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December 5, 2014

PROCUREMENT CIRCULAR NO. 2014-20

TO: Office of the Governor, Chief of Staff
Office of the Lieutenant Governor, Chief of Staff
Executive Department Heads
Hawaii State Public Library System, State Librarian

Chief Procurement Officers (CPOs):
Department of Education, Superintendent
University of Hawaii, President
Office of Hawaiian Affairs, Chairperson of the Board
Hawaii Health Systems Corporation, President and Chief Executive Officer
Judiciary, Administrative Director of the Courts
Senate, President
House of Representatives, Speaker

Counties of Hawaii, Kauai, Maui, and City & County of Honolulu
Executive Branch, Finance Director
Legislative Branch, Chairperson of the County Council
Board/Departments of Water Supply, Manager/Chief Engineer
Honolulu Authority for Rapid Transportation, Executive Director and CEO

FROM: Sarah Allen

SUBJECT: Notice of Applicability of HRS Chapter 104, Classifications on Floor Laying on Public Works Construction Projects

This circular is issued at the request of the Department of Labor and Industrial Relations concerning DLIR Memorandum No. WSD 2014-02 attached hereto. The DLIR Memorandum provides guidance on the classifications involved with floor laying on public works projects to promote consistency in the interpretation of the treatment of workers on a public construction project.

Questions concerning HRS Chapter 104 wage classifications shall be directed to the Department of Labor and Industrial Relations (DLIR), Wage Standards Division at (808)586-8777.

Attachment (1)

NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

DWIGHT TAKAMINE
DIRECTOR

JADE T. BUTAY
DEPUTY DIRECTOR

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November 20, 2014

Notice re: **MEMORANDUM NO. WSD 2014-02**

TO: All State and County Governmental Contracting Agencies and Contractors

FROM: Dwight Takamine, Director
Department of Labor and Industrial Relations

SUBJECT: Applicability of Chapter 104, HRS, Classifications on Floor Laying on a Public Works Construction Project.

The Department of Labor and Industrial Relations (DLIR) is suspending Memorandum No. WSD 2014-02, dated May 16, 2014, and this notice now provides guidance on the classifications involved with floor laying on public works.

Due to concerns questioning the proper classification for work performed at the beginning and end of a floor laying project and in order to promote consistency in the interpretation of the treatment of workers on a public construction project, pursuant to Section 12-22-8, Hawaii Administrative Rules (HAR), the DLIR is providing this notice to all governmental contracting agencies and contractors subject to Chapter 104, Hawaii Revised Statutes (HRS), Wages and Hours of Employees on Public Works Law.

The concerns raised regarded the proper classification of a worker who performs demolition and removal of the old flooring and the cleanup and finishing of the newly installed flooring material, i.e. waxing among other types of finishing treatments, when the flooring contractor is sub-contracted.

The proper classification of a worker is:

1. "Floor layer" when performing the actual installation of the flooring on any public construction project;

2. "Floor layer" when the contract for a public construction project has as the only activity, the replacement or installation of new flooring, and includes the removal of old flooring material, installation of new flooring, finishing, and cleaning of the floors.

3. "Laborer" when performing general demolition work, which may include removal and disposal of old flooring material where the general contractor is not a floor laying contractor, and the public construction project is not a single activity of replacement or installation of new flooring.

4. "Laborer" when performing abatement removal, which includes removal and the disposal of hazardous, old, flooring material.

5. "Laborer" when performing general area and final clean-up (janitorial) work normally done at or near the completion of a multi-trade construction project phase or work area.

In situations concerning workers performing the removal and disposal of old flooring and the clean up immediately after completion of the floor laying under situations other than described above, the DLIR will allow either classification of Floor Layer or Laborer.

In making a determination, the DLIR will generally look to the contract that engaged the work to resolve the answer to whether the classification "floor layer" or "laborer" applies to either the removal of the old flooring or the cleaning and final treatments of the flooring. Generally, if the governmental contracting agency contracts simply for replacement or installation of flooring, then the removal and preparation along with the finishing and cleanup of the floors would belong to the "floor layer" classification as described in #2 above.

In the situation where the contract that engaged the work comes from a subcontract of a general contractor, the general contractor may subcontract the floor laying work out to "floor layers" for the provision of the floor laying and employ "laborers" to do any floor demolition and provide the cleanup as part of a larger multiple-trade construction project as described in #3 and #5 above.

To ensure compliance, contracting agencies should share this memo with all contractors. Contractors who are not in compliance should be advised to conduct a self-audit to correct any violations.

If you have any questions, please call the DLIR Wage Standards Division at (808) 586-8777. This document is available on the DLIR website at http://labor.hawaii.gov/wsd/guidelines/.