
A BILL FOR AN ACT

RELATING TO WAGES AND HOURS OF EMPLOYEES ON SERVICE CONTRACTS.

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

1 SECTION 1. 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 EMPLOYEES ON SERVICE CONTRACTS

6 PART I. GENERAL PROVISIONS

7 § -1 Exemptions. This chapter shall not apply to:

- 8 (1) Any contract covered under chapter 104;
- 9 (2) Any contract for the carriage of freight or personnel
10 by vessel, airplane, bus, truck, express, railway line
11 or oil or gas pipeline where published tariff rates
12 are in effect;
- 13 (3) Any contract for the furnishing of services by radio,
14 telephone, telegraph, or cable companies;
- 15 (4) Any contract for public utility services, including
16 electric light and power, water, steam, and gas; and
- 17 (5) Any employment contract providing direct services to a
18 governmental contracting agency.



1 § -2 **Definitions.** As used in this chapter, the
2 following words and phrases shall have the following meanings:

3 "Basic hourly rate" means the hourly wage paid to a service
4 employee for work performed during nonovertime hours, but shall
5 not include the cost to an employer of furnishing fringe
6 benefits whether paid directly or indirectly to the service
7 employee.

8 "Department" means the department of labor and industrial
9 relations.

10 "Director" means the director of labor and industrial
11 relations of the State.

12 "Governmental contracting agency" means the State, any
13 county and any officer, bureau, board, commission, or other
14 agency or instrumentality thereof.

15 "Overtime compensation" means compensation based on one and
16 one-half times the service employees' basic hourly rate of pay
17 plus the cost to an employer of furnishing a service employee
18 with fringe benefits.

19 "Party" includes eligible bidders for any service to be
20 provided to the State.

21 "Service employee" or "employee" means any person engaged
22 in the performance of a contract entered into by the State, the



1 principal purpose of which is to furnish services in the state,
2 and shall include all such persons regardless of any contractual
3 relationship that may be alleged to exist between a contractor
4 or subcontractor and such persons. "Service employee" or
5 "employee" does not include any person employed in a bona fide
6 executive, administrative, or professional capacity.

7 "Wages", "rate of wages", "wage rates", "minimum wages",
8 and "prevailing wages" mean the basic hourly rate and the cost
9 to an employer of furnishing a service employee with fringe
10 benefits, including health and welfare benefits, vacation
11 benefits, and pension benefits, whether paid directly or
12 indirectly to the service employee.

13 **§ -3 Applicability; wages, hours, and other**
14 **requirements.** (a) This chapter shall apply to every contract
15 in excess of \$2,000 for the furnishing of services to the State
16 through the use of service employees, in which a governmental
17 contracting agency is a party.

18 (b) Every service employee performing work under the
19 contract shall be paid no less than prevailing wages; provided
20 that:

21 (1) The prevailing wages shall be established by the
22 director as the sum of the basic hourly rate and the



1 cost to an employer of providing a service employee
2 with fringe benefits. In making prevailing wage
3 determinations, the following shall apply:

4 (A) The director shall make separate findings of:

5 (i) The basic hourly rate; and

6 (ii) The rate of contribution or cost of fringe
7 benefits paid by the employer when the
8 payment of the fringe benefits by the
9 employer constitutes a prevailing practice.
10 The cost of fringe benefits shall be
11 reflected in the wage rate scheduled as an
12 hourly rate;

13 and

14 (B) The rates of wages which the director shall
15 regard as prevailing in each corresponding
16 classification of service employees shall be the
17 rate of wages paid to the greatest number of
18 those employed in the state, the modal rate, in
19 the corresponding classes of service employees
20 under similar contracts;

21 (2) The prevailing wages shall be not less than the wages
22 payable under federal law to corresponding classes of



1 service employees employed under contracts in the
2 state that are prosecuted under contract or agreement
3 with the government of the United States; and

4 (3) Notwithstanding the provisions of the original
5 contract, the prevailing wages shall be periodically
6 adjusted during the performance of the contract in an
7 amount equal to the change in the prevailing wage as
8 periodically determined by the director.

9 (c) No service employee employed under a contract with the
10 State or any political subdivision thereof shall be permitted or
11 required to work on Saturday, Sunday, or a legal holiday of the
12 State or in excess of eight hours on any day if the work is in
13 excess of forty hours in the same week with the same employer
14 unless the service employee receives overtime compensation for
15 all hours worked on Saturday, Sunday, and a legal holiday of the
16 State or in excess of eight hours on any day. For purposes of
17 determining overtime compensation under this subsection, the
18 basic hourly rate of any service employee shall not be less than
19 the basic hourly rate determined by the director to be the
20 prevailing basic hourly rate for corresponding classes of
21 service employees under similar contracts in the state.



1 (d) The contractor or the contractor's subcontractor shall
2 pay all service employees employed on the job site,
3 unconditionally and not less often than once a week, and without
4 deduction or rebate on any account, except as allowed by law,
5 the full amounts of their wages including overtime, accrued to
6 not more than five working days prior to the time of payment, at
7 wage rates not less than those deemed to be prevailing,
8 regardless of any contractual relationship which may be alleged
9 to exist between the contractor or subcontractor and the service
10 employees. The rates of wages to be paid shall be given to each
11 service employee employed under the contract by the contractor
12 at the time each service employee is employed, except that where
13 there is a collective bargaining agreement the contractor does
14 not have to provide the contractor's employees the wage rate
15 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 service employees employed by the contractor or any
20 subcontractor under the contract the difference between the
21 prevailing wages and the wages received and not refunded by the
22 service employees.



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

8 (g) For any contract that is subject to this chapter but
9 not directly caused by a governmental contracting agency, the
10 director shall be responsible for enforcement of this chapter,
11 including the collection and maintenance of certified copies of
12 all payrolls that are subject to this chapter. The director
13 shall adopt rules pursuant to chapter 91 to effectuate the
14 purposes of this section.

15 (h) When:

16 (1) The department of budget and finance enters a project
17 agreement with a project party, as those terms are
18 defined in chapter 39A, to finance or refinance a
19 project with the proceeds of special purpose revenue
20 bonds;



1 (2) The project party has entered into a collective
2 bargaining agreement with a bona fide labor union
3 governing the project party's workforce; and
4 (3) The collective bargaining agreement has been properly
5 submitted to the director under this chapter,
6 the terms of the collective bargaining agreement and associated
7 provisions shall be deemed the prevailing wages and terms
8 serving as the basis of compliance with this chapter for work on
9 the project by the project party's workforce; provided that this
10 subsection does not affect the director's enforcement powers
11 contained in subsection (g).

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:

22 (1) Health and welfare benefits;



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

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

16 (b) Payroll records for all service employees working
17 under the contract shall be maintained by the general contractor
18 and the general contractor's subcontractors, if any, during the
19 course of the work and preserved for a period of three years
20 thereafter. The records shall contain the name of each
21 employee, the employee's correct classification, rate of pay,
22 the itemized fringe benefit reporting form pursuant to



1 subsection (a), daily and weekly number of hours worked,
2 deductions made, and actual wages paid.

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

7 (1) Fails to make payroll records accessible within ten
8 days;

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

11 (3) Fails to keep or falsifies any record required under
12 this chapter,

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

14 § -5 Termination of work on failure to pay agreed wages;
15 completion of work; contract and specifications provision.

16 Every contract and the specifications for such contract shall
17 contain a provision that if the governmental contracting agency
18 finds that any service employee employed under the contract by
19 the contractor or any subcontractor has been or is being paid
20 wages at a rate less than the required rate by the contract or
21 the specifications, or has not received the employee's full
22 overtime compensation, the governmental contracting agency, by

1 written notice to the contractor, may terminate the contractor's
2 right, or the right of any subcontractor, to proceed with the
3 work or with the part of the work in which the required wages or
4 overtime compensation have not been paid and may complete such
5 work or part by contract or otherwise, and the contractor and
6 the contractor's sureties shall be liable to the governmental
7 contracting agency for any excess costs occasioned thereby.

8 **PART II. ADMINISTRATION AND ENFORCEMENT**

9 **§ -21 Governmental contracting agency responsibilities.**

10 The governmental contracting agency shall:

11 (1) Pay or cause to be paid, within sixty days of a
12 determination made by the director, directly to
13 service employees or to the director, from any accrued
14 payment withheld under the terms of the contract, any
15 wages or overtime compensation found to be due to
16 service employees under the terms of the contract
17 subject to this chapter, or any penalty assessed;

18 (2) Order any contractor to pay, within sixty days of a
19 determination made by the director, any wages or
20 overtime compensation which the contractor, or any of
21 the contractor's subcontractors, should have paid to
22 any service employee under any contract subject to



1 this chapter, or any penalty assessed which the
2 contractor, or any of the contractor's subcontractors,
3 should have paid to the director; and

4 (3) Report to the director any violation of this chapter,
5 the rules adopted thereunder, or the terms of the
6 contract subject to this chapter.

7 § -22 Investigation; penalties. (a) The department may
8 conduct investigations to determine compliance with this
9 chapter. The department may enter any job site at which
10 services under the contract are provided, examine records of any
11 contractor, either during or after the performance of any
12 contract, or subpoena the records. The department may also
13 interview employees during working hours on the job.

14 (b) If any contractor interferes with or delays any
15 investigation by the department, the governmental contracting
16 agency, on receipt of written notice from the director of the
17 interference or delay, shall withhold from the contractor all
18 further payments until the director has notified the
19 governmental contracting agency in writing that the interference
20 or delay has ceased. Interference or delay includes failure to
21 provide requested records under section -4; failure to allow
22 employees to be interviewed during working hours on the job; and



1 falsification of records required under this chapter. The
2 department shall assess a penalty of \$1,000 per project for
3 interference or delay. For each day thereafter that the
4 employer fails to cooperate, the director shall assess a penalty
5 of \$100 per project.

6 § -23 **Notification of violation.** (a) When the
7 department, either as a result of a report by a governmental
8 contracting agency or as a result of the department's own
9 investigation, finds that a violation of this chapter or of the
10 terms of the contract subject to this chapter has been
11 committed, the department shall issue a notification of
12 violation to the contractor or subcontractor involved.

13 (b) A finding of violation shall be final and conclusive,
14 twenty days after a notice of violation is mailed to the
15 violator, unless within the twenty-day period the violator files
16 a written notice of appeal with the director.

17 (c) A hearing on the written notice of appeal shall be
18 held by a hearings officer appointed by the director in
19 conformance with chapter 91. Hearings on appeal shall be held
20 within sixty days of the notice of appeal and a decision shall
21 be rendered by the hearings officer within sixty days after the
22 conclusion of the hearing, stating the findings of fact and



1 conclusions of law. The hearings officer may extend the due
2 date for decision for good cause; provided that all parties
3 agree.

4 **§ -24 Violations; penalties.** (a) Where the department
5 finds that a first violation of this chapter has been committed,
6 the department shall assess a penalty equal to ten per cent of
7 the amount of back wages found due or \$25 per offense, whichever
8 is greater.

9 (b) Where the department finds that a second violation of
10 this chapter has been committed, whether on the same contract or
11 another, within two years of the first notification of
12 violation, the department, after proper notice and opportunity
13 for hearing, shall order the person or firm in violation to pay
14 a penalty equal to the amount of back wages found due or \$100
15 for each offense, whichever is greater.

16 (c) Where the department finds that a third violation of
17 this chapter has been committed, whether on the same contract or
18 another, within two years of the second notification of
19 violation, the department, after proper notice and opportunity
20 for hearing, shall order the person or firm in violation:



1 (1) To pay a penalty equal to two times the amount of back
2 wages found due or \$200 for each offense, whichever is
3 greater; and

4 (2) To be suspended from doing any new work under any
5 contract with a governmental contracting agency for a
6 period of three years except as provided in section
7 -25(a)(2).

8 (d) A first, second, or third violation refers to each
9 investigation involving one or more contracts in which the
10 department finds that a contractor has failed to comply with
11 this chapter.

12 (e) For purposes of this section, "offense" means each
13 section of this chapter under which the contractor is cited;
14 provided that, with respect to prevailing wage and overtime
15 citations under section -2, each employee and each project
16 shall be considered a separate offense.

17 **§ -25 Suspension.** (a) The director shall suspend a
18 person or firm as follows:

19 (1) For a first or second violation, if a person or firm
20 fails to pay wages found due, any penalty assessed, or
21 both, the person or firm shall be immediately
22 suspended from doing any work under any contract with



1 a governmental contracting agency until all wages and
2 penalties are paid in full;

3 (2) For a third violation, the suspension shall be as
4 prescribed in section -24(c); provided that, if the
5 person or firm continues to violate this chapter or
6 fails to pay wages found due or any penalty assessed,
7 or both, then the contractor shall immediately be
8 suspended from doing any work under any contract with
9 a governmental contracting agency for a mandatory
10 three-year period. If after the three-year suspension
11 period the wages found due or penalties assessed are
12 still unpaid, the suspension shall remain in force
13 until payment is made in full; or

14 (3) For falsification of records, or for delay or
15 interference with an investigation pursuant to section
16 -22, the contractor shall be suspended for a period
17 of three years.

18 (b) The director shall immediately notify the comptroller
19 and the auditor or director of finance of the county of any
20 suspension order.

21 (c) No contract shall be awarded to the person or firm so
22 suspended or to any firm, corporation, partnership, or



1 association in which the person or firm has an interest, direct
2 or indirect, until three years have elapsed from the date of
3 suspension, unless the period of suspension is reduced as herein
4 provided. Any contract awarded in violation of this subsection
5 shall be void.

6 § -26 **Judicial review.** (a) Any party to an appeal
7 under this chapter may obtain judicial review of the decision on
8 the appeal in the manner provided in chapter 91.

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

13 § -27 **Liability.** If the accrued payments withheld under
14 the terms of the contract are insufficient to reimburse all the
15 service employees for wages or overtime compensation due under
16 this chapter, and the contractor has failed to pay the wages or
17 overtime compensation, the contractor and the contractor's
18 sureties shall be liable to the service employees in the amount
19 of the unpaid wages and overtime compensation due, and in an
20 additional equal amount as liquidated damages. However, any
21 claim for liquidated damages, insofar as the surety or sureties

1 are concerned, shall not be paid until the claims of all other
2 creditors have been satisfied.

3 § -28 Civil action. (a) The following civil actions
4 may be instituted in any court of competent jurisdiction:

5 (1) An action to recover unpaid wages or overtime
6 compensation may be maintained by any one or more
7 service employees for and on behalf of oneself or
8 themselves and others similarly situated; and

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

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

19 (c) It shall be no defense that the service employees
20 accepted or agreed to accept less than the required rate of
21 wages or overtime compensation or voluntarily made refunds.



1 (d) When a written request is filed by any service
2 employee with the director claiming unpaid wages or overtime
3 compensation under this chapter, the director, after receiving
4 an assignment from the service employee, may bring an action in
5 any court of competent jurisdiction to recover the amount of the
6 claim. The consent of any service employee to the bringing of
7 such action by the director, unless the action is dismissed
8 without prejudice on motion of the director, shall constitute a
9 waiver by the service employee of any right of action the
10 service employee may have under subsection (a). Any amount
11 recovered by the director before suit and accepted by the
12 service employee as payment in full shall constitute a waiver of
13 any rights under this chapter.

14 § -29 Rules. Subject to chapter 91, the director shall
15 adopt reasonable rules for determining the prevailing wages,
16 enforcement, administration, and general purposes of this
17 chapter. These rules shall have the force and effect of law.

18 § -30 Application of this chapter to contracts entered
19 into without regard to other laws. The fact that a contract is
20 or was entered into without regard to chapter 103D, or upon a
21 cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage
22 basis, or without advertising for proposals, shall not render



1 this chapter inapplicable to the contract, if otherwise this
2 chapter would be applicable.

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

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

16 § -33 **Inspection.** (a) If work performed in accordance
17 with this chapter, in excess of eight hours in any day or on a
18 Saturday, Sunday, or legal holiday of the State, requires
19 inspection by the State or any political subdivision thereof,
20 the inspection shall be conducted by the State or a political
21 subdivision, as the case may be.



1 (b) In the event an inspection is required, it shall be
2 lawful, notwithstanding any other provision of law to the
3 contrary, for the State or any political subdivision thereof to
4 alter the normal working hours of public employees, as may be
5 needed for these purposes, and to pay these public employees for
6 all hours worked in excess of eight hours per day or on a
7 Saturday, Sunday, or legal holiday of the State.

8 **§ -34 Submission of collective bargaining agreement to**
9 **the director.** (a) Parties to a collective bargaining agreement
10 covering classes of service employees, which are included in the
11 prevailing wage determinations made pursuant to this chapter,
12 shall submit a copy of the agreement to the director within five
13 days after execution of the agreement.

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

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. This Act shall take effect on July 1, 2010.



Report Title:

Service Contracts

Description:

Extends Davis-Bacon rights regarding prevailing wages to employees on service contracts with governmental contracting agencies. (HB2100 HD1)

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

