

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

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



# WSD Responsibilities

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



# Overview

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



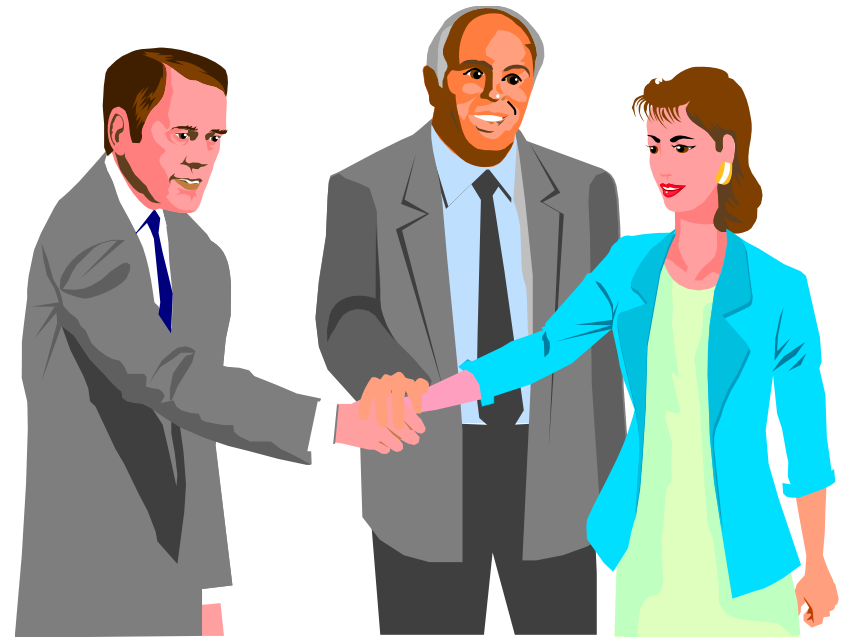
# CHAPTER 104, HRS OVERVIEW

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- 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





# COVERAGE & CLASSIFICATION

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- 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

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- 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?

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- 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

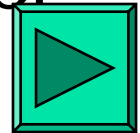




## Other covered activities

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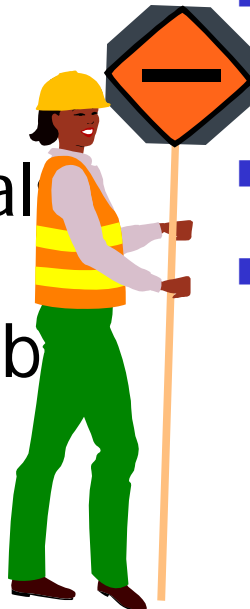
Other activity performed by a laborer or mechanic employed at the site includes the following if the activity is an integral part of or is in conjunction with a construction contract, or if there is substantial construction activity involved in a supply, service, or other type of non-construction contract:



# Other covered activities

include:

- Warranty work except when done by the manufacturer on defective products or equipment
- Manufacturing or furnishing of material 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?

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- 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?

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- 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?

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- 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 ?

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- 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;

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- 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

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- 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

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- 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.





# WAGE RATE SCHEDULE & POSTING REQUIREMENTS

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- 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

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- 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](http://hawaii.gov/labor/rs/6-14-05update/WRS.HTM)



# Posting Requirements

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- 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

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



# Prevailing Wages

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- 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



## EXAMPLE: Refer to WRS 464 pg 1

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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

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- 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

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- 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:

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## 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 DLIR



## Allowable fringe must: *(continued)*

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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

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- 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

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- 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:  $\$173 \div 173 \text{ hrs} = \$1.00/\text{hr}$
- 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?

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- 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
- $\$33.95 \times 1.5 = \$50.925 + \$18.05 = \$68.975$

# Calculating Overtime

## Prevailing Rate for Carpenter

	Straight Time		Overtime
Basic Hourly Rate	\$33.95	X1.5	\$50.925
Fringe Benefit	\$18.05	=	\$18.05
Prevailing Rate	\$52.00		\$68.975
Possible Fringe Benefit Credit	\$1.00		\$0
Amount to Pay	\$51.00		\$68.975

# 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

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- 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:

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- 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

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- 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 on line at [www.dol.gov/esa](http://www.dol.gov/esa) Click on Forms

PAYROLL

NAME OF CONTRACTOR <input checked="" type="checkbox"/> OR SUB-CONTRACTOR <input type="checkbox"/>		ADDRESS																	
Masbena Contractors Inc.		1973 Olmsted Pl, Honolulu, HI 96821																	
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTACT NO.													
1		March 16, 1991		Ehelihoalani Building Renovation (Honolulu)		12 16 0011													
(1) NAME ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) U.S. EMPLOYER'S IDENTIFICATION NUMBER	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) PROJECT EARNINGS	TOTAL GROSS WAGES	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK	
			10	11	12	13	14	15	16					WITH HOLDING TAX	SAI	FICA	OTHER		TOTAL DEDUCTIONS
Rosco Bonabera 991 Uweilo Place Honolulu, HI 96817 333 22 4579	1	Carpenter								16	21.80 8.95*	348.80	372.00	91.00	54.50	43.25		188.75	683.25
Ernesto Shavers 998 Uweilo Lp Honolulu, HI 96817 455 67 9802	1	Carpenter Apprentice Step 1, Indent 6/1/85								16	8.72 4.22*	139.52	348.80	53.25	24.25	21.75		99.25	249.55
Kenneth Murua 717 Punchbowl Honolulu, HI 96913 567 98 0009	1	Electrician Line/wire installer						8		8	22.10 10.36	176.80	884.00	93.10	57.25	45.15		195.50	688.50
Jeri Kwari 980 Waimani Lp Waianae, HI 96792 575 66 3425	1	Laborer I								16	16.75 6.69*	268.00	670.00	77.95	43.75	31.15		152.85	517.15
* Fringe Benefits paid to the union. See attachment for applicable fringe benefits.																			

ORIGINAL

WLO5

SAMPLE

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# Penalties

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



# OTHER POWERS TO ENFORCE

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- Contracting Agency will withhold payment to contractor 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

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- 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

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

In the Guide to Administrative Hearings

[http://hawaii.gov/labor/wsd/pdf/forms/wage\\_standards\\_division\\_guide\\_to\\_administrative\\_hearings.pdf](http://hawaii.gov/labor/wsd/pdf/forms/wage_standards_division_guide_to_administrative_hearings.pdf)



# CONTACT

## Wage Standards Division at:

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[dlir.wages@hawaii.gov](mailto:dlir.wages@hawaii.gov)