

New York State Now Requires Contractor Registration for Contractors and Subcontractors Working on Public Projects and Certain Private Projects

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In this article, the author reviews a new registration requirement in New York for contractors and subcontractors working on covered projects.

Contractors and subcontractors who perform work on public projects and certain private projects in New York State must have registered with the New York State Department of Labor (DOL) by December 30, 2024, as required by N.Y. Lab. Law § 220-i signed into law on December 30, 2022¹ and amended on March 3, 2023.²

The stated purpose of this requirement is to allow DOL to better enforce existing labor laws and regulations, and to ensure that contractors and subcontractors that perform work on public projects and covered private projects do not have previous labor law violations and will abide by New York labor law and regulations, including prevailing wage requirements.³

DOL will also establish and maintain a public online system where registration and disclosure information will be available.⁴ It is important to keep in mind that Section 220-i registration requirements are in addition to,

and do not replace, any other state or local vendor requirements.

The information below provides a high-level summary of the registration requirement.

WHO MUST REGISTER?

Any contractor submitting a bid on a covered project on or after December 30, 2024, as well as any contractor or subcontractor commencing any work on a covered project on or after December 30, 2024, must register.⁵ Section 220-i defines contractor as any entity that enters into a contract to perform “construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration or custom fabrication” on covered projects.⁶ Subcontractor is defined as any entity that subcontracts with a contractor to perform any of the above-specified types of work.⁷

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WHAT PROJECTS ARE COVERED?

Section 220-i applies to public work projects, as well as private projects subject to N.Y. Lab. Law § 8, which include:⁸

- a. N.Y. Lab. Law § 224-a (public subsidy funded projects);
- b. N.Y. Lab. Law § 224-d (renewable energy systems);
- c. N.Y. Lab. Law § 224-e (broadband projects); and
- d. N.Y. Lab. Law § 224-f (climate risk-related and energy transition projects, and roadway excavations).

HOW TO REGISTER?

Contractors and subcontractors must complete an online application on DOL's website⁹ and provide information¹⁰ about their business, insurance coverage and any previous labor law violations. The application must be accompanied by a \$200 nonrefundable fee.¹¹ If a contractor or subcontractor is a New York State Certified Minority or Woman-Owned Business Enterprise, the nonrefundable fee is \$100.¹² Upon successful registration and payment of the fee, DOL will issue a certificate of registration, which will be valid for two years.¹³

WHAT ARE THE PENALTIES FOR FAILURE TO REGISTER?

The penalties apply to both the unregistered entity that is performing the work, as well as the entity that hired the unregistered contractor or subcontractor. A contractor that bids on a contract for public work or begins work on a covered project knowing that it is not registered with DOL will be subject to a fine up to \$1,000,

and a stop-work order may be issued.¹⁴ A subcontractor that begins work on a covered project knowing that it is not registered with DOL will face the same fine.¹⁵

Additionally, contractors that allow a subcontractor to start work on a covered project where they know, or should have known, that the subcontractor is not registered, as well as owners or developers on private covered projects who commence work with a contractor or subcontractor that they know or should have known is not registered, will also be subject to a fine up to \$1,000.¹⁶

A notice and a hearing are required before any fines can be assessed.

CAN A CERTIFICATE OF REGISTRATION BE DENIED OR REVOKED?

Yes. DOL will not issue a certificate of registration, or will revoke an already issued certificate of registration, for any contractor or subcontractor that it finds "unfit" to be registered.¹⁷ DOL will find a subcontractor or contractor is unfit if (a) the contractor or the subcontractor is currently debarred or ineligible pursuant to N.Y. Lab. Law § 220-b(3) or N.Y. Work. Comp. Law § 141-b, or (b) the contractor or subcontractor is currently subject to a final administrative or court order for violation of state or federal prevailing wage law which has not been fully satisfied.¹⁸

There are procedural protections for registration applicants and before DOL can find a contractor or subcontractor "unfit," which include a requirement that DOL provides reasons for the proposed "unfit" determination and provides an opportunity to cure or be heard prior to the determination.¹⁹

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TIME IS OF THE ESSENCE

DOL estimates that it may take approximately three to four weeks to review a registration application and issue a certificate of registration.²⁰ As such, contractors and subcontractors who perform work on the covered projects and have not yet commenced the registration process should do so expeditiously.

IN SUMMARY

- Any contractor submitting a bid on a covered project on or after December 30, 2024, as well as any contractor or subcontractor commencing any work on a covered project on or after December 30, 2024, must register.
- Section 220-i applies to public work projects, as well as private projects subject to N.Y. Lab. Law § 8.
- Penalties apply to both an unregistered entity performing work as well as to an entity that hired the unregistered contractor or subcontractor.

NOTES:

¹N.Y. State Senate Bill 2021-S5994C, available at <https://www.nysenate.gov/legislation/bills/2021/S5994>; N.Y.

State Assembly Bill 2021-A1338C, available at <https://www.nysenate.gov/legislation/bills/2021/A1338>.

²N.Y. State Senate Bill 2023-S838, available at <https://www.nysenate.gov/legislation/bills/2023/S838>; N.Y. State Assembly Bill 2023-A984, available at <https://www.nysenate.gov/legislation/bills/2023/A984> (amending Section 220-i to clarify and change some of the registration requirements).

³N.Y. State Senate Bill 2021-S5994C, available at <https://www.nysenate.gov/legislation/bills/2021/S5994> (Purpose or General Idea of Bill).

⁴N.Y. Lab. Law § 220-i(2)(b).

⁵N.Y. Lab. Law § 220-i(6).

⁶N.Y. Lab. Law § 220-i(1)(a).

⁷N.Y. Lab. Law § 220-i(1)(b).

⁸N.Y. Lab. Law § 220-i(1)(c); Frequently Asked Questions for NYSDOL Contractor Registry | Department of Labor, available at <https://dol.ny.gov/frequently-asked-questions-nysdol-contractor-registry>.

⁹ <https://dol.ny.gov/how-register-contractor-and-subcontractor-registry>.

¹⁰ <https://dol.ny.gov/what-you-need-register-contractor-and-subcontractor-registry>.

¹¹N.Y. Lab. Law § 220-i(3).

¹²N.Y. Comp. Codes R. & Regs. tit. 12, § 223.2(b).

¹³N.Y. Lab. Law § 220-i(4).

¹⁴N.Y. Lab. Law § 220-i(8); Frequently Asked Questions for NYSDOL Contractor Registry | Department of Labor, available at <https://dol.ny.gov/frequently-asked-questions-nysdol-contractor-registry>.

¹⁵N.Y. Lab. Law § 220-i(8).

¹⁶N.Y. Lab. Law § 220-i(8).

¹⁷N.Y. Lab. Law § 220-i(4).

¹⁸N.Y. Comp. Codes R. & Regs. tit. 12, § 223.3.

¹⁹N.Y. Lab. Law § 220-i(4).

²⁰How to Register for the Contractor and Subcontractor Registry | Department of Labor, available at <https://dol.ny.gov/how-register-contractor-and-subcontractor-registry>.