
A BILL FOR AN ACT

RELATING TO PREVAILING WAGES.

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

1 SECTION 1. The legislature finds that Hawaii provides
2 prevailing wage protections for one hundred thirty-one unique
3 job classifications, all of which are traditionally male-
4 dominated occupations, for State-funded contracts. The
5 legislature further finds that in contrast, when the State
6 awards contracts for human services providers, most of whom are
7 female, it does not set prevailing wages for those
8 professionals. The legislature also finds that this disparity
9 affects the economic security of these workers and the quality
10 and continuity of care for Hawaii's children, elderly,
11 individuals exiting the carceral system, individuals with
12 disabilities, and individuals with mental health challenges.

13 Therefore, the purpose of this Act is to promote equity and
14 stability in Hawaii by establishing prevailing wage protections
15 for human services providers hired through contracts with the
16 State.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER
5 WAGES AND HOURS OF
6 HUMAN SERVICES PROVIDERS
7 CONTRACTED BY THE STATE OR COUNTIES
8 PART I. GENERAL PROVISIONS

9 § -1 Definitions. As used in this chapter, unless the
10 context otherwise requires:

11 "Basic hourly rate" means the hourly wage paid to a human
12 services provider for work performed during nonovertime hours,
13 but shall not include the cost to an employer of furnishing
14 fringe benefits, whether paid directly or indirectly to the
15 human services provider as provided in the definition of
16 "wages".

17 "Contractor" means any person furnishing human services
18 under a contract with a governmental contracting agency,
19 subcontractor, or any other person under a subcontract
20 arrangement with any person who has a contract subject to this
21 chapter.



1 "County" means the city and county of Honolulu, county of
2 Hawaii, county of Kauai, and county of Maui.

3 "Department" means the department of labor and industrial
4 relations.

5 "Director" means the director of labor and industrial
6 relations of the State.

7 "Governmental contracting agency" means the State, any
8 county and any officer, bureau, board, commission, or other
9 agency or instrumentality thereof.

10 "Human services" includes social work, case work, and
11 investigative services intended to improve the lives of
12 individuals and families by, among other duties, evaluating an
13 individual's needs, creating a treatment plan for the
14 individual, implementing the plan, and providing emotional
15 support.

16 "Human services provider" includes a social worker, case
17 worker, or investigator employed by a private organization
18 providing human services under a contract with a governmental
19 contracting agency.

20 "Overtime compensation" means compensation based on not
21 less than one and one-half times the human services providers'



1 basic hourly rate of pay plus the cost to an employer of
2 furnishing a human services provider with fringe benefits as
3 described in the definition of "wages"; provided that if the
4 department determines that a prevailing wage is defined by a
5 collective bargaining agreement, the overtime compensation shall
6 be at the rates set by the applicable collective bargaining
7 agreement.

8 "Wages", "rate of wages", "wage rates", "minimum wages" and
9 "prevailing wages" mean the basic hourly rate and the cost to an
10 employer of furnishing a human services provider with fringe
11 benefits, including but not limited to health and welfare
12 benefits, vacation benefits, and pension benefits, whether paid
13 directly or indirectly to the human services provider.

14 **§ -2 Applicability; wages, hours, and other**
15 **requirements.** (a) This chapter shall apply to every contract
16 in excess of \$2,000 for human services to which a governmental
17 contracting agency is a party.

18 For the purposes of this subsection:

19 "Contract" includes but is not limited to any agreement,
20 purchase order, or voucher in excess of \$2,000 for human
21 services.



"Governmental contracting agency" includes:

- (1) Any person or entity that causes either directly or indirectly the provision of human services; and
- (2) Any public-private partnership.

"Party" includes eligible bidders for the provision of human services.

(b) Every human services provider performing work pursuant to this chapter 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 human services provider 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 that the director shall regard
4 as prevailing in each corresponding
5 classification of human services providers shall
6 be the rate of wages paid to the greatest number
7 of those employed in the State, the modal rate,
8 in the corresponding classes of human services
9 provider in circumstances that are similar to the
10 contract work;

11 (2) Except for the prevailing wages established by
12 subsections (h) and (i), the prevailing wages shall be
13 not less than the wages payable under federal law to
14 corresponding classes of human services providers
15 employed in the State that are prosecuted under
16 contract or agreement with the government of the
17 United States; and

18 (3) Notwithstanding the provisions of the original
19 contract, the prevailing wages shall be periodically
20 adjusted during the performance of the contract in an



1 amount equal to the change in the prevailing wage as
2 periodically determined by the director.

3 (c) No human services provider employed pursuant to this
4 chapter by the State or any county shall be permitted or
5 required to work on Saturday, Sunday, or a legal holiday of the
6 State or in excess of eight hours on any other day unless the
7 human services provider receives overtime compensation for all
8 hours worked on Saturday, Sunday, and a legal holiday of the
9 State or in excess of eight hours on any other day. The rate
10 for overtime compensation and any other premium rates of pay
11 shall be those rates specified in an applicable collective
12 bargaining agreement when the basic hourly rate is established
13 by a collective bargaining agreement.

14 For purposes of determining overtime compensation under
15 this subsection, the basic hourly rate of any human services
16 provider shall not be less than the basic hourly rate determined
17 by the director to be the prevailing basic hourly rate for
18 corresponding classes of human services providers in similar
19 circumstances in the State.

20 (d) The contractor or the contractor's subcontractor shall
21 pay all human services providers that it employs,



1 unconditionally and not less often than once a week, and without
2 deduction or rebate on any account, except as allowed by law,
3 the full amounts of their wages including overtime, accrued to
4 not more than five working days prior to the time of payment, at
5 wage rates not less than those deemed to be prevailing,
6 regardless of any contractual relationship that may be alleged
7 to exist between the contractor or subcontractor and the human
8 services providers. The rates of wages to be paid shall be
9 posted by the contractor in a prominent and easily accessible
10 place, and a copy of the rates of wages required to be posted
11 shall be given to each human services provider employed under
12 the contract by the contractor at the time each human services
13 provider is employed, except that where there is a collective
14 bargaining agreement, the contractor does not have to provide
15 the contractor's employees the wage rate schedules.

16 (e) The governmental contracting agency may withhold from
17 the contractor so much of the accrued payments as the
18 governmental contracting agency may consider necessary to pay to
19 the human services providers employed by the contractor or any
20 subcontractor the difference between the prevailing wages and



1 the wages received and not refunded by the human services
2 providers.

3 (f) Every contract in excess of \$2,000 for human services
4 and the specifications for such contract shall include
5 provisions that set forth the requirements of subsections (a) to
6 (e); provided that failure by the contracting agency to include
7 those provisions in the contract or specifications shall not be
8 a defense of the contractor or subcontractor for noncompliance
9 with the requirements of this chapter.

10 (g) For any provision of human services that is subject to
11 this chapter but not directly caused by a governmental
12 contracting agency, the director shall be responsible for
13 enforcement of this chapter, including the collection and
14 maintenance of certified copies of all payrolls that are subject
15 to this chapter.

16 (h) When:

17 (1) A party has entered into a collective bargaining
18 agreement with a bona fide labor union governing the
19 party's workforce; and

20 (2) The collective bargaining agreement has been properly
21 submitted to the director under section -34,



1 the terms of the collective bargaining agreement and associated
2 provisions shall be deemed the prevailing wages and terms
3 serving as the basis of compliance with this chapter for work on
4 the contract by the party's workforce; provided that this
5 subsection does not affect the director's enforcement powers
6 contained in subsection (g).

7 As used in this subsection, "party" includes eligible
8 bidders for the provision of human services.

9 § -3 **Provisions of law; waiver.** No provision of this
10 chapter may in any way be contravened or set aside by private
11 contract.

12 § -4 **Payrolls and payroll records.** (a) Every contract
13 subject to this chapter and the specifications for those
14 contracts shall contain a provision that a certified copy of all
15 payrolls and a certified copy of a fringe benefit reporting form
16 supplied by the department or any certified form that contains
17 all of the required fringe benefit information shall be
18 submitted weekly to the governmental contracting agency for
19 review. The fringe benefit reporting form shall itemize the
20 cost of fringe benefits paid by the general contractor or
21 subcontractor for:



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

7 The general contractor shall be responsible for the submission
8 of certified copies of the payrolls of all subcontractors. The
9 certification shall affirm that the payrolls are correct and
10 complete, that the wage rates contained therein are not less
11 than the applicable rates contained in the wage determination
12 decision of the director of labor and industrial relations
13 attached to the contract, and that the classifications set forth
14 for each human services provider conform with the work the human
15 services provider performed. Any certification discrepancy
16 found by the contracting agency shall be reported to the general
17 contractor and the director to effect compliance.

18 (b) Payroll records for all human services providers
19 performing work shall be maintained by the general contractor
20 and the general contractor's subcontractors, if any, during the
21 course of the work and preserved for a period of three years



1 thereafter. The records shall contain the name of each
2 employee, the employee's correct classification, rate of pay,
3 the itemized fringe benefit reporting form pursuant to
4 subsection (a), daily and weekly number of hours worked,
5 deductions made, and actual wages paid.

6 (c) The contractor shall make payroll records available
7 for examination within ten days from the date of a written
8 request by a governmental contracting agency, director, or any
9 authorized representatives thereof. Any contractor who:

10 (1) Fails to make payroll records accessible within ten
11 days;

12 (2) Fails to provide information requested for the proper
13 enforcement of this chapter within ten days; or

14 (3) Fails to keep or falsifies any record required under
15 this chapter,

16 shall be assessed a penalty as provided in section -22(b).

17 **§ -5 Termination of work on failure to pay agreed wages;**
18 **completion of work; contract and specifications provision.**

19 Every contract and the specifications for such contract shall
20 contain a provision that if the governmental contracting agency
21 finds that any human services provider employed by the



1 contractor or any subcontractor has been or is being paid wages
2 at a rate less than the required rate by the contract or the
3 specifications, or has not received the human services
4 provider's full overtime compensation, the governmental
5 contracting agency may, by written notice to the contractor,
6 terminate the contractor's right, or the right of any
7 subcontractor, to proceed with the work or with the part of the
8 work in which the required wages or overtime compensation have
9 not been paid and may complete such work or part by contract or
10 otherwise, and the contractor and the contractor's sureties
11 shall be liable to the governmental contracting agency for any
12 excess costs occasioned thereby.

13 **PART II. ADMINISTRATION AND ENFORCEMENT**

14 **§ -21 Governmental contracting agency responsibilities.**

15 The governmental contracting agency shall:

- 16 (1) Pay or cause to be paid, within sixty days of a
17 determination made by the director, directly to human
18 services providers or to the director, from any
19 accrued payment withheld under the terms of the
20 contract, any wages or overtime compensation found to
21 be due to human services providers under the terms of



1 the contract subject to this chapter, or any penalty
2 assessed;

3 (2) Order any contractor to pay, within sixty days of a
4 determination made by the director, any wages or
5 overtime compensation that the contractor, or any of
6 the contractor's subcontractors, should have paid to
7 any human services provider under any contract subject
8 to this chapter, or any penalty assessed which the
9 contractor, or any of the contractor's subcontractors,
10 should have paid to the director; and

11 (3) Report to the director any violation of this chapter,
12 the rules adopted thereunder, or the terms of the
13 contract subject to this chapter.

14 § -22 Investigation; penalties. (a) The department may
15 conduct investigations to determine compliance with this
16 chapter. The department may examine the records of any
17 contractor, either during or after the performance of any
18 contract, or subpoena the records. The department may also
19 interview employees during working hours on the job.

20 (b) If any contractor interferes with or delays any
21 investigation by the department, the governmental contracting



1 agency, on receipt of written notice from the director of the
2 interference or delay, shall withhold from the contractor all
3 further payments until the director has notified the
4 governmental contracting agency in writing that the interference
5 or delay has ceased. Interference or delay includes failure to
6 provide requested records under section -4; failure to allow
7 employees to be interviewed during working hours on the job; and
8 falsification of records required under this chapter. The
9 department shall assess a penalty of \$10,000 per contract for
10 interference or delay. For each day thereafter that the
11 employer fails to cooperate, the director shall assess a penalty
12 of \$1,000 per contract.

13. (c) The names of all complainants shall be withheld from
14 the employer unless prior permission is given by the complainant
15 to release the complainant's name.

16 § -23 Notification of violation. (a) When the
17 department, either as a result of a report by a contracting
18 agency or as a result of the department's own investigation,
19 finds that a violation of this chapter or of the terms of the
20 contract subject to this chapter has been committed, the



1 department shall issue a notification of violation to the
2 contractor or subcontractor involved.

3 (b) A notification of violation shall be final and
4 conclusive unless within twenty days after a copy has been sent
5 to the contractor, the contractor files a written notice of
6 appeal with the director.

7 (c) A hearing on the written notice of appeal shall be
8 held by a hearings officer appointed by the director in
9 conformance with chapter 91.

10 Hearings on appeal shall be held within sixty days of the
11 notice of appeal and a decision shall be rendered by the
12 hearings officer within sixty days after the conclusion of the
13 hearing, stating the findings of fact and conclusions of law.
14 The hearings officer may extend the due date for decision for
15 good cause; provided that all parties agree.

16 **§ -24 Violations; penalties.** (a) Where the department
17 finds that a first violation of this chapter has been committed,
18 the department, after proper notice and opportunity for hearing,
19 shall assess and order the person or firm in violation to be
20 jointly and severally liable for a penalty equal to twenty-five



1 per cent of the amount of back wages found due or \$250 for each
2 offense, up to \$2,500, whichever is greater.

3 (b) Where the department finds that a second violation of
4 this chapter has been committed, whether on the same or another
5 contract, within two years of the first notification of
6 violation, the department, after proper notice and opportunity
7 for hearing, shall assess and order the person or firm in
8 violation to be jointly and severally liable for a penalty equal
9 to the amount of back wages found due or \$500 for each offense,
10 up to \$5,000, whichever is greater.

11 (c) Where the department finds that a third violation of
12 this chapter has been committed, whether on the same or another
13 contract, within three years of the second notification of
14 violation, the department, after proper notice and opportunity
15 for hearing, shall assess and order the person or firm in
16 violation to be:

17 (1) Jointly and severally liable for a penalty equal to
18 two times the amount of back wages found due or \$1,000
19 for each offense, up to \$10,000, whichever is greater;
20 and



(2) Suspended from doing any new work for a governmental contracting agency for a period of three years, except as provided in section -25(a)(2). The suspension shall be effective on the later of the twenty-first day after the notification of violation has been sent, or upon the issuance of a decision pursuant to section -23(c).

(d) A first, second, or third violation refers to each contract in which the department finds that a contractor has failed to comply with this chapter.

(e) Both the person and firm shall be listed on each notice of violation.

(f) As used in this section:

"Firm" includes a non-profit, corporation, limited liability company, partnership, and limited partnership.

"New work on a contract" includes any contract in which the suspended person or firm has not begun work as of the date of the suspension order.

"Offense" means each section of this chapter under which the contractor is cited; provided that, with respect to prevailing wage and overtime citations under section -2, each



1 employee and each contract shall be considered a separate
2 offense.

3 "Person" includes a sole proprietor and the principal
4 responsible managing employee of a firm.

5 § -25 **Suspension.** (a) The director shall suspend a
6 person and firm as follows:

7 (1) For a first or second violation, if a person or firm
8 fails to pay wages found due or any penalty assessed,
9 or both, the person and firm shall be immediately
10 suspended from doing any work on any contract with a
11 governmental contracting agency until all wages and
12 penalties are paid in full;

13 (2) For a third violation, the suspension shall be as
14 prescribed in section -24(c); provided that if the
15 person or firm continues to violate this chapter or
16 fails to pay wages found due or any penalty assessed,
17 or both, then the person and firm shall immediately be
18 suspended from doing any work on any contract with a
19 governmental contracting agency for a mandatory three-
20 year period. If after the three-year suspension
21 period, the wages found due or penalties assessed are



1 still unpaid, the suspension shall remain in force
2 until payment is made in full; or

3 (3) For falsification of records, or for delay or
4 interference with an investigation pursuant to
5 section -22, the person and firm shall be
6 immediately suspended for a period of three years.

7 (b) The director shall immediately notify the governmental
8 contracting agency, comptroller, auditor or director of finance
9 of the county, and, in the case of a suspended subcontractor,
10 general contractor of any suspension order.

11 (c) No contract shall be awarded to the person and firm so
12 suspended or to any firm, corporation, partnership, or
13 association in which the person or firm has an interest, direct
14 or indirect, until three years have elapsed from the date of
15 suspension, unless the period of suspension is reduced or
16 extended as herein provided. Any contract awarded in violation
17 of this subsection shall be void.

18 (d) As used in this section, "person" includes a sole
19 proprietor and the principal responsible managing employee of a
20 firm.



1 § **-26 Judicial review.** (a) Any party to an appeal
2 under this chapter may obtain judicial review of the decision on
3 the appeal in the manner provided in chapter 91.

4 (b) Any suspension or dismissal of any complaint under
5 this chapter shall be subject to appeal in circuit court by the
6 aggrieved party, under section 91-14 and rule 72 of the Hawaii
7 rules of civil procedure.

8 § **-27 Liability.** If the accrued payments withheld under
9 the terms of the contract are insufficient to reimburse all the
10 human services providers for wages or overtime compensation due
11 under this chapter, and the contractor has failed to pay the
12 wages or overtime compensation, the contractor and the
13 contractor's sureties shall be liable to the human services
14 providers in the amount of the unpaid wages and overtime
15 compensation due, and in an additional equal amount as
16 liquidated damages. However, any claim for liquidated damages,
17 insofar as the surety or sureties are concerned, shall not be
18 paid until the claims of all other creditors have been
19 satisfied.

20 § **-28 Civil action.** (a) The following civil actions
21 may be instituted in any court of competent jurisdiction:



(1) An action to recover unpaid wages or overtime compensation may be maintained by any one or more human services providers for and on behalf of oneself or themselves and others similarly situated; and

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

(b) The court, in its action and in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow reasonable attorney's fees and costs of the action to be paid by the defendant.

(c) It shall be no defense that the human services providers accepted or agreed to accept less than the required rate of wages or overtime compensation or voluntarily made refunds.

(d) When a written request is filed by any human services provider with the director claiming unpaid wages or overtime compensation under this chapter, the director, after receiving



1 an assignment from the human services provider, may bring an
2 action in any court of competent jurisdiction to recover the
3 amount of the claim. The consent of any human services provider
4 to the bringing of such action by the director, unless the
5 action is dismissed without prejudice on motion of the director,
6 shall constitute a waiver by the human services provider of any
7 right of action the human services provider may have under
8 subsection (a). Any amount recovered by the director before
9 suit and accepted by the human services provider as payment in
10 full shall constitute a waiver of any rights under this chapter.

11 **§ -29 Rules.** The director shall adopt reasonable rules
12 pursuant to chapter 91 to determine the prevailing wages,
13 enforcement, administration, and general purposes of this
14 chapter. These rules shall have the force and effect of law.

15 **§ -30 Application of this chapter to contracts entered**
16 **into without regard to other laws.** The fact that a contract is
17 or was entered into without regard to chapter 103D, or upon a
18 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage
19 basis, or without advertising for proposals, shall not render
20 this chapter inapplicable to the contract, if this chapter would
21 otherwise be applicable.



1 § **-31 Effect on other laws.** Neither this chapter nor
2 any rule or other action under this chapter shall supersede or
3 impair any minimum wage or maximum hour law or any authority
4 otherwise granted by law to provide for the establishment of
5 specific minimum or other wage rates.

6 § **-32 Suspension during emergency.** During a national
7 emergency declared by the President or the Congress of the
8 United States, or a state of emergency declared by the governor,
9 subject to the provisions of section 127-10 or 128-7, the
10 governor, by executive order in writing, may suspend this
11 chapter; provided that the governor may not suspend this chapter
12 except in the event such an emergency occurs and is so
13 proclaimed.

14 § **-33 Inspection.** (a) If work performed in accordance
15 with this chapter, in excess of eight hours in any day or on a
16 Saturday, Sunday, or legal holiday of the State, requires
17 inspection by the State or any county, the inspection shall be
18 conducted by the State or county, as applicable.

19 (b) In such event, it shall be lawful, notwithstanding any
20 other provision of law to the contrary, for the State or any
21 county to alter the normal working hours of public employees, as



1 may be needed for these purposes, and to pay these public
2 employees for all hours worked in excess of eight hours per day
3 or on a Saturday, Sunday, or legal holiday of the State.

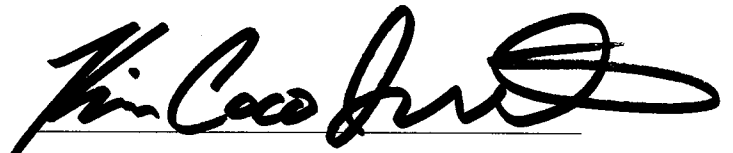
4 § -34 **Submission of collective bargaining agreement to**
5 **the director.** (a) Parties to a collective bargaining agreement
6 covering classes of human services providers, which are included
7 in the prevailing wage determinations made pursuant to this
8 chapter, shall submit a copy of the agreement to the director
9 within five days after execution of the agreement.

10 (b) Except as otherwise provided herein, the terms of the
11 agreement shall be kept confidential by the director. The
12 director may disclose terms of the agreement to any federal or
13 state agency for the purpose of enforcing this chapter."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. This Act shall take effect upon its approval.

18
INTRODUCED BY:



JAN 21 2025



H.B. NO. 887

Report Title:

Prevailing Wages for Human Services Providers

Description:

Requires prevailing wages for human services providers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

