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MEMORANDUM NO. WSD 2026-01

TO: All State and County Governmental Contracting Agencies and Contractors

FROM: Jade T. Butay, Director 
Department of Labor and Industrial Relations

SUBJECT: Applicability of Chapter 104, HRS, to Truck Drivers on Asphalt Paving Public Construction Projects.

To promote consistency regarding 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) provides 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. This notice is based on currently existing statutes and rules as specified herein.

Asphalt Milling/Cold Planing

Depending on the project scope of work, the initial phase for a typical asphalt paving operation is the removal of existing asphalt pavement through a process called milling or cold planing. A milling operation cannot commence without truck drivers being present and prepared to work at the start of the work shift. Trucks are staged in sequence at the jobsite in advance. Once started, a milling operation is continuous and integrally dependent on the uninterrupted use of trucks; if at any time a break in truck availability occurs, the milling operation stops.

During a milling operation, a cold planer moves forward while grinding the existing asphalt pavement into pieces. The milled material is conveyed directly into the bed of a truck traveling in coordination with the cold planer ensuring safe loading, proper weight distribution, and continuous transfer. After a truck is filled to capacity, it is immediately replaced by the next sequenced truck, allowing the milling operation to proceed uninterrupted. Additionally, after a truck filled with milled material is driven to a designated dump site and emptied, depending on the coordinated needs of the asphalt

paving operation, a truck driver may be instructed to return to the jobsite to receive additional milled material or first proceed directly to an asphalt batch plant to transport new asphalt paving material to the jobsite for the repaving portion of the operation.

As the milling method above describes a truck driver that is part of the coordinated sequence of trucks, and receives milled material conveyed directly from a cold planer to be transported to a designated dump site, 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, for time spent at the jobsite and time transporting material to and from the jobsite.

Material Transfer Vehicle (MTV)

When an MTV is used to transfer asphalt paving material from a truck to a spreader or paving machine, the truck driver reverses the truck into a position adjacent to the MTV, raises the truck bed, and transfers the asphalt paving material directly into the MTV. The MTV simultaneously transfers the asphalt paving material to the spreader or paving machine allowing for a continuous paving operation. The truck driver works concurrently with the MTV, continuously moving in coordination with the MTV, while controlling the transfer rate of asphalt paving material into the MTV.

The above-described method of using an MTV to transfer asphalt paving material from a truck to a spreader or paving machine, is essentially the same as the method described in DLIR's Memorandum No. WSD-2013-1 and deemed to be the work of a laborer or mechanic. Therefore, a truck driver performing such work in the manner described is deemed to be performing the construction work of a laborer or 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 are encouraged to share this memo with all asphalt paving contractors. Non-compliant contractors are 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 or email dlir.wages@hawaii.gov.

This document is available on the DLIR website at:
<https://labor.hawaii.gov/wsd/prevailing-wages-on-public-works/>