



Prevailing wage law for IDA projects goes into effect on Jan. 1, 2022 - by John Gordon

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Starting January 1, 2022, certain construction projects receiving tax benefits as a result of the involvement of an IDA must pay prevailing wage.

Industrial development agencies (IDAs) are public benefit corporations established under the New York General Municipal Law to foster local economic development. IDAs are empowered to provide financial assistance to qualified construction projects in the form of a real estate tax exemption (with a beneficial payment in lieu of taxes (PILOT) agreement), a sales tax exemption on building materials and FF&E, and a partial mortgage recording tax exemption on project financing. In certain situations, IDAs can also provide tax-exempt bond financing.

Under the New York Labor Law, all workers under any “public work” contract are entitled to receive prevailing wage, but receiving financial assistance through an IDA did not make a construction project a “public work” subject to prevailing wage.

However, in April of 2020, Section 224-a of the New York Labor Law was enacted, broadening the scope of construction projects subject to prevailing wage requirements. With respect to construction projects having a cost exceeding \$5 million, where public funds (including the value of the financial assistance provided by the IDA) account for 30% or more of the “total construction project costs,” contractors and subcontractors must pay prevailing wage.

Notable exceptions include not-for-profit developments and affordable housing developments meeting the criteria set forth in the law.

The applicability of the new requirement to projects which have been approved and are either awaiting closing, or which have closed and are in construction, is not clear under the new law. To avoid uncertainty, it would be advisable to advance projects as far as practicable prior to the effective date.

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