

New Jersey Prevailing Wage Act – Q & A

Q. What is the New Jersey Prevailing Wage Act?

A. *The Act which affects prime contractors and subcontractors who perform work on any state or political subdivision construction contracts which exceed the current contract threshold amount. This law protects construction workers such as carpenters, plumbers, power equipment operators, laborers, etc. Covered workers must receive the appropriate craft prevailing wage rate as determined by the Commissioner of Labor and Workforce Development.*

Q. What is the difference between the Davis-Bacon Act and the New Jersey Prevailing Wage Act?

A. *The Davis-Bacon Act (DBA) pertains to public construction projects awarded by a federal agency, such as work on military bases and U.S. Postal Service buildings. Certified payrolls must be filed with the proper federal agency. The New Jersey Wage and Hour office does not monitor projects which are covered exclusively by the DBA.*

The New Jersey Prevailing Wage Act applies to public works contracts awarded by the state, a political subdivision of the state or a regional school board. Examples of projects covered by the New Jersey Prevailing Wage Act include schools, roads, water and sewer systems, airports, dams, and public buildings.

Some projects such as airports and highways, may be subject to both the DBA and the New Jersey Prevailing Wage Act.

Q. What is public work?

A. *N.J.S.A. 34:11-56.26(5) defines public work as "...construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body..."*

"Public Work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body.

Q. What is a public body?

A. *N.J.S.A. 34:11-56.26(4) defines a public body as "...the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions."*

Q. What types of projects are subject to prevailing rate?

A. *There are several scenarios in which work can be subject to prevailing wage:*

1. *There is an agreement or contract between a public body and a contractor to perform "public work", which is defined as construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under the rehabilitation program. "Public work" shall also mean*

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construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

- i. Not less than 55 percent of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
 - ii. the portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.
2. The property or premises where the work is to be performed is owned by a public body at the time the contract is awarded, even if the public body is not a party to the contract and the contractor will not be paid with public funds.
 3. Projects undertaken with the involvement of the New Jersey Economic Development Authority, New Jersey Redevelopment Authority (NJRA), and New Jersey Housing and Mortgage Finance Agency (NJHMFA) require the payment of prevailing wage. Also, effective August 23, 2004, projects undertaken with the involvement of the Casino Reinvestment Development Authority, New Jersey Educational Facilities Authority, New Jersey Healthcare Facilities Financing Authority, or a County Improvement Authority require the payment of prevailing wage. Effective November 7, 2005, projects undertaken with the involvement of the New Jersey Commerce, Economic Growth, and Tourism Commission (including the Urban Enterprise Zone Authority) require the payment of prevailing wage. Such involvement can be in the form of loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance.

Q. Do all public works projects, regardless of contract value, require the payment of prevailing wage rates?

A. In order for a project to be subject to prevailing wage, the total value of the project must exceed \$14,187 (effective July 1, 2014 this amount will increase to \$15,444), if the work is being done for, or on property or premises owned by, a municipality or \$2,000 if the work is being done for, or on property or premises owned by, any other public entity, including boards of education and municipal utility authorities.

Q. Do Authorities providing financial assistance in the form of loans, loan guarantees, expenditures, investments, tax exemptions, incentives, or other financial assistance for private sector construction projects have an obligation to require compliance with the Prevailing Wage Act?

A. Yes. The following Authorities must require that contractors and subcontractors performing work on projects that have received financial assistance from those Authorities pay prevailing wage rates as determined by the Commissioner of Labor and Workforce Development when they meet the definition of "public work":

- NJ Economic Development Authority
- NJ Redevelopment Authority (NJRA)
- NJ Housing and Mortgage Finance Agency (NJHMFA)
- Urban Enterprise Zone Authority (NJ Commerce, Economic Growth, and Tourism Commission)

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- *Casino Reinvestment Development Authority*
- *NJ Educational Facilities Authority*
- *NJ Health Care Facilities Financing Authority*
- *Any County Improvement Authority*

Q. Who can I contact to find out if a project has been undertaken in connection with the involvement of the NJ Economic Development Authority, NJ Redevelopment Authority, NJ Housing and Mortgage Finance Agency, Urban Enterprise Zone Authority, Casino Reinvestment Development Authority, NJ Educational Facilities Authority, NJ Healthcare Facilities Financing Authority, or a County Improvement Authority?

A. You will find listings of projects and contact information on the following websites. Please be advised that some sites may also list projects awarded by a County Improvement Authority, which are, therefore, 'public works' projects, as defined above.

Please Note: The New Jersey Department of Labor and Workforce Development cannot guarantee the accuracy or completeness of information contained on the below-listed websites.

*New Jersey Economic Development Authority:
<http://www.njeda.com/>*

*New Jersey Redevelopment Authority:
<http://www.njra.us/>*

*New Jersey Housing and Mortgage Finance Agency (NJHMFA):
<http://www.nj.gov/dca/hmfa/>*

*Urban Enterprise Zone Authority:
<http://www.state.nj.us/dca/affiliates/uez/index.shtml>*

*Casino Reinvestment Development Authority:
<http://www.njcrda.com/>*

*New Jersey Educational Facilities Authority:
<http://www.njefa.com/>*

*New Jersey Health Care Facilities Financing Authority:
<http://njhcffa.com/>*

COUNTY IMPROVEMENT AUTHORITIES:

(Some counties do not list a County Improvement Authority on their website.)

As of 9/18/2007, the following authorities list projects undertaken with their involvement, on their website:

*Bergen County Improvement Authority:
<http://www.bcia.us/html/Projects.aspx>*

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Camden County Improvement Authority:
<http://business.camdencounty.com/AboutCCIA.aspx>

Cumberland County Improvement Authority:
<http://www.ccia-net.com/>

Gloucester County Improvement Authority:
<http://www.gcianj.com/>

Mercer County Improvement Authority:
<http://www.mcia-nj.com/>

Middlesex County Improvement Authority:
<http://www.mciauth.com/>

Passaic County Improvement Authority:
<http://www.passaiccountynj.org/>

As of 9/18/2007, the following authorities do not list current projects on their website:

Atlantic County Improvement Authority:
<http://www.atlanticcountyimprovementauthority.org/Main/Projects.asp>

Burlington County Improvement Authority:
<http://www.bcbridges.org/Home/tabid/36/Default.aspx>

Hudson County Improvement Authority:
<http://hcia.org>

Monmouth County Improvement Authority:
<http://www.co.monmouth.nj.us/page.aspx?ID=1553>

Morris County Improvement Authority:
<http://www.co.morris.nj.us/improvement/>

Somerset County Improvement Authority:
<http://www.scia.co.somerset.nj.us/index.htm>

The following County Improvement Authorities do not currently have websites. Other contact information is provided:

Essex County: Mr. Abramowitz, Essex County Director of H.R. (973) 621-4977.

Salem County: Mr. Jack Kugler, Director, jkugler@salemcitynj.com.

Union County: (908) 820-9710

The following counties do not currently have Improvement Authorities: Cape May,

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Hunterdon, Ocean, Sussex, and Warren Counties.

*County websites are listed on the State of New Jersey website at:
<http://www.state.nj.us/nj/govinfo/county/localgov.html>*

Q. Is Public Works Contractor Registration required on these "authority" projects?

A. No. Contractors and subcontractors are required to pay prevailing wage, but Public Works Contractor Registration is not required. Unless a project is done on "public property" then the answer would be yes.

Q. How does the Commissioner determine "locality" for the purposes of determining prevailing wage rates?

A. Prevailing wage rates are generally set for each of the State's twenty-one (21) counties.

Q. What are wage determinations?

A. A "wage determination" lists the wage and fringe benefit rates for each classification of laborer and craftsman which the Commissioner of Labor and Workforce Development has determined to be prevailing in a given locality. The public body must provide a copy of the wage determination issued for a project at the time of awarding the contract. Note: the public body's failure to supply rates is not sufficient defense for the contractor's failure to pay prevailing rate.

Q. Is there any requirement to post the wage rates for the various classifications of workers?

A. Yes. The scale of wages must be posted in a prominent and accessible place at the work site or at such places that are used by employers to pay workers their wages.

Q. What do I do when I am unsure of which classification to use?

A. Contact the Division of Wage and Hour Compliance at (609) 292-2259 or (609) 292-2283.

Q. What responsibilities do contractors and subcontractors have while performing covered public projects?

A. Contractors and subcontractors must:

- 1. be registered with the Department of Labor and Workforce Development, pursuant to the Public Works Contractor Registration Act;*
- 2. pay prevailing wage rates based upon work classifications actually worked for all actual hours of work;*
- 3. post a wage determination in a prominent place where workers have access;*
- 4. submit certified payroll records to the public body within 10 days of payday;*
- 5. permit on-site inspection and employee interviews by authorized representatives of the Commissioner of Labor and Workforce Development; and*
- 6. produce payroll-related records to authorized representatives of the Commissioner within 10 days of a request.*

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Q. How long does it take to process an application for a Public Works Contractor Registration Certificate?

A. *Provided that the application is properly completed, a certificate of registration will be mailed to the applicant within 30 days from the receipt of the application.*

Q. What happens if the wage rates change after I have submitted my bid or started work?

A. *The Craft Prevailing Wage Rate in effect at the time the contract is awarded applies, but the contractor is responsible to comply with any projected wage rate increases indicated in that wage determination.*

Q. How often do I have to pay my employees on a public construction project?

A. *All employers must pay wages to all employees in full at least twice a calendar month.*

Q. What is a certified payroll record?

A. *A "certified payroll record" is a payroll record which is certified by a principal or authorized agent of any business entity employing covered workers on a public project, to be true and accurate.*

Q. How often are certified payroll submitted to the public entity?

A. *Such records shall be submitted for each payroll period within ten (10) days of the payment of wages.*

Q. Do owner/operators who perform covered work have to be included on certified payrolls?

A. *Yes. The information required for owner/operators is the same as for employees, with no exceptions.*

Q. The prime contractor requires the subcontractor to file certified payrolls with them. Does this satisfy the subcontractor's filing requirements with the awarding public body?

A. *No. The law requires that all subcontractors and contractors file certified payrolls within 10 days of pay dates with the awarding public body. An original signature certifying the accuracy of the payroll records is required on the payroll filed with the public body.*

Q. As a corporate officer who performs craft type work on public construction, must I report myself on the certified payrolls?

A. *Yes. You are an employee of the corporation. Therefore, you must report and pay yourself just as you would any other employee.*

Q. On many public projects, particularly highways, state and federal laws both apply but require different rates and standards?

A. *The highest standard applies, whichever rate is higher must be paid. Both laws must be followed, since prevailing rate is a minimum wage by paying the higher rate both laws are satisfied.*

Q. Can an unskilled or inexperienced employee working on a job subject to the New Jersey Prevailing Wage Act be paid the apprentice rate while they learn the craft?

A. *An employee may only be paid the apprentice rate if he or she is enrolled in an*

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apprenticeship program that is approved by the United States Department of Labor - Bureau of Apprenticeship and Training. Otherwise, the employee must be paid at least the 'Journeyman' rate.

Q. Do foremen have to be paid prevailing rates of pay?

A. Yes. Foremen who are performing "hands on" work must be paid prevailing rates of pay in the appropriate classification(s) for the "hands on" work.

Q. What is custom fabrication?

A. The Prevailing Wage Act defines custom fabrication as the fabrication of plumbing, heating, cooling, ventilation and exhaust duct systems, and mechanical insulation that is going to be installed on a public works project.

Q. Is custom fabrication subject to Prevailing Wage?

A. Yes; The fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation that is to be installed on a public works project is subject to Prevailing Wage, even when the fabrication work is performed at a location other than the public works jobsite.

Q. What requirements must a fabrication shop meet in order to be in compliance with the New Jersey Prevailing Wage Act and the Public Works Contractor Registration Act?

A. The firm must meet the following requirements:

1. Possess a Public Works Contractor Registration Certificate from the Division of Wage and Hour Compliance: obtained by submitting a completed application for registration with a non-refundable fee and upon approval from LWD;
2. Pay the craft-appropriate Prevailing Wage rate to the workers performing the fabrication work;
3. Record workers names, work classifications, daily/weekly hours and rate of pay.
4. If any workers are classified as "Apprentices" in a certified apprenticeship program:
 - a. documentation of enrollment in approved programs is required
 - b. maintain and provide proof of cost and coverage if the employer claims credit for fringe benefits provided;
5. Custom fabricators must submit Certified Payrolls to public body like all other public contractors/subcontractors.

Q. What should I do if I don't know whether or not a project is subject to the New Jersey Prevailing Wage Act?

A. Refer to the definition of "public work".

Q. What should workers do if they believe they may have not been paid properly?

A. File a wage claim

Q. As a worker on a public works project what records should I keep?

A. Workers should keep a record of their hours and save their pay stubs to help verify the

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amount of wages received. If work is being performed in more than one classification, the worker should identify at what time of the day he was doing the various jobs, as well as the total hours worked in each classification.

Q. What happens if a contractor/subcontractor fails to pay all of its employees properly?

A. When a claim is received the Department of Labor and Workforce Development will investigate.

Q. Is any further action taken against the violating contractor?

A. Contractors who violate the provisions of the Prevailing Wage Act are subject to the following: administrative fees and penalties, and may be prohibited from engaging in future public works projects.

Q. Does the New Jersey Prevailing Wage Act apply to snow plowing or lawn maintenance (lawn mowing and leaf collection)?

A. No. See the definition of "Public Work" above.

Q. What types of fringe benefits may a company take credit for, towards the Prevailing Wage fringe benefit rate?

A. A company may take credit for the actual cost of providing their employees certain fringe benefits, such as: Medical/Hospitalization coverage, Dental coverage, Pension or Retirement plan, Paid Time Off (vacation, holidays, sick days), or Life Insurance. To calculate the cost per hour, divide the annual cost of the benefits by 2,000 hours, for each employee. This amount should be entered in the column labeled "Total Fringe Benefit Cost / Hr." on the Certified Payroll Form, for each employee.

Items such as use of company vehicles or cell phones, lodging reimbursement, or company-provided tools may not be credited towards the Prevailing Wage. Under no circumstances may statutory deductions (Unemployment Insurance, Income Tax, etc.), Workers' Compensation Insurance, or the portion of any fringe benefit that is deducted from the employee's pay, be credited towards the Prevailing Wage.

Q. Do the requirements of the New Jersey Prevailing Wage Act and the Public Works Contractor Registration Act apply to New Jersey Department of the Treasury Cooperative Purchasing Contracts?

A. Yes, if the particular Term Contract is for work that would be subject to the PWA, the vendor would be required to pay the applicable Prevailing Wage rates and would be required to have a valid Public Works Contractor Registration Certificate. The types of work that are subject to the PWA are discussed elsewhere in the Frequently Asked Questions.

Q. Is installation work consisting of activities such as pulling wires, installation of jacks, and termination of wires in racks subject to the New Jersey Prevailing Wage Act or the Public Works Contractor Registration Act?

A. Yes, such activities would be subject to both the New Jersey Prevailing Wage Act and the Public Works Contractor Registration Act. However, activities such as programming of existing systems, placing, or plugging in of equipment, would not be subject to either Act.

Q. On a job subject to the New Jersey Prevailing Wage act, what types of work can be

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performed by a worker classified as "Electrician - Teledata"?

A. The classification "Electrician - Teledata" applies to service, maintenance, moves, or changes to wiring and devices for telephone or internet connectivity, and is limited to 15 or fewer drops. It can not be used for work in any new construction project. Work in new construction, or consisting of more than 15 drops is classified as "Electrician".

Q. If my firm is hired off of a New Jersey Department of the Treasury approved vendor list by a public body (i.e. municipality, school board, etc.), for work that is subject to the New Jersey Prevailing Wage Act, what Prevailing Wage Rate Determination do I use?

A. The Prevailing Wage Rate Determination in effect on the date of the purchase order/contract issued by the public body for whom the work is to be performed, would apply.

Q. If my firm is on a New Jersey Department of the Treasury approved vendor list as a material supplier only, am I subject to the New Jersey Prevailing Wage Act and/or the Public Works Contractor Registration Act?

A. No, if your firm is strictly a supplier of materials you would not be subject to either the New Jersey Prevailing Wage Act or the Public Works Contractor Registration Act unless your contract calls for installation, whether or not the work is done by your firm or a sub-contractor.

Q. As a vendor hired off of a New Jersey Department of the Treasury approved vendor list for work that is subject to the New Jersey Prevailing Wage Act, is my firm required to submit Certified Payrolls? If so, where should they be submitted?

A. Yes, the Certified Payrolls must be submitted to the public agency awarding the contract or purchase order.

Q. What obligations does a public agency using a Department of Treasury Cooperative Purchasing Contract have when the work performed under the contract is subject to the Prevailing Wage Act?

A. A public agency has the following responsibilities under this or any public works contract:

- To determine if the value of the work exceeds the PWA value threshold (currently, \$14,187 but effective July 1, 2014 this amount will increase to \$15,444 for municipalities; \$2,000 for all others)
- If the value exceeds the threshold, request a Prevailing Wage Rate Determination from the Department through the website
at: <https://lwd.state.nj.us/labor/wagehour/content/prevwageapplication.html>
- To include the Determination in the contract with the contractor
- To accept and file Certified Payrolls from the contractor

Q. Are owner/operators of trucks required to have Public Works Contractor Registration in order to engage in public works projects?

A. Yes.

Q. When engaging in public works projects, are owner/operators required to pay themselves prevailing wage, and file certified payrolls?

A. Yes, there are no exemptions for owner/operators or sole proprietors.

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Q. Are truckers who are hired by a construction contractor to pick up materials from an off-site location (asphalt plant, quarry, contractor's yard, etc) and deliver them to a public works project subject to Prevailing Wage/Contractor Registration?

A. Yes.

Q. Are truckers who are hired by a material supplier (asphalt plant, quarry, etc) to deliver materials to and pick up materials from a public works project subject to Public Works Contractor Registration?

A. Yes, when picking up materials from the public works project, they are considered a contractor, and therefore are subject to Contractor Registration. The material supplier would also be subject to Contractor Registration, as they too would be considered a contractor, in this situation.

Q. Are truckers who are hired by a material supplier (asphalt plant, quarry, etc) to deliver materials to and pick up materials from a public works project subject to Prevailing Wage?

A. They would be subject to Prevailing Wage when picking up and hauling materials from the jobsite, but not while delivering to the jobsite.

Q. Are truckers who are hired by a material supplier only to deliver materials to a public works project subject to Prevailing Wage/Contractor Registration?

A. No, material suppliers are exempt from Prevailing Wage/Contractor Registration, unless they are also acting as a contractor.

Q. The Prevailing Wage Rate Determinations show rates for "Truck Driver – Material Delivery Driver" and rates for "Truck Driver" based on the type of truck being operated. Which rates should be used?

A. While hauling materials to a public works site, and while returning to the supplier to pick up another load, the "Truck Driver – Material Delivery Driver" rates apply. While hauling materials from a public works site, and while returning to the site to pick up another load, the "Truck Driver" rates apply. The "Truck Driver" rates also apply when operating on-site. See the next 2 questions for information regarding "blended" rates.

Q. Which rates apply to a trucker hired by a construction contractor, who is hauling new materials (i.e. asphalt) to a public works site and also removing materials (i.e. millings) from the site?

A. Except in counties for which the Wage Determination shows a "blended rate", the time would be "split" – while hauling the asphalt to the site, the "Truck Driver – Material Delivery Driver" rate would apply, and while hauling the millings from the site, the "Truck Driver" rates would apply. If there is a blended rate published for the county in which the jobsite is located, the blended rate must be used.

Q. What is a "blended rate", and when is it used?

A. If shown in the Wage Determination applicable to the county in which the jobsite is located, the blended rate is paid to a truck driver who is performing work on the site (including removal of materials) and also serving as a material delivery driver. This "round robin" must continue for a minimum of 6 hours.

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Q. If a contractor has excess fill dirt on a public works site, and offers to give it away for free, would a trucker picking up the free dirt be subject to Prevailing Wage/Contractor Registration?

A. Yes – the removal of the dirt is part of the work included in the public works contract, therefore any trucker removing the dirt is considered a subcontractor.

Q. Is the hauling of materials from a public works site to an off-site stockpile (located on private property) subject to Prevailing Wage/Contractor Registration?

A. Yes

Q.. Is delivery of tools or equipment (items that will not become a permanent part of the site) to a public works jobsite subject to Prevailing Wage/Contractor Registration?

A. No.

Q. Is the delivery of moveable traffic barriers which will be removed from the site when the project is finished, subject to Prevailing Wage/Contractor Registration?

A. The delivery of items that require set-up or installation is subject to Prevailing Wage / Contractor Registration, if the items are required by the contract. The “Truck Driver” rates would apply to such deliveries.

Q. The Prevailing Wage rates vary by county. If a trucker hired by a contractor is picking up materials from a supplier in one county, and hauling to a public works site in a county in which the rates are different, which rates apply?

A. The rates applicable to the county in which the public works site is located.

Q. If a trucker is picking up materials from a public works site in one county, and hauling to a county in which the rates are different, which rates apply?

A. The rates applicable to the county in which the public works site is located.

Q. If a truck driver leaves the company’s yard, drives to an asphalt plant, picks up a load of asphalt, delivers it to a public works site, returns to the asphalt plant for another load, delivers it, then drives back to the company’s yard, does Prevailing Wage apply to the entire time?

A. Prevailing Wage would apply from when the driver reached the asphalt plant until when he left the public works site for the last time that day. The initial leg of the trip, to the asphalt plant, and the final leg of the trip, back to the company’s yard, would not be subject to Prevailing Wage (but would be subject to basic Wage and Hour laws).

Q. If a truck arrives at an asphalt plant to pick up materials to be transported to a public works site, and spends an hour waiting in line to be loaded, does Prevailing Wage apply to that hour?

A. Yes, Prevailing Wage begins as soon as the driver arrives at the plant.

Q. Is there a requirement to pay Prevailing Wage for work which receives financial assistance from or through the NJ Board of Public Utilities (BPU)?

A. Financial assistance, by or through the BPU, to an otherwise privately-funded project, subjects the work to a requirement to pay Prevailing Wage. This includes solar installations and weatherization projects.

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Q. Are BPU-assisted projects of all sizes subject to Prevailing Wage?

A. *The amount of the contract must exceed the prevailing wage contract threshold for municipalities described in paragraph (a) of subsection (11) of the New Jersey Prevailing Wage Act (C.34:11-56.26), in order for the work to be subject to Prevailing Wage.*

Q. If a homeowner receives rebates from the Board of Public Utilities (BPU) to offset the cost of having solar panels installed, is there a requirement to pay Prevailing Wage for the installation?

A. *No, rebates given directly to a homeowner (or tenant), for energy-related work or other improvements to be performed at their place of residence, do not carry a requirement to pay Prevailing Wage.*

Q. Are privately-funded photovoltaic (solar) installations, which may ultimately receive Renewable Energy Credits (RECs) or Solar Renewable Energy Credits (SRECs) subject to Prevailing Wage?

A. *Yes, SRECs for any solar project connected to the distribution system with capacity of one megawatt or more will be deemed financial assistance from the BPU and subject to prevailing wage.*