



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

ENFORCEMENT GUIDANCE

DATE: December 4, 2023
RE: LL §224-e; Wage Requirements for Certain Broadband Projects
FROM: Shaun McCready, Director of Public Work
ATTN: All

On April 9, 2022, Labor Law Article 8, section 224-e became effective, subjecting “covered broadband projects” to the prevailing wage requirements of Article 8.

A “covered broadband project” means a broadband project funded by programs established pursuant to subdivisions 7 and 8 of section 16-gg of the NYS Urban Development Corporation Act.

UDCA §16-gg defines “broadband”, “broadband service,” or “broadband internet” as a “mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.”

UDCA §16-gg(7) & (8) refer to the NY ConnectAll initiative. Information about the program can be found at <https://broadband.ny.gov/>

UDCA §16-gg(7); ConnectAll Deployment Program.

- Established to provide grant funding to construct infrastructure necessary to provide broadband service to unserved and underserved locations in the state.

UDCA §16-gg(7); ConnectAll Municipal Assistance Program

- Established to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99 of the General Municipal Law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purpose for maximizing the effectiveness of municipal broadband programs as determined by the Division of Broadband Access.

The New NY Broadband Program is not part of the current ConnectAll initiative. The New NY Broadband Program was established in 2015 and was implemented in 3 phases. A list of all contractors awarded grants through the program is available at <https://broadband.ny.gov/new-ny-broadband-program>, with an additional link to an Excel chart of all New NY Broadband grants broken down by county and municipality.



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Section 224-e covered broadband projects will be subject to prevailing wage requirements under the following circumstances:

- Any grant money for the project was provided to a contractor, municipality, non-profit, or other entity through the ConnectAll Deployment Program or ConnectAll Municipal Assistance Program, and
- The grant was awarded on or after April 9, 2022.

There is no funding threshold in the law and some of these will be matching grants. Therefore any funding provided through either of these two ConnectAll programs after the effective date will trigger §224-e.

If there is an ongoing broadband project that was funded by a ConnectAll precursor, such as New NY Broadband, then that project becomes subject to prevailing wage as of the date it is awarded a new ConnectAll grant. Any work done on the project prior to that will not be subject to prevailing wage.

On September 15, 2023, the Roadway Excavation Quality Assurance Act (LL §224-f) went into effect. Broadband extension projects that are not subject to §224-e may still be subject to the prevailing wage requirements of §224-f if performed by a utility contractor and a permit to use, open or excavate a roadway is required.

Broadband extension projects not subject to §224-e may also be subject to prevailing wage requirements under §224-a if the project exceeds \$5 million dollars and receives public funding equal to 30% of the construction project costs, or §220 if a public agency is party to the contract, the project primarily involves construction-like labor and is paid for by public funds, and the primary objective or function of the project is for the benefit of the general public.


Director
Bureau of Public Work