and produces a prevailing wage schedule that is to be incorporated into the project documents so that contractors and subcontractors have notice of the wages and benefits that they must pay their personnel assigned to work on the project.

The fire district is required to register a contract award for the project and thereafter notify the Department of Labor when the project has been completed.

Through legislation enacted in 2022 and 2023, the State Legislature expanded this process by requiring all contractors and subcontractors working on public works projects to register with the Department of Labor and obtain a registration number. Possession of this registration number serves as evidence of a contractor's or subcontractor's eligibility to be awarded public works projects. See <https://dol.ny.gov/public-work-contractor-and-subcontractor-registry-landing>.

In the 2025 Legislative Session the State Legislature set a new requirement for this process with the adoption of Labor Law § 220-J which formalizes a process for contractors and subcontractors to file their certified payrolls for each public works project with the public entity and the Department of Labor on a 30-day cycle. The statute provides as follows:

§ 220-j. Payroll reporting requirements

1. As used in this section:

a. "Contractor" means any entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

b. "Fiscal officer" for purposes of this section shall have the same meaning as set forth in paragraph e of subdivision five of section two hundred twenty of this article.

c. "Subcontractor" means any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

d. "Covered project" means any project subject to the provisions of this article, including but not limited to, public work projects, privately owned prevailing wage projects and those subject to the provisions of sections two hundred twenty-four-a, two hundred twenty-four-d and sections two hundred twenty-four-f of this article.

e. "Monthly" means at least once every thirty days while work is being performed on a covered project and within thirty days after the final day of work was performed on the covered project.

2. Each contractor and subcontractor working on a covered project shall furnish records consistent with subparagraph (iii) of paragraph a of subdivision three-a of section two hundred twenty of this article directly to the fiscal officer in the following manner:

a. submit records monthly unless such covered project contract requires more frequent reporting requirements;

b. in an electronic format, in a manner prescribed by the commissioner, on the department's website;

c. provide documentation of each fund, plan or program where any supplement has been paid or provided for; and

d. provide a copy of the payment bond required by section one hundred thirty-seven of the state finance law, including all information open to public inspection.

2-a. For purposes of subparagraphs (iii) and (iv) of paragraph a of subdivision three-a of section two hundred twenty of this article, the furnishing of electronic records consistent with subdivision two of this section by a contractor or subcontractor shall satisfy the requirement that such contractor or subcontractor submit a transcript of the original payroll record and that the appropriate department of jurisdiction collect and maintain such payroll records.

3. a. A contractor or subcontractor who fails to furnish records pursuant to this section relating to its employees, shall be subject to a penalty by the fiscal officer of one hundred dollars for each day such contractor or subcontractor is in violation of this section.

b. The fiscal officer shall not level a penalty pursuant to this subdivision until such contractor or subcontractor fails to furnish such electronic records fourteen days after the requirements set forth in paragraph a of subdivision two of this section.

c. Such penalties pursuant to this subdivision shall only accrue to the actual contractor or subcontractor who failed to furnish such required records.

d. All penalties collected pursuant to this section shall be used by the fiscal officer for prevailing wage enforcement.

e. The fiscal officer shall undertake activities it deems necessary to monitor and enforce compliance with this section.

4. No later than December thirty-first, two thousand twenty-five, the department shall develop and implement an online database of electronic certified payroll records submitted pursuant to this section. Such database shall be publicly accessible, but not include personally identifiable information. Such database shall be searchable, including each available payroll record subset. In a city with a population in excess of one million, the commissioner shall ensure access to such online database is provided to the fiscal officer in a manner that allows such officer to monitor and enforce the provisions of this section.

5. Within thirty days of the effective date of this section, the mayor of a city with a population in excess of one million shall notify the commissioner that such city elects to develop and implement an online database of electronic certified payroll records submitted pursuant to this section for every contractor and subcontractor working on a public work subject to section two hundred twenty of this article performed by or on behalf of the city. Such database shall be publicly accessible on the city's website and through the department's website, shall not include personally identifiable information and shall comply with all provisions of this chapter. The city comptroller shall have access to such online database in a manner that allows such officer to monitor and enforce the provisions of this section. Where such city comptroller determines that such database does not comply with all provisions of this chapter, or where such city fails to develop such database by December first, two thousand twenty-five, upon notice to the commissioner, all such city agency projects shall be covered by the commissioner's database and such contractors and subcontractors shall furnish records to the commissioner in accordance with this section. N.Y. Lab. Law § 220-j (McKinney)

Fire districts that were not aware of this new element of the regulatory scheme are learning about it when their contractors seek to file their certified payrolls digitally with the Department of Labor on its website. The contractors are asking the fire district they are working for to provide the project number so that they can file their certified payrolls on the website of the Department of Labor. That project number is a number that is assigned when the fire district registers the project to obtain the prevailing wage schedules.

Previously, public entities that did not bother to register the project with the Department of Labor were still able to require compliance with prevailing wage requirements by having the contractors submit their prevailing wage certified payrolls with their payment requisitions. Now contractors that seek to protect their status as registered contractors with the Department of Labor are looking to file those certified payrolls with the Department of Labor. They cannot file their form without the fire district's Department of Labor project number.

Clearly, these new requirements set further administrative burdens on the fire district staff to register each project and follow up with the required reporting.