

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

AUGUST 24, 2023

Governor Hochul Signs Roadway Excavation Quality Assurance Act Into Law

On Aug. 16, 2023, Gov. Kathy Hochul signed the Roadway Excavation Quality Assurance Act (the Act), S.4887/A.5608, into law. This new legislation guarantees prevailing wages to construction workers on roadway excavation projects. The law takes effect 13 days after its signing, i.e., Aug. 29, 2023.

The Act is consistent with New York's history of requiring certain projects to pay their employees a prevailing wage. In 1984, New York created legislation to provide prevailing wages to employees on public work projects. Thereafter, in 2020, New York extended the prevailing wage requirement to apply to certain private projects.

Expanding those entitled to prevailing wages, the Act requires utility company contractors and subcontractors on a "covered excavation project" to pay not less than the prevailing rate of wage to each laborer, worker, or mechanic on such project. A "covered excavation project" means a construction project where a permit is issued by the state, county, or municipality to use, excavate, or open a street.

As stated in the Act, the prevailing rate of wage is either (i) the prevailing rate set for the trade or occupation in the locality where the covered excavation project is situated, or (ii) the rate set by the prevailing scale of union wages on excavation projects where local law or ordinance requires only competent workers be employed on the projects.

Utility company contractors and subcontractors who are bound by local law or ordinance to employ competent workers on covered excavation projects should note that are also required to maintain original payrolls or transcripts of these competent workers that are sworn to or affirmed under the penalties of perjury as true. The payrolls or transcripts must include the competent worker's name and address, their work hours and days, the occupation worked, and the hourly wage rate and supplements paid.

Notably, to compel compliance, a permit will not be issued for a roadway excavation project until an agreement has been made by the contractor or subcontractor that confirms payment of wages will be made in accordance with the Act. Such an agreement must be filed with the department where the permit is sought.

If you have any questions about the information presented in this memo, please contact [Natalie Vogel](#), any attorney in Bond's [labor and employment department](#) or the attorney at the firm with whom you are regularly in contact.

