

Law Alert: New York Passes Roadway Excavation Quality Assurance Act by Andrew L. Richards, Esq. and Erik Ortmann, Esq.

New York State recently passed the Roadway Excavation Quality Assurance Act (S.4887/A.5608) to ensure construction workers are paid prevailing wages on roadway excavation projects. The legislation, recently signed into law in New York State, amends the labor law to protect workers on projects requiring a permit to excavate or open a street.

It is intended to ensure that workers are paid fairly. Additionally, proponents believe that requiring prevailing wage standards will lead to the use of a “highly trained and skilled workforce” helping to protect public safety. Prevailing wage must be paid on public works projects, and the requirement to pay prevailing wage on roadway excavation projects has already been in place for New York City projects.

Covered Excavation Projects

Specifically, this legislation mandates that utility company contractors and their subcontractors pay the prevailing wage to employees on “covered excavation” projects. The law does not cover direct employees of a utility company. A covered excavation project is defined in the statute as a construction project that involves a permit issued to a contractor or subcontractor by a state, county or municipality to use, excavate, or open a street. According to the law, “no permit shall be issued for a covered excavation project until an agreement confirming the payment of wages” as required by the law “has been contractually mandated and filed with the department of jurisdiction,” meaning the jurisdictional entity charged with issuing the permit.

Under the statute, utility company contractors and subcontractors are also required to keep original payrolls or transcripts “setting forth the names and addresses and showing for each workman, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid, and the supplements paid or provided.” For further clarity, the New York State Department of Labor has issued enforcement guidance answering some frequently asked questions.

Contractors Tread Carefully

Consider there is one major problem with this new law. It requires that the contractor pay prevailing wage on any street opening project even if the contract between the contractor and utility company has been executed. In other words, the contractor will be required to pay prevailing wage going forward based on the prices agreed to with the utility company despite the fact that the contractor did not bid the work using prevailing wage. It appears that the legislature did not take into account that a contractor and utility company execute contracts for periods of time, not knowing when an application for the permit would be submitted. And without a change order from the utility company, the contractor will suffer greatly with the additional labor cost for roadway openings permitted after the enactment of the Act.

Kaufman Dolowich Can Help

Prevailing wage within the construction industry has become a hot-button issue and contractors need to ensure they are paying workers in compliance with local and state laws. Kaufman Dolowich’s team of skilled construction attorneys can assist in navigating this new law, as well as complying with local and state statutes.