

***Wages and Hours of Employees on Public Works
Chapter 104, HRS***

***Presented by: Pamela Martin, DLIR, Wages Division,
September 27, 2016***

Executive Summary: We present the highlights of a presentation by the State of Hawaii's Department of Labor and Industrial Relations (DLIR), Wage Standards Division. This is the department that handles what is better known as "prevailing wage".

Highlights: Contractors who perform public projects for the State of Hawaii or the federal government are likely well aware of the term "prevailing wage". Prevailing wage is a minimum wage (base wage combined with fringe) that must be paid by a contractor when performing on most public projects.

Basic hourly rate + fringe benefits = Prevailing wage

There are few exceptions to paying prevailing wage on public projects – the only one of significance was projects less than or equal to \$2,000.

Below are some examples of when to pay, or not to pay, prevailing wage:

Offsite location

There has long been a bid strategy of constructing or assembling products offsite for incorporation into the project. This practice is still permissible; however, it is worth noting the following:

- In your existing facility - the contractor is not required to pay prevailing wage when work is being performed in a contractor's existing facility.
- In an addition to your permanent facility – Ms. Martin stated that work in an addition to your existing facility can be paid less than prevailing wage, but only if that facility is for service of the entire company and will be in service after completion of the project.
- In a newly/specially constructed facility: if the contractor constructs a facility specifically to perform work for a particular project, then this work must be paid at a prevailing wage rate.
- Just "offsite" doesn't work – Ms. Martin shared an anecdote when a contractor went outside of the project fence at Honolulu Airport, and adjacent to the site, and assembled parts for incorporation into the project. The contractor was mistaken in



thinking that performing work outside of the project limits would permit paying below the prevailing wage. This location was only used for this project, so it was subject to prevailing wage.

Service or delivery

The ages old position of “this is a service, so no prevailing wage is required” is still a little fuzzy to me for services such as concrete pumping. I’m happy to pursue a decisive answer if any readers request it of me. Here’s what I learned with certainty:

- Dropping off materials – Ms. Martin used the example of traffic cones. If you drop off the cones, this is an event not requiring prevailing wage. Once the cones are laid out on the site in a traffic pattern, these are now part of the project and now require paying prevailing wage.

Owner-operators

Owner-operators are required to be paid prevailing wage.

Apprentices

Below are highlights of apprentices and the prevailing wage – you must take action on each of these items to qualify for payment of the apprentice wage:

- Only registered participants in recognized programs by the Workforce Development Division may be paid the apprentice wage.
- Call (808) 586-8877 and make sure your apprentices are registered with the State. If they’re not registered, then they will have their pay adjusted to receive journeyman rate.
- Apprentice certification must be documented to Contracting Agency (copy of certification agreement or status of agreement).
- Indentured date and step or level must be listed on certified payrolls.

Submission/retention of certified payrolls

One of the biggest issues stressed by Ms. Martin was the issue of timely certified payroll submission.

- Why can’t these be submitted weekly while paychecks are being handed out!??
- Payroll records must be retained for three (3) years after a project’s completion.

Penalties

Penalties have recently increased across the board.

- Now \$10,000 (formerly \$1,000) and suspension for delay or for certification of falsified payrolls.
- Notice of Violation (some information omitted on penalties below)
 - 1st violation – was 10%, now 25% of back wages due



- 2nd violation – within two years of 1st violation equal to amount of back wages or \$500/offense (was \$100/offense) up to \$5,000
- 3rd violation – within three (3) years, equal to twice back wages or was \$200, now \$1,000/offense up to \$10,000 and suspension from public works for three (3) years.

Postings

Attached to this document is the NOTICE TO WORKERS. Post this document. Also know that:

- The person you should put in the “Project Representative/Inspector” blank is your *problem solver* as Ms. Martin said. Don’t put her name in the blank, you don’t want her involved (by Ms. Martin’s own words!). Put the project manager from the agency you’re working for in this blank or whomever can fix your wage problem.
- Make sure to timely change out the applicable Wage Rate Schedules which must be attached to this posting.

More information

For more information, please

- Go to <http://labor.hawaii.gov/wsd>
- Email dliir.wages@hawaii.gov
- Call (808) 586-8771
- See attached two-sided sheet titled Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law.

NOTICE TO WORKERS



WAGE INFORMATION

This project is subject to State Law, Chapter 104. Every laborer and mechanic employed on this job site must be:

1. PAID not less than the prevailing wage for the job classification - See schedules below. (Note: The Wage Rate Schedule may also be downloaded at - <http://labor.hawaii.gov/rs>)
2. PAID overtime at not less than time and one-half for all hours worked after 8 hours each day, and for all hours worked on Saturdays, Sundays, and legal State holidays.
3. PAID fringe benefits for all hours worked, including overtime.
4. PAID every week, within five working days after the end of the payperiod.
5. GIVEN a copy of the applicable rate schedules (see below), unless covered by a collective bargaining agreement.

If You Don't Receive the Above, Report to:

Project Representative/Inspector: _____ Phone: _____

For more information, contact the Department of Labor and Industrial Relations, Wage Standards Division:

OAHU (Honolulu)
830 Punchbowl Street
Room 340
Honolulu, HI 96813
Phone: 586-8777

HAWAII (Hilo)
75 Aupuni Street
Room 108
Hilo, HI 96720
Phone: 974-6464

WEST HAWAII
P.O. Box 49
81-990 Halekii Street
Kealahou, HI 96750
Phone: 322-4808

KAUAI
State Building
3060 Eiwa Street, Rm 202
Lihue, HI 96766-1887
Phone: 274-3351

MAUI
2264 Aupuni Street
Wailuku, HI 96793
Phone: 243-5322

H104-1 (Rev. 05/13)

-- Attach Applicable Wage Rate Schedules Here --

[Provided for the convenience of contractors. Copy on blue cardstock, if available.]

Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law

Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty, SPRB).

Rate of Wages for Laborers and Mechanics

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

Overtime

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at no less than one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. [§§104-1, 104-2(c), HRS]

Weekly Pay

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

Posting of Wage Rate Schedules

- Wage rate schedules with the notes for prevailing wages and special overtime rates, shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

Withholding of Accrued Payments

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

Certified Weekly Payrolls and Payroll Records

- A certified copy of all payrolls shall be submitted weekly to the contracting agency.
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain: [HAR §12-22-10]
 - the name and home address of each employee
 - the employee's correct classification
 - rate of pay (basic hourly rate + fringe benefits)
 - itemized list of fringe benefits paid
 - daily and weekly hours worked
 - weekly straight time and overtime earnings
 - amount and type of deductions
 - actual wages paid
 - date of payment
- Records shall be made available for inspection by the contracting agency, the Department of Labor and Industrial Relations, and any of its authorized representatives, who may also interview employees during working hours on the job. [§104-3(b), HRS]

Termination of Work on Failure to Pay Wages

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

Apprentices and Trainees

- In order to be paid apprentice or trainee rates, apprentices and trainees must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the Department of Labor and Industrial Relations, Workforce Development Division, (808) 586-8877. [§12-22-6(1), HAR]
- The number of apprentices or trainees on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship or trainee standards registered with or recognized by the Department of Labor and Industrial Relations. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(2), HAR]

Enforcement

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are:
 - First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
 - Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
 - Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within two years of **the second notification of violation**.
- **Suspension:** For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25]
- **Suspension:** Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty including suspension as provided in Section 104-22(b) and 104-25(a)(3), HRS. [§104-3(c)]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$10,000 per project, and \$1,000 per day thereafter, for interference or delay. [§104-22(b)]
- Failure by the contracting agency to include in the provisions of the contract or specifications the requirements of Chapter 104, HRS, relating to coverage and the payment of prevailing wages and overtime, is not a defense of the contractor or subcontractor for noncompliance with the requirements of this chapter. [§104-2(f)]

For additional information, visit the department's website at <http://labor.hawaii.gov/vsd> or contact any of the following DLIR offices:



Oahu (Wage Standards Division)	(808) 586-8777
Hilo	(808) 974-6464
Kauai	(808) 274-3351
Maui	(808) 243-5322
West Hawaii	(808) 322-4808