
A BILL FOR AN ACT

RELATING TO PREVAILING WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 104-1, Hawaii Revised Statutes, is
2 amended by amending the definitions of "basic hourly rate",
3 "overtime compensation", "public work", and "wages", "rate of
4 wages", "wage rates", "minimum wages", and "prevailing wages" to
5 read as follows:

6 "Basic hourly rate" means the hourly wage paid to a
7 laborer ~~[or]~~, mechanic, or utility worker for work performed
8 during nonovertime hours, but shall not include the cost to an
9 employer of furnishing fringe benefits, whether paid directly or
10 indirectly to the laborer ~~[or]~~, mechanic, or utility worker as
11 provided in the definition of "wages".

12 "Overtime compensation" means compensation based on not
13 less than one and one-half times the laborers ~~[or]~~, mechanics,
14 or utility workers basic hourly rate of pay plus the cost to an
15 employer of furnishing a laborer ~~[or]~~, mechanic, or utility
16 worker with fringe benefits as described in the definition of
17 "wages"; provided that if the department determines that a



1 prevailing wage is defined by a collective bargaining agreement,
2 the overtime compensation shall be at the rates set by the
3 applicable collective bargaining agreement.

4 "Public work" means any project, including development of
5 any housing pursuant to section 46-15 or chapter 201H and
6 development, construction, renovation, and maintenance related
7 to refurbishment of any real or personal property, where the
8 funds or resources required to undertake the project are to any
9 extent derived, either directly or indirectly, from public
10 revenues of the State or any county, or from the sale of
11 securities or bonds whose interest or dividends are exempt from
12 state or federal taxes. "Public work" includes utility
13 projects.

14 "Wages", "rate of wages", "wage rates", "minimum wages" and
15 "prevailing wages" mean the basic hourly rate and the cost to an
16 employer of furnishing a laborer [øx], mechanic, or utility
17 worker with fringe benefits, including but not limited to health
18 and welfare benefits, vacation benefits, and pension benefits,
19 whether paid directly or indirectly to the laborer [øx],
20 mechanic, or utility worker."



SECTION 2. Section 104-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) through (e) to read:

"(b) Every laborer ~~[and]~~, mechanic, and utility worker performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages; provided that:

(1) The prevailing wages shall be established by the director as the sum of the basic hourly rate and the cost to an employer of providing a laborer ~~[or]~~, mechanic, or utility worker with fringe benefits. In making prevailing wage determinations, the following shall apply:

(A) The director shall make separate findings of:

(i) The basic hourly rate; and

(ii) The rate of contribution or cost of fringe benefits paid by the employer when the payment of the fringe benefits by the employer constitutes a prevailing practice. The cost of fringe benefits shall be



1 reflected in the wage rate scheduled as an
2 hourly rate; and

3 (B) The rates of wages which the director shall
4 regard as prevailing in each corresponding
5 classification of laborers [~~and~~], mechanics, and
6 utility workers shall be the rate of wages paid
7 to the greatest number of those employed in the
8 State, the modal rate, in the corresponding
9 classes of laborers [~~or~~], mechanics, or utility
10 workers on projects that are similar to the
11 contract work;

12 (2) Except for the project prevailing wages established by
13 subsections (h) and (i), the prevailing wages shall be
14 not less than the wages payable under federal law to
15 corresponding classes of laborers [~~and~~], mechanics,
16 and utility workers employed on public works projects
17 in the State that are prosecuted under contract or
18 agreement with the government of the United States;
19 and

20 (3) Notwithstanding the provisions of the original
21 contract, the prevailing wages shall be periodically



1 adjusted during the performance of the contract in an
2 amount equal to the change in the prevailing wage as
3 periodically determined by the director.

4 (c) No laborer ~~[or]~~, mechanic, or utility worker employed
5 on the job site of any public work of the State or any political
6 subdivision thereof shall be permitted or required to work on
7 Saturday, Sunday, or a legal holiday of the State or in excess
8 of eight hours on any other day unless the laborer ~~[or]~~,
9 mechanic, or utility worker receives overtime compensation for
10 all hours worked on Saturday, Sunday, and a legal holiday of the
11 State or in excess of eight hours on any other day. The rate
12 for overtime compensation and any other premium rates of pay
13 shall be those rates specified in an applicable collective
14 bargaining agreement when the basic hourly rate is established
15 by a collective bargaining agreement.

16 For purposes of determining overtime compensation under
17 this subsection, the basic hourly rate of any laborer ~~[or]~~,
18 mechanic, or utility worker shall not be less than the basic
19 hourly rate determined by the director to be the prevailing
20 basic hourly rate for corresponding classes of laborers ~~[and]~~,



1 mechanics, or utility workers on projects of similar character
2 in the State.

3 (d) The contractor or the contractor's subcontractor shall
4 pay all mechanics [~~and~~], laborers, and utility workers employed
5 on the job site, unconditionally and not less often than once a
6 week, and without deduction or rebate on any account, except as
7 allowed by law, the full amounts of their wages including
8 overtime, accrued to not more than five working days prior to
9 the time of payment, at wage rates not less than those deemed to
10 be prevailing, regardless of any contractual relationship which
11 may be alleged to exist between the contractor or subcontractor
12 and the laborers [~~and~~], mechanics, and utility workers. The
13 rates of wages to be paid shall be posted by the contractor in a
14 prominent and easily accessible place at the job site, and a
15 copy of the rates of wages required to be posted shall be given
16 to each laborer [~~and~~], mechanic, and utility worker employed
17 under the contract by the contractor at the time each laborer
18 [~~and~~], mechanic, and utility worker is employed, except that
19 where there is a collective bargaining agreement the contractor
20 does not have to provide the contractor's employees the wage
21 rate schedules.



1 (e) The governmental contracting agency may withhold from
2 the contractor so much of the accrued payments as the
3 governmental contracting agency may consider necessary to pay to
4 the laborers ~~[and]~~, mechanics, and utility workers employed by
5 the contractor or any subcontractor on the job site the
6 difference between the prevailing wages and the wages received
7 and not refunded by the laborers ~~[and]~~, mechanics, and utility
8 workers."

9 2. By amending subsection (i) to read:

10 "(i) The terms of section 201H-36(a)(5) prevailing wages
11 shall be deemed the prevailing wages serving as the basis of
12 compliance with this chapter for work on the project when:

13 (1) The Hawaii housing finance and development corporation
14 has approved and certified a qualified person or firm
15 involved with a newly constructed, or moderately or
16 substantially rehabilitated project under section
17 201H-36(a)(5) for exemption from general excise taxes;

18 (2) The qualified person or firm has entered into a
19 contract with a general contractor or subcontractors
20 whose workforce is subject to either:



1 (A) A collective bargaining agreement with a bona
2 fide labor union for which a section
3 201H-36(a)(5) prevailing wage for the laborers
4 [and], mechanics, and utility workers employed
5 for the construction project has been approved by
6 the director; or

7 (B) A project labor agreement with the group whose
8 wages are reflected in the Hawaii prevailing wage
9 schedule for which section 201H-36(a)(5)
10 prevailing wages for the laborers [and],
11 mechanics, and utility workers employed for the
12 construction project have been approved by the
13 director; and

14 (3) The qualified person or firm has received no other
15 direct or indirect financing for the construction
16 project from any other governmental contracting
17 agency, including the Hawaii housing finance and
18 development corporation."

19 SECTION 3. Section 104-3, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:



1 "(a) Every contract subject to this chapter and the
2 specifications for those contracts shall contain a provision
3 that a certified copy of all payrolls and a certified copy of a
4 fringe benefit reporting form supplied by the department or any
5 certified form that contains all of the required fringe benefit
6 information shall be submitted weekly to the governmental
7 contracting agency for review. The fringe benefit reporting
8 form shall itemize the cost of fringe benefits paid by the
9 general contractor or subcontractor for:

- 10 (1) Health and welfare benefits;
- 11 (2) Pension and annuity benefits;
- 12 (3) Vacation benefits;
- 13 (4) Continuing education and training benefits; and
- 14 (5) Other fringe benefit costs paid by the general
15 contractor or subcontractor.

16 The general contractor shall be responsible for the submission
17 of certified copies of the payrolls of all subcontractors. The
18 certification shall affirm that the payrolls are correct and
19 complete, that the wage rates contained therein are not less
20 than the applicable rates contained in the wage determination
21 decision of the director of labor and industrial relations



1 attached to the contract, and that the classifications set forth
2 for each laborer [~~or~~], mechanic, or utility worker conform with
3 the work the laborer [~~or~~], mechanic, or utility worker
4 performed. Any certification discrepancy found by the
5 contracting agency shall be reported to the general contractor
6 and the director to effect compliance.

7 (b) Payroll records for all laborers [~~and~~], mechanics, and
8 utility workers working at the site of the work shall be
9 maintained by the general contractor and the general
10 contractor's subcontractors, if any, during the course of the
11 work and preserved for a period of three years thereafter. The
12 records shall contain the name of each employee, the employee's
13 correct classification, rate of pay, the itemized fringe benefit
14 reporting form pursuant to subsection (a), daily and weekly
15 number of hours worked, deductions made, and actual wages paid."

16 SECTION 4. Section 104-4, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§104-4 Termination of work on failure to pay agreed
19 wages; completion of work; contract and specifications
20 provision. Every contract and the specifications for such
21 contract shall contain a provision that if the governmental



1 contracting agency finds that any laborer [~~or~~], mechanic, or
2 utility worker employed on the job site by the contractor or any
3 subcontractor has been or is being paid wages at a rate less
4 than the required rate by the contract or the specifications, or
5 has not received the laborer's [~~or~~], mechanic's, or utility
6 worker's full overtime compensation, the governmental
7 contracting agency may, by written notice to the contractor,
8 terminate the contractor's right, or the right of any
9 subcontractor, to proceed with the work or with the part of the
10 work in which the required wages or overtime compensation have
11 not been paid and may complete such work or part by contract or
12 otherwise, and the contractor and the contractor's sureties
13 shall be liable to the governmental contracting agency for any
14 excess costs occasioned thereby."

15 SECTION 5. Section 104-21, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§104-21 Governmental contracting agency responsibilities.**

18 The governmental contracting agency shall:

19 (1) Pay or cause to be paid, within sixty days of a
20 determination made by the director, directly to
21 laborers [~~and~~], mechanics, or utility workers or to



1 the director, from any accrued payment withheld under
2 the terms of the contract, any wages or overtime
3 compensation found to be due to laborers ~~[or]~~,
4 mechanics, or utility workers under the terms of the
5 contract subject to this chapter, or any penalty
6 assessed;

7 (2) Order any contractor to pay, within sixty days of a
8 determination made by the director, any wages or
9 overtime compensation which the contractor, or any of
10 the contractor's subcontractors, should have paid to
11 any laborer ~~[or]~~, mechanic, or utility worker under
12 any contract subject to this chapter, or any penalty
13 assessed which the contractor, or any of the
14 contractor's subcontractors, should have paid to the
15 director; and

16 (3) Report to the director any violation of this chapter,
17 the rules adopted thereunder, or the terms of the
18 contract subject to this chapter."

19 SECTION 6. Section 104-27, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§104-27 Liability. If the accrued payments withheld
2 under the terms of the contract are insufficient to reimburse
3 all the laborers [~~and~~], mechanics, and utility workers for wages
4 or overtime compensation due under this chapter, and the
5 contractor has failed to pay the wages or overtime compensation,
6 the contractor and the contractor's sureties shall be liable to
7 the laborers [~~and~~], mechanics, and utility workers in the amount
8 of the unpaid wages and overtime compensation due, and in an
9 additional equal amount as liquidated damages. However, any
10 claim for liquidated damages, insofar as the surety or sureties
11 are concerned, shall not be paid until the claims of all other
12 creditors have been satisfied."

13 SECTION 7. Section 104-28, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) The following civil actions may be instituted in any
17 court of competent jurisdiction:

18 (1) An action to recover unpaid wages or overtime
19 compensation may be maintained by any one or more
20 laborers [~~or~~], mechanics, or utility workers for and



1 on behalf of oneself or themselves and others

2 similarly situated; and

3 (2) An action for injunctive and other relief against an
4 employer that fails to pay the prevailing wage to its
5 employees as required by this chapter by a joint
6 labor-management committee established pursuant to
7 section 175a of the federal Labor Management
8 Cooperation Act of 1978 (29 U.S.C. 175a)."

9 2. By amending subsections (c) and (d) to read:

10 "(c) It shall be no defense that the laborers [~~and~~],
11 mechanics, and utility workers accepted or agreed to accept less
12 than the required rate of wages or overtime compensation or
13 voluntarily made refunds.

14 (d) When a written request is filed by any laborer [~~or~~],
15 mechanic, or utility worker with the director claiming unpaid
16 wages or overtime compensation under this chapter, the director,
17 after receiving an assignment from the laborer [~~or~~], mechanic,
18 or utility worker, may bring an action in any court of competent
19 jurisdiction to recover the amount of the claim. The consent of
20 any laborer [~~or~~], mechanic, or utility worker to the bringing of
21 such action by the director, unless the action is dismissed



without prejudice on motion of the director, shall constitute a waiver by the laborer ~~[or]~~, mechanic, or utility worker of any right of action the laborer ~~[or]~~, mechanic, or utility worker may have under subsection (a). Any amount recovered by the director before suit and accepted by the laborer ~~[or]~~, mechanic, or utility worker as payment in full shall constitute a waiver of any rights under this chapter."

SECTION 8. Section 104-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Parties to a collective bargaining agreement covering classes of laborers ~~[or]~~, mechanics, or utility workers, which are included in the prevailing wage determinations made pursuant to this chapter, shall submit a copy of the agreement to the director within five days after execution of the agreement."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

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H.B. NO. 2683

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JAN 24 2018



H.B. NO. 2683

Report Title:

Prevailing Wages; Labor; Utility Workers

Description:

Applies chapter 104, Hawaii Revised Statutes, to utility workers.

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