

JAN 19 2018

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# 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 ~~[or]~~, 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 ~~[or]~~,  
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



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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:



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

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

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

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





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

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

The general contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination 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



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

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

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

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

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

18 INTRODUCED BY: BT

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**Report Title:**

Prevailing Wages; Labor; Utility Workers

**Description:**

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

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