


This presentation is to familiarize contractors, subcontractors, laborers and mechanics and state and county contracting agencies as well as other interested parties about the requirements of construction in Hawaii funded by the American Reinvestment and Recovery Act.

This presentation summarizes the main issues as understood by the Department of Labor and Industrial Relations and is a general interpretation of the Chapter 104, Hawaii Revised Statutes (HRS). Specific instances may have facts and circumstances not considered in this overview.

This presentation reviews coverage under Chapter 104, HRS, differences between Davis Bacon and Chapter 104, explains classification of laborers and mechanics, examines the prevailing wage, calculating overtime and how to account for fringe benefits along with new reporting requirements. Finally, the State penalties for failure to comply with the law are provided, along with contact information if further questions arise.



Prevailing Wages on Public Works

<p>FEDERAL</p> <p>Davis-Bacon</p> <p>Applies to all ARRA funds for construction directly received from federal agencies</p> <p><i>(Note: McNamara -Ohara Applies to all service contracts of ARRA funds)</i></p>	<p>STATE</p> <p>Chapter 104, Hawaii Revised Statutes</p> <p>Applies to all ARRA funds for construction released through state city or county agencies.</p> <p><small>This requirement follows all contractors and sub-contractors down to the actual laborers and mechanics doing the work.</small></p>
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2

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There are two laws that govern prevailing wages in construction of public works .To determine which one applies you must know how the ARRA funds were committed.

If a contractor receives ARRA funds directly from a federal agency, like the Department of Energy, then the Davis Bacon Act will apply and the contractor will be reporting to a contracting agency in the federal government.

When a contractor receives ARRA funds via a State , City or County agency, then the prevailing wage law that applies is Chapter 104, Hawaii Revised Statutes. An example of this the Weatherization Assistance Program, where contracts are awarded via the Office of Community Services at the Dept. of Labor and Industrial Relations. Recipients of these funds for example Honolulu Community Action Program must impose the same requirements on the contractors and subcontractors who proceed on the contracts. The responsibility to pay laborers and mechanics the prevailing wage and file certified payrolls follows the chain down to the actual work performed by laborers and mechanics on the project.

To note: ARRA Service contracts are required to follow the McNamara-O’Hara Service Contract Act, which requires prevailing wages in services for contracts \$2,500 and higher and overtime for contracts above \$100,000 but this presentation focuses on construction contracts.

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Differences

Chapter 104, HRS	Davis Bacon Act
<ul style="list-style-type: none"> ● OT – after 8 hrs/day or Sat, Sun or State Holidays ● Wage Rate Schedule issued 2 times/yr (Feb&Sept) ● Reporting itemized fringe benefits & date paid ● Only DLIR can issue penalties ● No “owner-operators for truck drivers 	<ul style="list-style-type: none"> ● OT- after 40 hours a week ● One Wage Rate Schedule for the life of the project. ● WH-347 Cert. payroll ● Contracting Agency can issue penalties ● Allows “owner-operators” for truck drivers only

3

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While Chapter 104, HRS was modeled after the Davis Bacon Act, there are some major differences that everyone who is involved in state or county construction work should understand.

Some of the major differences between the Hawaii prevailing wage law and the federal prevailing wage law, the Davis Bacon and Related Acts are listed here.

Note that the rule for overtime is unique for Chapter 104 work. It does not follow the general rule for the State of Hawaii under the Wage and Hour Law (Chapter 387, HRS). Overtime is due after 8 hours of Chapter 104 work, or any work on a Saturday, Sunday or State Holiday.

Example: If you plan your workers for a 40 hour, 5-day, 8-hour –a-day work week that goes from Monday to Saturday, you have scheduled 8 hours of overtime, because of the work on Saturday.

Another dramatic difference from the federal Davis Bacon Act is that the prevailing wages are issued twice a year in February and September. The wage rate schedule that is applicable during the time you bid a job, may not be the applicable wage rate schedule when you are doing the work. You are obligated to pay the wages of the current wage rate schedule during the time the work is being performed. Note that where the DLIR is aware of planned rate increases the rates have been provided.

NOTICE TO WORKERS

WAGE INFORMATION

This project is subject to State Law, Chapter 104. Every laborer and mechanic employed on this job site must be:

1. PAID not less than the prevailing wage for the job classification - See schedules below. (Note: The Wage Rate Schedule may also be downloaded at - <http://hawaii.gov/labor/rs>)
2. PAID overtime at not less than time and one-half for all hours worked after 8 hours each day, and for all hours worked on Saturdays, Sundays, and legal State holidays.
3. PAID fringe benefits for all hours worked, including overtime.
4. PAID every week, within five working days after the end of the payperiod.
5. GIVEN a copy of the applicable rate schedules (see below), unless covered by a collective bargaining agreement.

If You Don't Receive the Above, Report to:
Project Representative/Inspector: _____ Phone: _____

For more information, contact the Department of Labor and Industrial Relations, Wage Standards Division:

OAHU (Honolulu)
830 Punchbowl Street
Room 340
Phone: 586-8777

HAWAII (Hilo)
75 Aupuni Street
Room 108
Phone: 974-6464

WEST HAWAII
(Kealahou)
Post Office Building
Phone: 322-4808

KAUAI (Lihue)
State Building
3060 Ewa Street
Room 202
Phone: 274-3351

MAUI (Waikuku)
2264 Aupuni Street
Phone: 243-5322



4

H104-1 (Rev. 6/08)

-- Attach Applicable Wage Rate Schedules Here --

This notice is H104-1. It is available on the DLIR website under the Wage Standards Division publications (http://hawaii.gov/labor/wsd/pdf/forms/eH104-1_poster_rev4-09.pdf) and must be posted in a conspicuous place on the jobsite. A full wage rate schedule must be attached, and must be updated each Feb. and Sept. when the wage rate schedule changes. The link to the wage rate schedule appears on the notice to workers.

This notice contains the major issues in Chapter 104. Note that #4 requires that you pay all laborers and mechanics on weekly basis in contrast to the general rule for Hawaii which requires payment only semi-monthly, basis on Chapter 388, HRS.

Additionally, if your employees are not governed by a collective bargaining agreement, each employee must receive a complete copy of the current wage rate schedule.

This notice must have the name and phone number of the project manager or contracting agency that can be contacted in case of a problem or discrepancy.

Finally, The contact numbers for the DLIR on each island are listed. Feel free to call and ask a question, we are always available for compliance assistance.

COVERAGE

- Chapter 104 is applicable to all state city, and county construction contracts in excess of \$2,000 (*including ARRA funded*). (104-2(a), HRS)
- Contract means any type of agreement regardless of what the agreement may be called including:
 - Purchase orders
 - vouchers

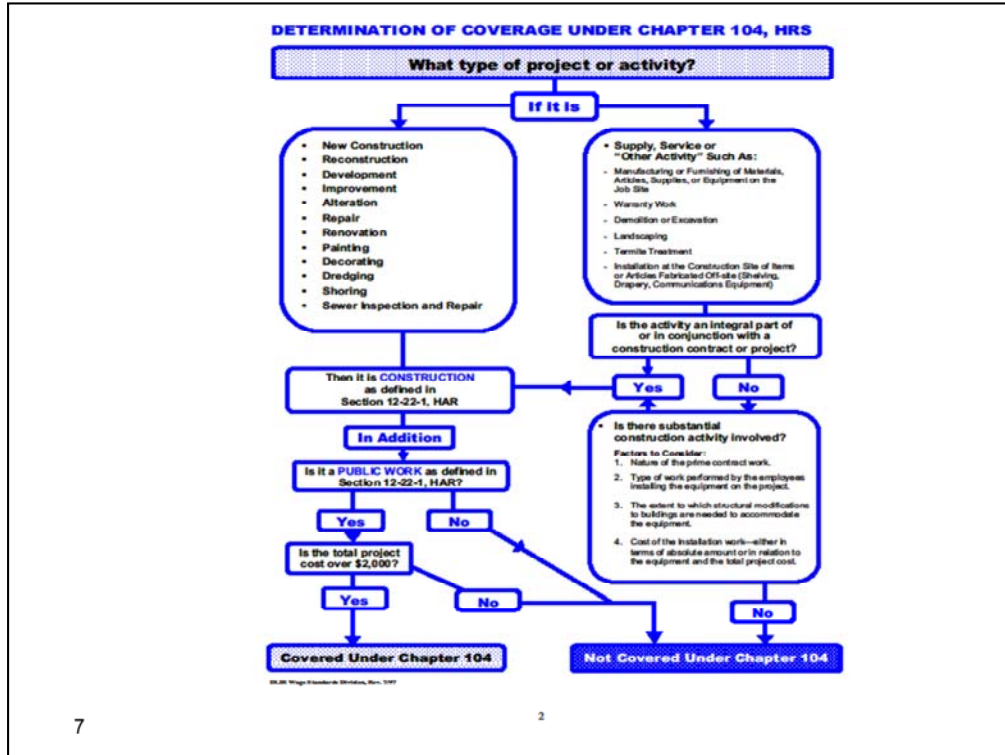
Chapter 104 applies to all state and county construction contracts in excess of \$2,000. Do not be fooled by an agreement that is described as a purchase order or voucher, this type of agreement is included. If it is construction for the state or county and it is more than \$2,000, it is likely an included project. Questions should be directed to the DLIR, Wage Standards Division.

Determining coverage

Activity performed by a **laborer or mechanic** employed **at the site** and includes any activity if it 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.

All laborers and mechanics at the construction site must be included on the certified payroll form. Note that this includes “owner-operators” if they are doing the work of a Laborer or Mechanic.

If you set up a location for the storage of supplies for a particular public works job or to assemble material for a particular public works job and after the job is over this location will not remain, the location would be considered a dedicated site and all construction activity carried on there would be included work, required to be reported on a certified payroll.



This is an important flow chart in determining whether a project is covered under Chapter 104, HRS.

Note the paragraph in the first rectangle on the right side, where perceived service or supply contracts may be included as a construction contract.

Is the labor or mechanic activity and integral part , or in conjunction with a construction contract or project?

Often, the answer to this question is “yes” and brings the “service” or “supply” contract back to an included activity.

This analysis is the process that the DLIR will use to determine if a project, contract, or activity, should be included under Chapter 104, Hawaii Revised Statutes.

A full size version of the chart can be found on-line in “Commonly Asked Questions about Chapter 104” http://hawaii.gov/labor/wsd/wsd/pdf/forms/eH104_2.pdf at page 2.

Included activities:

- 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 (See guidelines at hawaii.gov/labor/wsd)
- Signal man (See guidelines at hawaii.gov/labor/wsd)
- Installation of prefab items



Sample included activities are listed here. There are memos detailing survey work and signal man work on the DLIR website as indicated.

Classification Listing Examples



- Equipment Operator (Group 1)
- Laborer II
- Carpenter (foreman)
- Roofer Apprentice - level, percentage, or step (*Indenture date*)

When submitting Certified Payrolls all laborers and mechanics must be classified by a selection from the Wage Rate Schedule.

The examples above are the correct way to list the classifications. In the case of the Carpenter the designation of (foreman) is included. If the foreman actually participated in the work it is important to include the individual on the certified payroll. It is likely a foreman will get a higher rate than the standard journey worker. It is always acceptable to pay more than the prevailing wage rate.

The classification of the laborer or mechanic must reflect the work done. It has no relation to their title, it is about the work done. So if an owner participates in the work done at the site, the owner must be listed under the classification of work performed and that payment at the correct prevailing wage rate was paid.

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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: (HAR 12-22-1.1)
 - 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

10 Department of Labor & Industrial Relations

Truck drivers present a common violation when they are improperly excluded from the certified payroll. When a Laborer or Mechanic brings materials, supplies or equipment to the site, the time spent loading that equipment into the truck and driving to the location is included time.

For example: A painting company requires their employees to meet at the regular shop at 7:00 a.m. Three employees load up the truck with materials and supplies and drive to the public works site, unload and begin painting by 7:30. The half-hour from 7:00 to 7:30 a.m. is included time on the certified payroll and the three employees should receive prevailing wages. (Likewise if they are required to return to the shop at the end of the day)

Compare this to an employer who requires the employees to be at the public work site at 7:30 a.m. where the truck loaded with supplies, materials and equipment meets them. If the driver of the truck, came from the regular business location only the driver of the truck would be included for the drive time. If the truck is used in the commute to work from the home to the work site the driver is not included on the certified payroll. Any commuting rides must be at the convenience of the employee and not required by the employer to exclude "drive time".

If equipment or supplies is just dropped off and left for laborers and mechanics to handle at the site, the driver is not required to be listed on the certified payroll.

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.
 - Apprentice certification is documented to Contracting Agency
 - Indentured date & step or level is listed on certified payrolls

The incorrect use of apprentices or trainees is also a common problem seen on the submission of certified payrolls. There are no “trainees” allowed on public works projects, only registered apprentices in a recognized program.

All registered apprentices must be listed on the certified payroll as indicated previously with the indenture date and step or level. In addition, apprentices must not work alone. There must always be the correct ratio of journeyworker to apprentice on the job. The ratio will be determined by the organization that administers the recognized program, often a trade union, although merit-based organizations and individual companies have recognized apprentice programs.

Any company can apply to set up a registered program by calling the Workforce Development Division 586-8877. A template is available to assist in this area.

If an apprentice works without the correct number of journeyworkers on the project, or an individual is listed as an apprentice who is not registered in a recognized program, back wages to the full journeyworker level will be assessed and must be paid to the worker in addition a penalty paid to the general fund.

WRS - Updates

- Current is WRS 469 Issued February 21, 2009
- Updated twice a year – on or about Feb. 15 and Sept 15
- Available on the Internet at Index by Topic at Wage Rate Schedule
- When the prevailing wage increases the contractor must increase the wages accordingly. Future anticipated increases have been included where possible.

JAN	FEB ★	MAR
APR	MAY	JUN
JUL	AUG	SEP ★
OCT	NOV	DEC

Wage Rate Schedules (WRS) are updated twice a year and contractors and subcontractors are required to pay the rates on the current wage rate schedule.

There is no requirement for contracting agencies to pay any increases on the bid amount due to increases in the Wage Rate Schedule. Where there are known future increases they are included whenever possible.

You can get on a WRS notification list and receive an e-mail that a new schedule has been issued by calling 808-586-9019.

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

The prevailing wage is made of two parts, the basic hourly rate and fringe benefits. The only reason it is broken up is to compute overtime. The total amount required to be paid to laborers and mechanics on public works is the prevailing wage. The breakdown on how that is achieved is up to contractors or subcontractors. Paying most in fringe benefits and a little in basic hourly rate is the same as paying the entire amount in basic hourly rate. It does not affect overtime rates, it may only effect other issues outside the jurisdiction of DLIR, for example payroll taxes.

EXAMPLE: Refer to WRS 469 pg 1

Carpenter's rate as of 9/21/2009

- Basic hourly rate = \$36.20
- Fringe hourly rate = \$19.02
- Prevailing wage = \$55.22

Employer can either:

- Pay the basic and provide allowable fringe valued at \$19.02; or
- Pay the whole \$55.22 directly to employee; or
- Pay any combination of the basic hourly rate & fringe which equals \$55.22 or more

Here is an example from Wage Rate Schedule 469 which was valid from 9/21/09 to 2/22/10 until Wage Rate Schedule 470 was issued.

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.

Using allowable fringe benefits in the prevailing wage is often a problem.

An allowable fringe benefit must be irrevocably made by a contractor, which means they can not take it back from the laborer or mechanic.

It must be made to a trustee or a third person, which is usually a union or could be a trust account at a bank.

According to a fund plan or program, which means a set or rules exists to let laborers or mechanics know how to retrieve the benefits.

A specific example of a problematic fringe benefit is a vacation program that provides two weeks after one year of work. If a laborer works on a project in January but then leaves the company in June, no vacation was taken and no allowable fringe benefit was provided because it was not irrevocable.

Instead if the contractor provided .83 days of vacation a month, and put the funds monthly in a trust account set up for vacation and the employee left in June, they would be eligible for the vacation earned between Jan and June and it would be an allowable fringe benefit under Chapter 104.

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An allowable fringe benefit must have these 3 things:

A. Fall into one of six categories

- Health and Welfare
- Life or disability insurance
- Vacation and holiday pay
- Pensions
- Apprenticeship or similarly approved programs
- Other bona fide fringe benefits determined by DLIR

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

16

Department of Labor & Industrial Relations

In addition to being irrevocable, the three things an allowable fringe benefit must have are listed here.

As seen in the previous example, allowable vacation pay fringe benefits often have to be specifically set up if outside of a collective bargaining agreement arena.

Health Insurance is a good example of an allowable fringe benefit because payments are made monthly to the plan by the contractor or subcontractor and are irrevocable.

Pension plans are also a good example of an allowable fringe benefit, except that some pension plans are paid only quarterly and if so, payments would have to be modified to pay monthly.

Finally, the fringe benefit must be paid for all hours worked, including overtime. This is explained in more detail in the next two slides showing how to take credit for paying allowable fringe benefits on the certified payroll.

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. (HAR 12-22-4)
 - Ex: Monthly Health Premium is \$173.
Hourly Credit: $\$173 \div 173 \text{ hrs} = \$1.00/\text{hr}$
- If the prevailing wage is \$55.22/hr the employer can claim \$1/hr fringe and pay \$54.22/hr as the rate.

In determining the correct hourly amount for a fringe benefit credit in the prevailing wage, the magic number is **173**.

This is different than how the federal Davis Bacon computes the allowable amounts.

In Hawaii, Chapter 104 requires you to take the monthly amount paid for a fringe benefit and divide by 173 to determine the hourly fringe benefit credit. It does not matter if a laborer or mechanic only worked 40 hours that month, the number to use to divide the amount of monthly payment for an allowable fringe benefit remains 173.

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Calculating Overtime Prevailing Rate for Carpenter

	Straight Time		Overtime
Basic Hourly Rate	\$36.20	X1.5	\$54.30
Fringe Benefit	\$19.02	=	\$19.02
Prevailing Rate	\$55.22		\$73.32
Possible Fringe Benefit Credit	\$1.00		\$0
Amount to Pay	\$54.22		\$73.32

18

Department of Labor & Industrial Relations

This chart shows three things.

A. How to calculate overtime rates

Recall that the only reason the prevailing wage is split is to figure overtime. Here we see the basically hourly rate multiplied by 1 and one-half to determine the basic hourly overtime rate of \$54.30. Adding the fringe benefit rate of \$19.02 as required to be paid on all hours worked a total overtime rate is \$73,32

B. How to take credit for a fringe benefit on straight time when fringe benefits are not paid by the hour.

If fringe benefits are paid on a monthly basis as opposed to an hourly basis you take the monthly amount and divide by 173. Using the previous example where it was determined \$1 for Health Insurance the hourly rate reported on the certified payroll would be \$54.22 with \$1/hr fringe benefit credit for straight time and \$73.32 with fringe benefit credit exhausted for overtime.

C. How fringe benefits are paid for all hours worked including overtime.

What we would see in a union environment is a carpenter being paid \$36.20 straight time and \$54.30 overtime with payments of \$19.02 to the union trust accounts for all hours worked.

Typically, where fringe benefits are not paid on an hourly basis, we would see \$54.22 for straight time and \$73,32 for overtime with \$1 credit for straight time only.

Format of Certified Payrolls

- No standard form required; any form that includes all required information and is certified is acceptable **including itemized fringe benefits.**
- DAGS has an electronic form that assists with compliance. www.hawaii.gov/pwd look for **Construction Administration Forms - Construction Ongoing**
 - [STATEMENT OF COMPLIANCE & DAGS-ECP FOR PAYROLL AFFIDAVITS](#)
- Federal form WH-347 is also available on line at www.dol.gov/esa Click on Forms

While no standard form is required DLIR and Department of Accounting and General Services have collaborated to provide an Excel sheet certified payroll form that contains all the necessary information required. This form is available on the DAGS public works website as well as the DLIR

STATEMENT OF COMPLIANCE - With DAGS-ECP
(Certification Under Penalty of Perjury)

Date: _____ at _____

I, _____ do certify under penalty of perjury:

- That all of the information in this report is true and correct.
- That I pay or supervise the payment of the persons employed by _____ during the payroll week of _____ on the _____ that all persons employed on said project will be paid the full weekly wages earned; that no rebates have been or will be made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as described below:
FICA(Social Security), Medicare, Federal Income Taxes, State Income Taxes, State Disability (SDI), Court-ordered Wage Attachments.
- That any payrolls otherwise under this contract required to be submitted are correct and complete; that the wage rate for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work performed.
- That any apprentices employed on the above project are duly registered in a bona fide apprenticeship program registered with, or recognized by, a _____
- That:
 - WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS
In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above-referenced payroll, payments of fringe
Following is a breakdown of the hourly fringe benefit contributions:

Classification	Pension/Annuity	Health & Welfare	Vacation/Holiday	Training	Total OTHER	Total Fringes
a Example	\$1.23	\$2.23	\$3.33	\$6.34	\$4.45	\$17.58
b					\$0.00	\$0.00
c					\$0.00	\$0.00
d					\$0.00	\$0.00

Signature required at bottom of form

20

INSTRUCTIONS Initial STMT OF COMPL Wkly STMT OF COMPL DAGS.ECP v1

This is a snap shot of the recommended certification form with highlights where the new requirements to itemize fringe benefits are required. A signature on this page was cut off and is required by law to certify the payroll information

Fringe benefits paid must be itemized on the certified payroll, as of Oct. 1, 2009.

Employee Information

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
1	STATE OF HAWAII				CERTIFIED PAYROLL REPORT				DAGS.ECP v1.0_1205						
2	DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES														
3	Public Works Division				REPORT SUBMISSION DATE:				26-Oct-07						
4															
5	Name is Contractor:			<input checked="" type="checkbox"/>			THIS IS AN AMENDED FORM								
6	Subcontractor			<input type="checkbox"/>			<input checked="" type="checkbox"/> PAYMENTS MADE ON SAME DAY TO ALL EMPLOYEES								
7	NAME: Hesbens Contractors, Inc.														
8	PAYROLL NO.		FOR WEEK ENDING		LOCATION				VENDOR CODE						
9	34		October 20, 2007		CHERRY COURTHOUSE, FIX ROTTEN TREES				000003-98						
11	NAME				ADDRESS				SOC SEC NO.						
12	Rocco Bonabena				99 Uewelo Pl, Honolulu, HI 96819				xxx-xx-9999						
13	Kenneth Morton				29 Pualei Circle				xxx-xx-0009						
14	Keoni Lee				222 Nuuanu Dr.				xxx-xx-9000						
15															
16															
17															
18															
19															

This is the third worksheet in the recommended Excel form developed by DAGS and DLIR. Keeping this information separate from the public document parts will protect your employees. This form can be filled out once and submitted with the 1st Certified Payroll. Re-submission is required only when something changes.

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Penalties

- \$1000 and suspension for delay or for certification of falsified payrolls (104-22(b) HRS)
- Notification of Violation (NOV) (104-24, HRS)
 - 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 (104-25, HRS)

23 Department of Labor & Industrial Relations

If Contractors and Subcontractors do not comply there are penalties.

The most severe penalty is suspension. The Director can suspend contractors or subcontractors for failure to cooperate with our investigation causing delay or for falsification of a certified payroll. In addition to suspension from eligibility to get state or county construction work for 3 years, a \$1000 penalty to the State general fund will be imposed.

Suspension will also result if a contractor or subcontractor fails to pay any back wages found due or if they receive a 3rd Notice of Violation (NOV) according to the penalty structure in Section 104-34, HRS.

The penalty structure is mandatory and there is no discretion on the part of the Director. We impose NOV's based on an investigation. If we have a complaint that causes an investigator to examine three or four different projects and we find errors in all projects, we will issue one NOV, but invoke monetary penalties based on the timing and past experience as set out above whether it is a 1st, 2nd or 3rd Violation.

Five Quick Things

1. Overall
2. Apprentice Ratio
3. Wages – Overtime, Sat/Sun, State Holidays or > 8 hours a day
4. Timely
5. Signature & Itemized Fringe Benefits

TIP: Protect Employees & Reduce Redaction

Keep Confidential info separate.

This is a summary of how to review Certified Payrolls.

1. Do the classifications listed reflect the type of work completed that week?
For example, If it is painting a classroom, are there painters? If there is installation of solar water heaters, are there plumbers?
2. Are all apprentices registered and recorded appropriately. Were there enough journeyworkers on the job each day apprentices were on site.
3. Is there overtime paid on Saturday, Sunday or a State Holiday, or more than 8 hours a day?
4. Were laborers and mechanics paid weekly? Is the submission done a week after work was completed?
5. Did an officer of the company sign the certification and were fringe benefits itemized?

Should questions arise

- Check on line at hawaii.gov/labor/wsd
- Call the Wage Standards Division
At 586-8777

THANK YOU FOR YOUR COMPLIANCE