

# LABOR AND EMPLOYMENT INFORMATION MEMO

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## Legal Challenge to New York's Expanded Prevailing Wage Requirements for Off-Site Custom Fabrication

On May 28, 2026, the Associated General Contractors of New York State (AGC of NY) and several other trade associations filed a complaint in the U.S. District Court for the Northern District of New York seeking injunctive relief to block enforcement of New York's new prevailing wage law governing off-site custom fabrication. On June 8, 2026, the court entered a consent order preliminarily enjoining enforcement of the law pending further proceedings.

### Background

In December 2025, Governor Kathy Hochul signed legislation amending New York Labor Law Section 220 to expand the definition of "public work" to include certain "custom fabrication" performed off-site, even when the fabrication takes place outside New York. [As we previously reported](#), the law was originally set to take effect on June 18, 2026, and applies to contracts put out to bid on or after that date.

Prior to this amendment, New York regulators advised that prevailing wage requirements applied to off-site fabrication only if the work was "usually and customarily performed at the project site." Under that framework, off-site fabricators were often treated as material suppliers and fell outside the statute's coverage.

The new law significantly changes this landscape. As originally enacted, the amendment broadly defined "custom fabrication" as including "but not limited to" the following categories:

Exterior and interior wall panel systems;

- Woodwork;
- Electrical systems;
- Plumbing systems;
- Heating, cooling, ventilation or exhaust duct systems;
- Rebar cages; and
- Mechanical insulation.

The original version also required that the covered work constitute a "significant portion of the building or work" as delivered for installation or assembly.

Before the law's effective date, the legislature amended the law in important ways. The precise effect of these amendments is not entirely clear and may reflect both narrowing and expansion of the statute's scope in different respects. On the one hand, the legislature appears to have intended to limit the scope of coverage, while on the other hand, the amendments also indicate a broader intended reach.

Regarding the first point, the revised version removed the “but not limited to” language, which suggests that the statute may now be limited to the specifically enumerated categories as “custom fabrication” under the law. The amendments also included limiting exemptions for certain transportation and affordable housing projects. Regarding the second point, the amendment eliminated the “significant portion” requirement, which may broaden the reach of the statutory provision.

Under the current version of the statute, covered “custom fabrication” is defined by three criteria: (1) the work must involve fabrication of one of the enumerated categories—exterior or interior wall panel systems, woodwork, electrical systems, plumbing systems, heating, cooling, ventilation or exhaust duct systems, rebar cages or mechanical insulation; (2) the work must be “solely and specifically designed and engineered for a specified public work project”; and (3) the work must not involve components, portions, modules or materials that are “otherwise stocked or readily available absent a specified public work project.”

### **The Federal Court Challenge**

AGC of NY, joined by several national and regional trade associations and construction companies, filed a federal lawsuit seeking to block enforcement of the amended law.

The complaint alleges that the custom fabrication law is extraterritorial, protectionist, unconstitutionally vague, practically impossible to administer and disruptive to supply chains and existing collective bargaining arrangements. These issues were previously identified in our prior update.

More specifically, AGC of NY and its fellow plaintiffs argue that the law impermissibly reaches beyond New York’s borders by regulating manufacturers for fabrication work performed entirely outside the state, in violation of constitutional principles governing both interstate and foreign commerce. The complaint also raises constitutional due process and equal protection concerns, contending that key statutory terms such as “custom fabrication” and “solely and specifically designed and engineered” are impermissibly vague, and that exemptions for transportation, affordable housing and modular construction arbitrarily exclude materially similar work. Additionally, plaintiffs allege that the law effects an unconstitutional regulatory taking of established business interests and impairs existing collective bargaining agreements in violation of the federal Contract Clause.

The plaintiffs initially filed an emergency motion for a temporary restraining order, with a hearing scheduled for June 16, 2026—just two days before the law was set to take effect. However, on June 8, 2026, the parties entered a consent order voluntarily agreeing to the preliminary injunction, and to a revised briefing schedule on the merits. Under the consent order, the effective date of the amendment is “suspended and stayed” unless and until the court enters a subsequent order denying the plaintiffs’ emergency motion, granting a motion to dismiss or otherwise terminating the suspension.

Significantly, the order provides broad interim relief. The state is barred from enforcing any aspect of the amendment, and no public owner—including agencies, municipalities and school districts—or private owner of projects subject to New York prevailing wages is required to comply with the amendment or include its terms as a condition of their contracts. Similarly, no general contractor, subcontractor, fabricator or other project participant, regardless of location, is required to comply with the amendment or any of its conditions. The consent order extended the briefing schedule through late August 2026. We will continue to monitor developments in this litigation closely.

## What Employers Should Do Now

In light of the consent order, the custom fabrication amendment will not take effect on its originally scheduled date of June 18, 2026, and no party is currently required to comply with its terms. Enforcement is suspended until the court rules on the merits of the plaintiffs' challenge. However, the injunction does not guarantee that the law will ultimately be struck down. A court ruling in defendants' favor could revive the amendment, potentially with limited advance notice. Employers should therefore continue to assess the law's potential impact:

- Audit current and upcoming public work contracts to identify off-site fabrication components;
- Evaluate whether any fabrication work meets the statutory definition of covered "custom fabrication";
- Develop contingency plans for wage compliance in case the injunction is lifted and the law takes effect; and
- Stay informed about further developments in the federal court challenge, including the briefing schedule (defendants' opposition due July 21, 2026; plaintiffs' reply due August 18, 2026) and any subsequent court rulings.

Although the preliminary injunction suspends the amendment's effective date, the outcome of the litigation remains uncertain. Impacted businesses should work with legal counsel to assess their potential compliance obligations if the amendment is ultimately upheld. Further, contractors should keep in mind that, even under New York's prior enforcement position (which presumably remains in effect), certain off-site custom fabrication work may be covered under the state's prevailing wage law. If you have questions about the legislation discussed above or the current status of the federal litigation, please feel free to contact [Andy Bobrek](#) or [Rebecca J. LaPoint](#) or any attorney in Bond's [labor and employment practice](#) with whom you are regularly in contact.

