

1. Question: How can a project comply with the Prevailing Wage Requirements?

Answer:

- (a) The NY-Sun participating contractor (“Contractor”) for a covered project must enter into a project labor agreement or pay prevailing wage to all laborers, workmen and mechanics, within the meaning of NYS Labor Law Article 8, performing on-site construction activities for covered projects, whether through long-term or short-term employment and when completed prior to the project in-service date. The prevailing wage requirement will apply to direct employees of the Contractor and of Contractor’s subcontractor(s). The Contractor is responsible for ensuring that subcontractors performing on-site construction activities for covered projects are complying with prevailing wage requirements; and
- (b) When submitting the Commercial Operation invoice, a Contractor must submit:
- Quarterly certifications by an authorized representative of the Contractor, certifying the contractor has obtained copies of certified payrolls for all laborers, workmen and mechanics, within the meaning of NYS Labor Law Article 8, performing on-site construction activities for covered projects whether through long-term or short-term employment and when completed prior to the project in-service date; and
 - Quarterly certifications by a New York State licensed Certified Public Accountant certifying that during the project construction period, the payroll records for the project demonstrate compliance with prevailing wage requirements, including those of subcontractors.

2. Question: When must a project complete and submit their quarterly certifications?

Answer: NYSERDA strongly recommends that Contractors obtain certifications on an ongoing basis – every quarter – to avoid problems, such as underpayment of workers, that may be harder to correct at a later date. However, NY-Sun Program rules require only that the certifications are submitted to NYSERDA upon invoice for the project’s Commercial Operation payment; NYSERDA does not mandate that certifications are completed or submitted prior to that time.

3. Question: Is there any specific detail on the format of the quarterly certification or what exactly should be included in the documentation that we submit?

Answer: NYSERDA has provided template certifications, available on NY-Sun’s Resources for Contractors webpage: www.nyserda.ny.gov/All-Programs/NY-Sun/Contractors/Resources-for-Contractors.

4. Question: Which activities are considered as construction activities within the scope of the Prevailing Wage Requirements under the NY-Sun Program?

Answer: For the NY-Sun Prevailing Wage Requirements, construction activities include, but are not limited to, the clearing, grubbing, grading, staging, installation, erection and placement of the facility, the energy storage component of the facility, electrical interconnection, as well as start-up and commissioning of the facility during the construction period.

5. Question: Are drivers delivering materials to project sites subject to prevailing wage requirements?

Answer: Where materials or supplies are delivered to a covered project and dropped or stockpiled, the hauling, dropping and/or stockpiling of such materials is not subject to prevailing wage requirements. However, drivers hauling asphalt and/or concrete to and from portable batch plants established for the sole purpose of supplying a covered project are required to be paid prevailing rates.

6. Question: For the NY-Sun Program, when does the construction period begin and end for the Prevailing Wage Requirements?

Answer: The construction period will begin on the first day of construction activities and end on the day the covered project achieves commercial operation.

7. Question: Are pre-development and site survey activities, conducted before applying for an NY-Sun incentive, subject to prevailing wage compensation? Or is the prevailing wage compensation only intended to apply to construction activities only?

Answer: All construction activities, beginning on the first day of construction and ending on the day the covered project achieves commercial operation, are subject to prevailing wage requirements, regardless of when the project applies for the NY-Sun incentives. NYSERDA will treat pre-development and site survey activities in a manner aligned with New York State Department of Labor (DOL) policy as applied to public works projects. Generally speaking, if the pre-development and surveying is to be conducted in conjunction with any construction activities then prevailing wage requirements will apply.

8. Question: Are covered projects expected to comply with all the rules and requirements under Labor Law, or must they simply pay the hourly prevailing wage rate? For example, must projects pay overtime as set forth in Labor Law Article 8?

Answer: Unless otherwise required by law, rule or regulation, covered projects are required to comply with the provisions of Labor Law §§ 220 and 220-b, and all applicable rules, regulations and determinations established thereunder. This includes payment of overtime and supplements in accordance with those rules.

9. Question: For the NY-Sun Program, what evidence marks the achievement of commercial operation?

Answer: A utility issued Permission to Operate (PTO) will evidence the achievement of commercial operation.

10. Question: Is there any specific detail on the format of the quarterly certification or what exactly should be included in the documentation that we submit?

Answer: NYSERDA has provided template certifications, available on NY-Sun's Resources for Contractors webpage: www.nyserda.ny.gov/All-Programs/NY-Sun/Contractors/Resources-for-Contractors.

11. Question: Would compliance with Davis Bacon requirement or the prevailing wage requirement of the federal Inflation Reduction Act be sufficient to meet the Prevailing Wage Requirements for the NY-Sun incentive?

Answer: The Prevailing Wage Requirements require the Contractor to pay the New York State Prevailing Wage which may differ from the Davis Bacon Prevailing Wage.

12. Question: How would NYSERDA ensure a project's compliance with the Prevailing Wage Requirements?

Answer: In addition to requiring the submission of quarterly contractor and CPA certifications, NYSERDA may also conduct random audits to ensure that a payroll in fact is in compliance with the prevailing wage Requirements as certified by a Certified Public Accountant. The NY-Sun Participation Agreement allows NYSERDA to inspect and audit any and all books, accounts and records pertaining to the Builder and/or the Contractor's performance under this Agreement, during the term of the Participation Agreement and such period thereafter.

13. Question: How long must a Contractor maintain records of compliance with prevailing wage requirements?

Answer: Contractors must maintain payroll records in accordance with New York State Labor Law and all other applicable laws and regulations governing record retention. Records must be made available on request to demonstrate compliance in accordance with NY-Sun Program rules.

14. Question: What happens if a project fails to obtain a quarterly certification for one or more quarters during the construction period?

Answer: A contractor must submit quarterly certifications by a New York State licensed Certified Public Accountant for each calendar quarter during the project construction period. Missing certification for one or more quarters will be deemed as failure to meet the Prevailing Wage Requirements and the project will lose the NY-Sun incentive eligibility.

15. Question: How can a contractor remedy a failure to meet the Prevailing Wage Requirement?

Answer: Contractors are expected to identify and remedy any project payroll errors prior to submitting their quarterly certifications and the Commercial operation invoice. In the event a prevailing wage violation is identified at a later date, the Contractor must notify NYSERDA immediately. In the event the violation is a result of an unintentional error NYSERDA may, at its sole discretion, permit the contractor to take corrective action including, but not limited to, restitution of unpaid wages. Any such corrective action must be completed within thirty (30) days of identification of the violation.

16. Question: What NY-Sun program consequences can a contractor face due to a failure to meet the Prevailing Wage Requirements?

Answer: An unremedied failure to meet the Prevailing Wage Requirements on a project will result in a loss of the NY-Sun incentive eligibility for the project (inclusive of the Prevailing Wage Adder and

all other NY-Sun incentives). Repeated, continued, or systematic failure to meet the Prevailing Wage Requirements may result in a contractor being suspended or terminated from the NY-Sun program.

17. Question: As a worker, what are your rights on projects subject to the Prevailing Wage Requirements?

Answer: The NY-sun Program Rules have created Prevailing Wage Requirements for contractors participating in the Program. Failure to comply with such requirements may result in cancellation of the authorized incentives for the project and even termination of the Contractor participating in the Program. A worker may choose to consult with a legal consultant to assess remedies against a contractor under their employment agreement with the contractor.

18. Question: How can workers report suspected Prevailing Wage Requirements violations?

Answer: While a worker may choose to report suspected violation of Prevailing Wage Requirements to NYSERDA, and NYSERDA may take reasonable steps to investigate such violations, NYSERDA's action will only be directed to ensure that the Contractor meets the Program requirements and NYSERDA's course of action may only be limited to protecting the NY-Sun Program. Workers are encouraged to contact the DOL for additional information and to assess relevant remedies.