



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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July 10, 2013

Notice Re: MEMORANDUM NO. WSD 2013-01

TO: All State and County Governmental Contracting Agencies and Contractors

FROM: *Audrey Hidano*
for Dwight Takamine, Director
Department of Labor and Industrial Relations

SUBJECT: Applicability of Chapter 104, HRS, to Truck Drivers on Asphalt Paving Public Construction Projects When the Spreader Box or Paving Machine Method in Construction is Used

The Department is suspending implementation of Memorandum No. WSD 2013-1 issued on July 1, 2013, to address issues raised in appeals filed by several asphalt paving industry companies. In the coming months, the Department will address the asphalt paving issue under the Hawaii Administrative Rules, Title 12, Chapter 22, in the amendment process as required under Chapter 91, Hawaii Revised Statutes.

Until further notice, the practice of truck drivers delivering asphalt paving materials to paving machines and spreader boxes as described in Memorandum No. WSD 2013-01 will not be considered a violation of the Chapter 104, Hawaii Revised Statutes, Wages and Hours of Employees on Public Works, if not included on certified payroll.



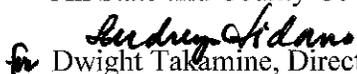
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July 1, 2013

MEMORANDUM NO. WSD-2013-1

TO: All State and County Governmental Contracting Agencies and Contractors

FROM:  Audrey Hidano
Dwight Takamine, Director
Department of Labor and Industrial Relations

SUBJECT: Applicability of Chapter 104, HRS, to Truck Drivers on Asphalt Paving Public Construction Projects When the Spreader Box or Paving Machine Method in Construction is Used.

In order to promote consistency in the interpretation of the treatment of truck drivers on asphalt paving public construction projects and pursuant to Section 12-22-8, Hawaii Administrative Rules (HAR), the Department of Labor and Industrial Relations (DLIR) is providing this notice to all governmental contracting agencies and contractors subject to the Wages and Hours of Employees on Public Works Law, Chapter 104, Hawaii Revised Statutes (HRS).

Spreader Box or Paving Machine Method Included Activities

A truck driver hauling asphalt or other paving materials under the spreader box or paving machine method on State and county public works construction projects is deemed to be a laborer or mechanic performing construction work of transporting materials under Section 12-22-1.1, HAR. As a laborer or mechanic, a truck driver must be paid the proper prevailing wage required by Chapter 104, HRS. Time spent at the construction site and the time transporting the equipment and materials to and from the construction site are covered under the law.

The spreader box or paving machine method is a method of construction where the truck driver backs the dump truck against an asphalt paving machine, raises the truck bed, and delivers the paving materials directly into the paving machine. The paving machine then lays the materials onto the roadbed. As the holding capacity of the asphalt paving machine cannot accommodate a full truck load of materials, the dump truck remains in contact with the asphalt paving machine, and the dump truck driver works in concert with the asphalt paving machine operator by controlling the rate of the materials being emptied into the asphalt paving machine's hopper.

In the spreader box or paving machine method, a truck driver who empties their load directly into the spreading machine and coordinates with the spreading machine operator to ensure a specific rate of materials flow while the spreading machine lays down a layer of the materials is an example of the incorporation of the delivered materials into the public construction process. A truck driver delivering asphalt or other paving materials to a public work construction jobsite in the spreader box or paving machine method is deemed to be performing the construction work of a laborer or

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July 1, 2013

mechanic and must be classified and paid the applicable prevailing wage provided in the appropriate Wage Rate Schedule Bulletin published by the DLIR.

To ensure compliance, contracting agencies should share this memo with all paving contractors. Contractors who are not in compliance should be advised to conduct a self-audit to correct the violation.

If you have any questions, please call the DLIR Wage Standards Division at (808) 586-8777. This document is available on the DLIR website at: <http://labor.hawaii.gov/wsd/>