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MEMORANDUM NO. WSD-2

TO: All State and County Governmental Contracting Agencies

FROM: Nelson B. Befitel, Director
Department of Labor and Industrial Relations

SUBJECT: Flaggers and Traffic Directors Employed on Public Works Projects

The Department of Labor and Industrial Relations would like to remind all contracting agencies that the payment of prevailing wages under the Wages and Hours of Employees on Public Works Law, Chapter 104, Hawaii Revised Statutes (HRS), applies to workers who are engaged in traffic control, if the work is performed in conjunction with a State or county public works project. This includes, but is not limited to, coning, barricading, and directing traffic by signals or flags.

It has come to our attention that some clarification is required on whether laborers who direct vehicular or pedestrian traffic on a public works construction project are subject to prevailing wages under Chapter 104, HRS. Flagger and traffic control duties have been determined to be manual and physical in nature; they typically work on or around heavy or highway construction projects as part of the construction crews; and their work is integrally related and necessary to the other construction activities at the site, regardless of whether their employer is a general contractor or a subcontractor. Employees of traffic service companies on public works projects who set up and service traffic control devices (e.g. barricades, directional signs, lights, arrow boards, etc.) are generally covered and classified as a Laborer II. The DLIR's position is consistent with the U.S. Department of Labor's position under the Davis-Bacon Act.

Chapter 104, HRS, applies to any laborer or mechanic who performs work on a covered project. All laborers and mechanics must be reported on certified payrolls, and paid the applicable prevailing wages. We request that you please review your current and future projects with this guideline in mind.

Please note that private duty police officers hired by a contractor generally are not covered under Chapter 104, HRS, unless they also perform the physical or manual work of a laborer or mechanic.

As partners in the enforcement of Chapter 104, HRS, if you have any questions, please call Ms. Caroline Okimoto, Compliance Branch Chief of the DLIR's Wage Standards Division, at 586-8784.