Chapter 104 Overview Wages and Hours of Employees on Public Works Projects

Wage Standards Division
Department of Labor and Industrial Relations
State of Hawaii
WSD Responsibilities

- Conducting investigations and hearings to enforce the six labor laws assigned to the Division;
- Conduct educational workshops
Overview

- Overview of Chapter 104
- Coverage & Classification
- WRS & Posting Requirements
- Certified Payrolls & Record Keeping
- Penalties
- Appeals
CHAPTER 104, HRS

OVERVIEW

- Enacted in 1955
- Sometimes referred to as “Little Davis-Bacon” (patterned after, not to be confused with, the Federal Davis-Bacon Act)
- Ensure that a prevailing wage standard be paid to laborers and mechanics in competitive bidding.
Enforcement Responsibilities

- Both the Contracting Agency and the Department of Labor and Industrial Relations have joint responsibility.
Chapter 104 is applicable to all state and county construction contracts in excess of $2,000.

Contract means any type of agreement regardless of what the agreement may be called including:

- Purchase orders
- Vouchers
New Additions to Coverage

- Act 61, Regular Session of 2007 added construction projects funded by Special Purpose Revenue Bonds
- Act 62, Regular Session of 2007 added construction projects for buildings where more than 50% is leased to a state or county agency.
WHO IS COVERED BY 104?

- Any laborer or mechanic, including owner-operators
  - working at the public work site
  - Transporting materials, supplies or equipment to or from the work site, or between a public work site and a dedicated work site.
- Subcontractors as well as Contractors are covered employers.
WHAT TYPE OF PROJECT OR ACTIVITY IS COVERED?

- New Construction
- Reconstruction
- Development
- Improvement
- Alteration
- Repair
- Renovation

- Painting Decorating
- Dredging
- Shoring
- Sewer Inspection
Other covered activities

Other activity performed by a laborer or mechanic employed at the site includes the following if the activity is an integral part of or is in conjunction with a construction contract, or if there is substantial construction activity involved in a supply, service, or other type of non-construction contract:
Other covered activities include:

- Warranty work except when done by the manufacturer on defective products or equipment
- Manufacturing or furnishing of materials, articles, supplies, or equipment on the job site
- Demolition or excavation
- Landscaping
- Termite Treatment
- Some survey work during construction
- Signal man
- Installation of prefab items
HOW IS THE APPROPRIATE JOB CLASSIFICATION DETERMINED?

- A contractor must identify the appropriate classification from the applicable wage rate schedule.
- The Classification should reflect the workers’ duties, materials, and tools used to perform the work and conform to prevailing area practice.
- BEWARE: Incorrect classification results in a prevailing wage violations.
What is prevailing area practice?

- Prevailing area practice refers to the classification of work used by contractors whose wage rates were found to be prevailing in the area and published in the wage rate schedule.
What happens if there is no appropriate job classification?

- The contractor is required to use the closest existing classification in the wage rate schedule.
- The contractor should first check with the contracting agency for assistance.
- If the contracting agency is unable to identify the appropriate classification, they should consult with the Wage Standards Division.
Disagreement over a proper or re-classification?

- Within **10 days** after receiving a request from an interested party, if the contracting agency has not forwarded a written report of the issues to the Director, the interested party may proceed to ask the Director themselves. (12-22-8, HAR)
Written requests should include;

- Project name and number
- Contracting agency
- Specific duties or work performed
- Type(s) of materials specified
- Tools and equipment used
- The Classification recommended by the contracting agency and contractor

*A written determination will be made by WSD*
How should job classifications be shown on the certified payroll?

Certified payrolls must show the specific job classification as listed in the wage rate schedule, which conform with the work performed by the laborer or mechanic on the job site.
Classification Listing Examples

- Equipment Operator (Group 1)
- Laborer II
- Carpenter (foreman)
- Roofer Apprentice - level, percentage, or step (*Indenture date*)
Truck Drivers employed on public works projects

- Chapter 104 is applicable when a laborer or mechanic employed at the public work site is engaged in transporting materials, supplies or equipment:
  - To or from a public work site; or
  - Between a public work sites or dedicated sites

- Proper prevailing wage for the driver is determined by the type of truck driven
Apprentices

- Apprentice or trainee wage rates in the Wage Rate Schedule apply only to:
  - Registered participants in recognized programs by the Workforce Development Division (586-8877)
  - The allowable ratio of journeyworker to apprentices is met – No “bootstrapping”
  - Apprentice certification is documented to Contracting Agency
  - Indentured date & step or level is listed on certified payrolls
Does the law allow “summer hires” or “helpers”?

- Only helper classifications listed in the Wage Rate Schedule.
- All others classified according to the closest existing job classification in the Wage Rate Schedule.
The Wage Rate Schedule is a publication of job classifications and corresponding wage rates determined by the Director to be prevailing based on surveys of the construction industry and determinations made by the U.S. Department of Labor.

http://www.wdol.gov/dba.aspx#8
WRS - Updates

- Current is WRS 463 Issued Sept 18, 2006
  Updated twice a year – on or about Feb. 15 and Sept 15

- Additional wage rate schedules, addenda, or notices of changes are issued as necessary by the Director

- Available on the Internet at Index by Topic at Wage Rate Schedule or: http://hawaii.gov/labor/rs/6-14-05update/WRS.HTM
Posting Requirements

- The current wage rate schedule must be posted by the general contractor at the job site in a prominent and easily accessible place and attached to the “Notice to Workers” poster (H104-1).

- Where there is no collective bargaining agreement in place, every worker needs to receive a copy.

- Partial posting not acceptable.
CERTIFIED PAYROLLS

- Classification
- Prevailing Wages
- Fringe Benefits
- Overtime
- Weekly Pay Requirement
- Record Keeping
Prevailing Wages

- The minimum rate of pay for employees to be paid for the type of work performed on the job site.

  Basic Hourly Rate
  + Fringe Benefits
  = Prevailing Wage

- Any combination of basic hourly rate and allowable fringe benefit to meet the applicable prevailing wage
ExM@PLE: Refer to WRS 464 pg 1

Carpenter’s rate as of 2/17/2007

- Basic hourly rate = $33.95
- Fringe hourly rate = $18.05
- Prevailing wage = $52.00

Employer can either:

- Pay the basic and provide allowable fringe valued at $18.05; or
- Pay the whole $52 directly to employee; or
- Pay any combination of the basic hourly rate & fringe which equals $52 or more
Increases to the Wage Rate Schedule

- Whenever the prevailing wage has increased the contractor must increase the wages accordingly. Therefore, future anticipated increases have been included where possible.
What is an allowable fringe benefit

- A fringe benefit is a contribution irrevocably made by a contractor to a trustee or to a third person according to a fund, plan or program in providing benefits to a laborer or mechanic, such as medical, life insurance, and pension.
An allowable fringe benefit must:

A. Fall into one of six categories

1. Health and Welfare
2. Unemployment, life or disability insurance
3. Vacation and holiday pay
4. Pensions
5. Apprenticeship or similarly approved programs
6. Other bona fide fringe benefits determined by DLI R
Allowable fringe must: (continued)

B. Be made at least monthly to the eligible fund, plan or program.

Example:  *HMSA & Kaiser Health Plans*

C. Be paid for all hours worked including overtime hours.
Examples of Unacceptable Fringe Benefits

- A contractor claims vacation to meet the fringe benefit requirement. The policy is that the vacation is earned after working one year. This is not allowable because:
  - Not paid to a trustee or third party fund, plan, or program
  - Not considered irrevocable because the employee must work one year before receiving the benefit;
  - Not paid at least once a month.
- Sick leave is similar to vacation
METHOD TO DETERMINE THE FRINGE BENEFIT HOURLY CREDIT

- The allowable hourly fringe benefit credit is determined by dividing the monthly contribution rate by 173 hours.
  
  Ex: Monthly Health Premium is $173.
  Hourly Credit: $173 ÷ 173 hrs = $1.00/hr

- If the prevailing wage is $30./hr the employer can claim $1/hr fringe and pay $29/hr as the rate.
When must overtime be paid?

- For all hours worked on:
  - Saturday;
  - Sunday;
  - A legal State Holiday; or
  - More than 8 hours on any other day whether worked on one or more projects.

- Computed at 1.5 times the basic hourly rate, plus the fringe benefit rate to equal the overtime prevailing rate.

- Carpenter Overtime Rate

  \[ \text{Carpenter Overtime Rate} = 33.95 \times 1.5 = 50.925 + 18.05 = 68.975 \]
## Calculating Overtime Prevailing Rate for Carpenter

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<thead>
<tr>
<th></th>
<th>Straight Time</th>
<th>Overtime</th>
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<tbody>
<tr>
<td><strong>Basic Hourly Rate</strong></td>
<td>$33.95</td>
<td>$50.925</td>
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<tr>
<td><strong>Fringe Benefit</strong></td>
<td>$18.05</td>
<td>$18.05</td>
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<tr>
<td><strong>Prevailing Rate</strong></td>
<td>$52.00</td>
<td>$68.975</td>
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<tr>
<td><strong>Possible Fringe Benefit Credit</strong></td>
<td>$1.00</td>
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<tr>
<td><strong>Amount to Pay</strong></td>
<td>$51.00</td>
<td>$68.975</td>
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Weekly Payment Required

- All employees must be paid weekly and within 5 working days after the end of the pay period.
Submission of Certified Payrolls

- The general contractor is responsible for submitting all certified payrolls on a weekly basis to the contracting agency.
- Preserve payroll records for 3 years after the project.
- The first certified payroll is allowed to be submitted the week after the first pay date. Then every week thereafter.
- Certification affirms that payrolls are correct and complete, and appropriate classifications with applicable prevailing wages rates are paid.
Required Information on Certified Payroll:

- Employee’s full name
- Last four digits of Social Security #
- Job Classification
- Rate of pay including applicable fringe benefits (itemized breakdown)
- Daily & weekly # of hrs worked
- Straight time hours
- Overtime hours
- Total earnings
- Amount and purpose of deductions
- Net pay
- Payment Date
- Signature of an authorized official of the company
Format of Certified Payrolls

- No standard form required; any form that includes all required information and is certified is acceptable.

- Federal form WH-347 is common place to start and available online at [www.dol.gov/esa](http://www.dol.gov/esa) Click on Forms
## PAYROLL

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>SOCIAL SECURITY NUMBER</th>
<th>POSITION</th>
<th>CLASSIFICATION</th>
<th>DATE PAID</th>
<th>RATE</th>
<th>OVERTIME</th>
<th>TOTAL HOURS</th>
<th>TOTAL EARNINGS</th>
<th>TOTAL DEDUCTIONS</th>
<th>DEDUCTION DETAILS</th>
<th>TOTAL PAID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ronco Bonabena</td>
<td>991 Uwelo Pkwy</td>
<td>Honolulu, HI 96817</td>
<td>111 24 4574</td>
<td>Carpenter</td>
<td>0</td>
<td>8</td>
<td>8</td>
<td>16</td>
<td>21.80</td>
<td>348.00</td>
<td>372.00</td>
<td>91.00</td>
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<tr>
<td>Ernest Shawers</td>
<td>981 Uwelo Pl</td>
<td>Honolulu, HI 96817</td>
<td>456 67 9802</td>
<td>Carpenter</td>
<td>1</td>
<td>8</td>
<td>8</td>
<td>16</td>
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<td>139.52</td>
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<tr>
<td>Kanoa Alapai</td>
<td>717 Punchbowl</td>
<td>Honolulu, HI 96813</td>
<td>567 98 0090</td>
<td>Electrician</td>
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<td>Keiki Nakai</td>
<td>780 Waimanui Pl</td>
<td>Waianae, HI 96792</td>
<td>575 66 3423</td>
<td>Laborer</td>
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<td>8</td>
<td>16</td>
<td>16.75</td>
<td>268.00</td>
<td>670.00</td>
<td>77.95</td>
</tr>
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</table>

* Fringe Benefits paid to the union. See attachment for applicable fringe benefits.
Date ________________

4. Walter Gobbs ________________

(Name of signature party) ________________

President

(Title)

I,_________________________ do hereby state:

(1) That I pay or supervise the payment of the persons employed by

XYZ Plumbing, Inc. on the

(Contractor or subcontractor) ________________

Makakilo Pump Station

(Building or work) ________________

Emergency Generator

that during the payroll period commencing on the ____________

22nd

day of __________________, 19__1, and ending the ____________ day of ____________, 19__1, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made directly or indirectly to or on behalf of said

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 946, 63 Stat. 108, 72 Stat. 937, 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rate for laborers or mechanics contained therein are not less than the applicable wage rate contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

<table>
<thead>
<tr>
<th>EXCEPTED (CRAFT)</th>
<th>EXPLANATION</th>
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<tbody>
<tr>
<td>Apprentice</td>
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<tr>
<td>Journeyman</td>
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</tr>
<tr>
<td>H &amp; D</td>
<td>2.17</td>
</tr>
<tr>
<td>Pension</td>
<td>3.20</td>
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<tr>
<td>Vacation</td>
<td>2.50</td>
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<tr>
<td>Training</td>
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REMARKS

FRINGE BENEFITS:

Journeyman 2.17

Pension 3.20

Vacation 2.50

Training .45

8.32

6.37

NAME AND TITLE

Walter Gobbs

(Signature) President

THE WILFUL FALSECIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR TO CRIMINAL PROSECUTION, SEE SECTION 1001 OF TITLE 18 AND
Penalties

- $1000 for certification of falsified payrolls
- Notification of Violation (NOV)
  - 1st - Equal 10% of back wages due or $25/offense
  - 2nd - w/in 2 yrs of 1st Equal to amount of back wages or $100/offense
  - 3rd - w/in 2 yrs of 2nd Equal to twice amount of back wages or $200/offense and
  - SUSPENSION FROM PUBLIC WORK FOR 3 YEARS
OTHER POWERS TO ENFORCE

- Contracting Agency will withhold payment to contactor for violations
- Use withheld funds to pay back wages to laborers and mechanics
- Order contractors to pay correct wages or any penalty assessed and terminate contract and proceed to hold contractors surety liable for any excess costs.
APPEALS

- Contractor has 20 days to appeal an NOV in writing to the Department
- Hearing is held before the Hearings Branch
- The administrative hearing is held pursuant to Chapter 91
- The administrative hearing decision can be appealed to Circuit Court
Appeals Process

- You will receive a notice of Hearing
- You can represent yourself
- Assistance available on the website under publications

In the Guide to Administrative Hearings

CONTACT
Wage Standards Division at:

Keelikolani Building
830 Punchbowl St., Room 340
Honolulu, Hawaii 96813
808-586-8771
dlir.wages@hawaii.gov