

KD Alert - Prevailing Wage Now Applicable to Private Construction

Governor Cuomo signed a bill on April 3, 2020, amending and adding Section 224-a to New York State Labor Law extending prevailing wages to private construction contracts. Previously, those prevailing wage requirements existed primarily with respect to public projects. Effective January 1, 2022, the new law extends prevailing wage requirements in the law to public/private partnerships and developments over \$5 million that receive tax breaks or economic incentives from industrial development agencies which comprise over 30 percent of a contract's cost.

Some projects exempted from this new law include construction work on one or two family dwellings where the property is the owner's primary residence, or the property owner owns no more than four dwelling units; construction performed for non-profit organizations; housing developments comprising of a minimum of 25 percent affordable units (if there is a regulatory agreement with housing non-profits or state/municipality); solar installations under 5 megawatts; brownfield redevelopment; sewage treatment and developments (that have an agreement with organized labor); supermarket retail space built or renovated with tax incentives to support NYC FRESH program; and space to be utilized as a school under 60,000 sq.ft. (with a lease from private owner to NYC DOE and the SCA).

In addition, new Labor Law Section 224-c creates a new public subsidy board. The board, comprising of thirteen members will be appointed by the Governor and shall serve without salary or compensation. Members shall only receive reimbursement for necessary expenses incurred within scope of their duties. Through public hearings, the board will examine construction contracts to determine if they are "covered projects" under Section 224-a.

While labor officials praise the new law, the new wage mandates could result in significant construction cost increases and a reduction in development and bidders for certain projects impacted by the changes. The concern among some is that the imposition of prevailing wages to construction projects not traditionally subject to such requirements will have a net negative impact on New York's economic activity as businesses avoid such projects in New York and/or seek work in surrounding states.

The attorneys in KD's Construction Law Practice Group continue to closely monitor developments on the law and update employers as the legal landscape continues to evolve. If you have questions about these developments, complying with the above regulations or are in need assistance in implementing the new policies, please contact one of the experienced Construction Law attorneys - Andrew Richards ((516) 283-8717, email: arichards@kaufmandolowich.com), Erik Ortmann ((516) 283-8730, email: eortmann@kaufmandolowich.com), Elizabeth Marchionni ((516) 283-8723, email: emarchionni@kaufmandolowich.com) or call Kaufman Dolowich & Voluck at (516) 681-1100.