



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

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Notice re: MEMORANDUM NO. WSD 2014-02

TO: All State and County Governmental Contracting Agencies and Contractors

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

SUBJECT: Applicability of Chapter 104, HRS, Classifications on Floor Laying on a Public Works Construction Project.

The Department of Labor and Industrial Relations (DLIR) is suspending Memorandum No. WSD 2014-02, dated May 16, 2014, and this notice now provides guidance on the classifications involved with floor laying on public works.

Due to concerns questioning the proper classification for work performed at the beginning and end of a floor laying project and in order to promote consistency in the interpretation of the treatment of workers on a public construction project, pursuant to Section 12-22-8, Hawaii Administrative Rules (HAR), the DLIR is providing this notice to all governmental contracting agencies and contractors subject to Chapter 104, Hawaii Revised Statutes (HRS), Wages and Hours of Employees on Public Works Law.

The concerns raised regarded the proper classification of a worker who performs demolition and removal of the old flooring and the cleanup and finishing of the newly installed flooring material, i.e. waxing among other types of finishing treatments, when the flooring contractor is sub-contracted.

The proper classification of a worker is:

1. "Floor layer" when performing the actual installation of the flooring on any public construction project;
2. "Floor layer" when the contract for a public construction project has as the only activity, the replacement or installation of new flooring, and includes the removal of old flooring material, installation of new flooring, finishing, and cleaning of the floors.

3. "Laborer" when performing general demolition work, which may include removal and disposal of old flooring material where the general contractor is not a floor laying contractor, and the public construction project is not a single activity of replacement or installation of new flooring.
4. "Laborer" when performing abatement removal, which includes removal and the disposal of hazardous, old, flooring material.
5. "Laborer" when performing general area and final clean-up (janitorial) work normally done at or near the completion of a multi-trade construction project phase or work area.

In situations concerning workers performing the removal and disposal of old flooring and the clean up immediately after completion of the floor laying under situations other than described above, the DLIR will allow either classification of Floor Layer or Laborer.

In making a determination, the DLIR will generally look to the contract that engaged the work to resolve the answer to whether the classification "floor layer" or "laborer" applies to either the removal of the old flooring or the cleaning and final treatments of the flooring. Generally, if the governmental contracting agency contracts simply for replacement or installation of flooring, then the removal and preparation along with the finishing and cleanup of the floors would belong to the "floor layer" classification as described in #2 above.

In the situation where the contract that engaged the work comes from a subcontract of a general contractor, the general contractor may subcontract the floor laying work out to "floor layers" for the provision of the floor laying and employ "laborers" to do any floor demolition and provide the cleanup as part of a larger multiple-trade construction project as described in #3 and #5 above.

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

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/guidelines/>.