

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Slide 1

Hello everybody. This is Pam Martin. I'm the Administrator for the Wage Standards Division of the Department of Labor and we enforce the Chapter 104 Wages and Hours of Employees on Public Works Projects. Today we're here to review the Chapter 104 Overview for the State and county employees and I will tell you that we are recording this session today so keep asking questions by typing questions in the Question & Answer box, but we won't answer the questions until we get to the break which should be about in an hour. We'll take a ten minute break in an hour and then I'll work on the questions during the break and when you come back, we'll have answers to the questions. And then we'll proceed on the second half, which is going to be focused mostly on the certified payroll issues. And then we'll have another question and answer session at the very end. So please feel free to type in your questions, it's just that I won't answer them until we get to the break. Because we're taping it, if you have such a good time today and you want everyone else in your office to listen, there will be an opportunity for them to come and just play it. So, let's get rolling here.

Slide 2

Okay, one of the things I like to point out for this law is that we have a webpage and we try to put as much possible information as we have and we can share on the webpage so if you are thinking about looking for something you should look here first. A lot of the handouts today that you were provided are actually links to our website and if you go on our website you'll see something like this and there's three dots down here, this picture area here. This is the third dot. It's the prevailing wage. Because you're all State and county employees you might be familiar with the government pages. The first dot is minimum wage and overtime. The second dot is child labor. The third dot is prevailing wages. In addition to this front page, we have also the Chapter 104 Suspension List which is quite handy. We'll also be referring to this Guidelines section as well. But I believe my next slide actually is a little picture of this Chapter 104 Suspension List.

Slide 3

And basically this is the list of contractors that have been suspended. Now this might be a little old, this screenshot that I took for this presentation that I made a little while ago. So I believe the list is always longer. And I encourage you to get familiar with checking this site because if you hire one of these suspended contractors then you will have problems because there will be protests. So these areas are things you want to avoid if you're trying to get your project done quickly.

Slide 4

Now this is another page. This is the 104 information page. This is what you link to from that front page with the picture of the contractors and this is where we have all the different documents that pertain to the Chapter 104 law. In addition, we have a link down here at the bottom – the DAGS statement of compliance and ECP (Electronic Certified Payroll) for Payroll Affidavits. So there's a form that DAGS made and we use that can be modified, that you can require people to use and we'll talk about why you

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

would want to do that down the road. So these are places you can go if you forgot everything I said today or you wanted to share this information with your contractors or someone else.

Slide 5

And so before we go into the nitty gritty of Chapter 104 I want to explain what the Wage Standards Division does. We do prevailing wage law right here, this light blue area. The bars we're looking at in this chart represent how many incoming cases we have in each area of law that we enforce. So this unpaid wage law that we enforce, the purple area, really is a lot of cases and these are the people that live pay check to pay check. The average claim is about \$1,000. This area that we're talking about here today is the light blue prevailing wage area. You'll notice in the last fiscal year, we had quite the increase, we had 205 claims and that was because of a law change that happened in this year where we had 86 claims, but you'll notice before that generally we had about on average 25 cases a year. So the other thing that's important about this chart to show you is that this brown line is the number of investigations resolved. So the bars represent how many investigations we get each year. And the brown line is how many we resolved. So here, less cases came in, in FY06, than how many were resolved. So we actually had a full complement of investigators and we had a hearty random program where we were going out and checking people's compliance levels even though we had no complaint on them. This was a great opportunity. We even were doing a few more investigations than we had complaints in FY07. Well if you look at FY08, we got buried in wage. And FY09 was the last year we did more investigations than we got in and as you can see we got buried and buried and buried. So we have a backlog. So it does take us a while to get these investigations out. I would like to point out one more line on this chart. The light blue line has to do with back wages and penalties found due and this refers to all these laws. Generally I would think over this period of time before FY11 to say that we recovered about half a million dollars in back wages in all the areas I think would have been a fair assessment. And recently in these last two years we have been up above a million dollars despite the fact that we are down in investigations and I think this relates to the fact that have more prevailing wage investigations which are bigger ticket items and the values are higher, which obviously means that it takes a little bit more time.

Slide 6

So, couple more charts. This is the money that we find due in each area of the law. Here we have the law we're talking about today, Public Works. You can see in the last two years we've had close to a million in that area alone. One thing to notice is here where we didn't have quite so much back wages due we were serving 337 individuals. The majority of them were in this unpaid wage category. Now, in this year we served 404 with more than a million dollars in recovery of wages and 160 of these 404 were in this blue area. And in this environment we had about 250. So there's a shift happening where a lot of our work is shifting toward this area. So be aware.

Slide 7

Okay, this is one chart that talks only about Chapter 104 information. Here is the last few years we've had on notice of violations that we've issued. These big black numbers are the number of what we call NOV, notice of violations, NOV. And in 06 we issued 7. Again 07, 13. So you get it. The big black number

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

is how many of notice of violations. Last year we had a banner year of notice of violations and that was 17. So you'll notice in this chart also starting in 2011 I have this Batman type of cloud where we had 2 suspensions in 2011, 3 suspensions in 2012, and 7 suspensions in 2013. And this was due to a change in the law that happened way back in 2008 but it took us a little while to get onboard to get the suspensions operational. And so now we're actually taking people out from their ability, we're suspending them, from bidding on public works jobs if they falsify their certified payroll or they cause some delay. You'll notice also that the number of violations really doesn't have a lot to do with the amount of wages that we had due. Here we had 12 in 2010, we had 12 notice of violations, but the amount of back wages we found due was under \$200,000. Even in 2009, we found 8, but the amount due was very low also. Finally, this purple line is the line that says how many investigations that we complete every year. So remember back we saw that we were doing more investigations than we had complaints. Here we were doing 130 104 investigations, 133, and then we started to lose people and we had to start to figure out what were our priorities and here in 2011, we only got a chance to complete 19. Now as part of the change in the law some of these investigations are finished quickly and in fact last year we closed 63 cases. And then for stats purposes most of these are the first NOV. And when it was not the first NOV, I've listed the particular years here. Usually if there's not a first NOV that would relate to the penalty. It's how much penalties were invoked. And again that's something we'll look at a little later, the penalty structure.

Slide 8

Okay. This is a new chart. This is a brand new chart to show you over the years, a chart of notice of violations issued and the number of contractors suspended. One point I do want to add so the suspension is going up which was what the purpose of the change in the law was - was to find what we would call the cheaters and get them out of the process of using taxpayer money to build public works jobs. I would mention at this point though that we do also have a couple of cases that are on appeal and we'll see what happens with those. So let's get into here.

Slide 9

This is one of my favorite slides in the whole presentation. This is a slide from the Getty Museum and this is a picture that was taken right around the time that the federal Davis-Bacon law was passed and a lot of people refer to our prevailing wage law as the little Davis-Bacon. So Davis-Bacon is the federal standard. It was passed right after the 1929 crash in the early '30s. And it was passed by legislators I believe they were originally both from New York and Pennsylvania to combat a situation where they had these low paid labor groups just going around the country trying to find work and getting jobs that were supposed to provide economic stability to communities. And instead the bids were being won by these traveling bands. So all the money that people thought was going to go to their constituents wasn't happening so hence the prevailing wage law. And so the Davis-Bacon law is a law that says you have to pay the wages for construction projects that are prevailing in the neighborhood of the building where it's being erected. So this slide also says following a federal standard. And in Hawaii, we passed our law in 1955 and while it has the same theory as the prevailing wages of the area, there are some differences.

Slide 10

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

And there's lots of confusion a lot of times between whether it's a federal or state project. So I always say follow the money. Determining whether it's a federal or state project. Everybody here is State or county so everybody that is working on a project that money came from your agency, it's going to be a 104 project. Some of the money may have come from federal resources so the federal Davis-Bacon will apply probably. But as long as you the State or county person or agency is the awarding agency, the Chapter 104 is going to apply. So don't be confused because some of this money comes from a federal agency. As long as you're the agency that says this is the contractor that's going to get the money, 104 applies.

Slide 11

So one of my early slides is what are the differences? And the differences are often the places where we have problems because people think oh it's a Davis Bacon job the same rules apply. Well it's incorrect. This is a Chapter 104 job, a State job, and so these are some basic differences in the law that we see. In Hawaii, the overtime law is you get paid overtime, time and a half, after 40 hours a week. That is the same law as the Davis Bacon law. But in Hawaii under Chapter 104 when you're doing construction on a Public Work job the overtime law is different. So yes everyone else gets overtime under the law after 40 hours a week. If you're an employee working on a public works job in Hawaii overtime is, right here, after 8 hours a day or Saturday, Sunday, or State holidays. This is an important difference. This is a big problem. Okay we are not over here. We are not in the general public. We are in Chapter 104 laws. So they're different.

Here's another big difference. When you get a federal job they issue one wage rate schedule and it goes along with the project and no matter how long the project takes you get one wage rate schedule. That is not the case in Hawaii. Here the wage rate schedule is issued 2 times a year. So every time the wage rate schedule is issued, that is the wage rate schedule that applies to the project. So it doesn't matter if it was bid with a different wage rate schedule. The one that is current according to the time of the actual work is the one that will apply. So there's always a lot of confusion in this area and I'm probably going to say this about the wage rate schedule issued 2 times a year several times. And I'm doing that because this is a big problem.

Here's another difference. In the reporting of the certified payroll, the feds have a form called the WH-347 Certified Payroll. This is a fine form. It's okay. It's available online. A lot of people use it. The problem is it doesn't have all the things that we need for the State Chapter 104 law and so that's why we have that link to the DAGS form. Because we modified the process to make sure that there's places for all the things we need. One of the big things is reporting itemized fringe benefits and the date you actually paid the people. And we'll point those items out when we get to actually using the Certified Payroll forms. So as project managers, as I suspect many of you are, or hopefully some of you are actually writing the RFPs and thinking about how you write them may impact the laws you are engaging. When you think about your contracts you might want to decide on a form you want them to use. And you'll see later how it's easier to adopt one form on a regular basis because you'll be able to do your part of the job, checking and reviewing, much easier.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Here's another difference. In the feds, they exempt owner-operator trucks. They have special treatment. You don't have to list them on the certified payroll in the Davis Bacon law, but in the State, you have to list everybody. So even if it's just one person who owns his own business, that person has to be listed on the job that they're doing and what they were paid because this could be a mechanism that somebody who is a subcontractor could win a bid because they're saying oh it's just me so I don't have to pay them a certain rate. Well that's not the philosophy of the law. The law is that everybody doing the same job should be getting paid the same amount and hence we have the wage rate schedule.

So here's a big difference and this is where the good cop bad cop comes in. In the federal environment, contracting agencies can issue penalties. So contractors doing federal jobs are sometimes maybe hesitant to reveal their inadequacies to their contracting agency for fear of reprisal. But in the State environment, only we can issue a penalty. So you're kind of the good cop. The contracting agency is the place where problems can get resolved. And you can work with people to, if you see problems, get them ironed out quickly. People can resubmit certified payrolls that you find problematic. And then at the same time if you find these people are uncooperative, that's where DLIR as the bad cop can come in. You can use us as the hammer, so to speak. And say well listen I'm going to have to turn this over to us and then once we get it you will have a penalty.

Slide 12

So here's the enforcement responsibilities for people who need the references. This is what this slide is about. The specific parts of the law that say what the authorities are. 104-2(e) says what you can withhold. (f) says you have to include 104 in the contract to let them know. There's a provision that says if you forget it still applies. So don't forget. And make sure you do put your 104 requirements in the contract. 104-3 is your responsibility to review certified payrolls. And 104-4 gives you power to terminate and go against sureties for failure to pay. I know you don't want to do that. Nobody wants to do that. So it's best to check up on these contractors as the project is moving along and you can figure out whether or not this is going to be a problem contract or not. And that's what this class is going to include, opportunities for the project manager to spot check certain things because I know certainly that everyone has a lot of work and it's very difficult for everyone to check every single thing.

Slide 13

The first thing that we like to talk about is this notice to workers. And that was one of the things in your handout. That was on the list of your handouts. This is notice to work and on the list of handouts there was a direct link to the place on the website. I always look at this as an opportunity to build your relationship with your contractors. So when you go to the site, if you have a copy of this, with your name right here – Project Representative/Inspector with your name and your phone number right here. This is the problem solver here. Right here. Because right here this notice to workers is required to be posted at the job for the employees' benefit, gives all the rules so the employee reads this and says hey I'm not getting overtime on the weekends or after 8 hours. They're going to see your name here and your phone number and call you and they're going to say hey I'm not getting that, what that says on that sign. And as the problem solver, you're going to go to the contractor and figure out how to solve that problem because if that same employee call us down here. Oahu, Hawaii, West Hawaii, Kauai down

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

here. All of sudden it's a complaint and now we're in this deep investigation that has to be court ready and it's going to slow down your project, which is going to be dreadful. So that's why we consider ourselves a team with you guys about getting the enforcement as the project is ongoing. And here this one poster is one way that you can keep everybody informed and get them to come to you to help solve problems. So again we say they have to be paid not less than the prevailing wage for the job classification. It's about what they're doing. They can call themselves anything they want. Oh they can call themselves a laborer, but if they're painting, they're a painter. They can call themselves a laborer, but if they're on the roof, they're a roofer. So it's all about what they're doing, not what they call themselves. Okay, the wage rate schedule can be found right here. Actually I think that might be an old website link but it still probably works because I checked it the other day.

The other thing here, paid overtime at not less than time and one-half for all hours worked after 8 hours each day, and for all hours worked on Saturdays, Sundays, and legal State holidays. You said that already. I know it's a repeat, but it's on the poster and again, this is problematic so people have to understand that if they work four 10 hour days, they just built 2 hours of overtime into their work schedule. If they have a work schedule that goes from Tuesday to Saturday, they just built in 8 hours of overtime. So these types of things are problematic. And I know that accounting for overtime especially on a lot of road projects where people are required to work at times when there's not regular work hours, you have to be expecting to see overtime on those environments.

So this number 3 issue, paid fringe benefits for all hours worked, including overtime. We're going to talk about that in the second half of the class so that you understand what it means. This part is far more important to the contractors, but having the people who are managing the project understand what that means is important for you guys; having to do the math is not so critical.

And then here another difference from the regular law. Paid every week, within five working days, which feels like a week. So paid every week and the general rule for everybody else in Hawaii is you must be paid twice a month. So if the contractor has private jobs and public jobs, they may if they want choose to pay the public jobs weekly and the private jobs twice a month. Or they may choose to just issue a paycheck every week and nix the amount due for wages to employees. But for public works jobs they have to be paid every week. And so there is a difference and people will get confused about that.

So here's something that's different according to your contractor. Given a copy of the applicable rate schedules unless covered by a collective bargaining agreement. So if you have union contractors on your job, not every employee has to get the complete wage rate schedule, but if they're non-union then every employee should have a copy of the applicable rate schedule. So that means that every time it changes, they should get a new copy. And it's a good idea to spot check to see whether or not a contractor's in compliance by just asking one of the employees, oh did you get the new wage rate schedule. It's a very simple thing to do and it's a way to bring the contractor into compliance and let them know they have to do that.

You'll notice at the very bottom, it says attach applicable wage rate schedule here. So once you see this notice posted at the job site, every time the wage rate schedule changes, you can go by and make sure

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

this wage rate schedule has changed because that will be a way to know that the contractor is on the ball. Believe me our investigators check these types of things.

Slide 14

So, now that we talked about all the rules, I have to get that in early just in case we lose people's attention. So now, we can talk about some of the other details. The coverage and classification. Alright Chapter 104 applies to every construction contract in excess of \$2,000. This \$2,000 amount is the same amount that was used in 1955 when the law passed. The \$2,000 amount was the same amount when the federal Davis Bacon was passed in 1931. So, in 1931, \$2,000 might have been a different value but at these rates, there are very few construction contracts that are not covered. So you have to know that if you're doing construction you better be getting a certified payroll. Don't be fooled by thinking that oh we just have a purchase order or I know in the DOE they do a lot of emergency stuff. That is covered work unless it drops below \$2,000. So you need to be collecting those certified payrolls for all that type of construction work.

Slide 15

There are some other coverage areas that probably won't involve you but I'll go over them just to give you an idea. Special purpose revenue bonds are construction projects that are funded by this funding mechanism often called the SPRB. And they're issued out of the Legislature and give construction companies favorable funding out of New York that there's no contracting agency in sight. But special purpose revenue bonds are given for things like hospitals, I think nursing homes, I think there's a couple of energy companies out there that have them. And so you probably won't be involved with them, but understanding that special purpose revenue bonds do come under this law as well. And then construction projects for buildings where more than 50% is leased to a state or county agency. And this issue is going to come up more on the neighbor islands because places like Hilo that have county and State offices, but in addition they also have private companies in the same building. So suppose the roof needs repair and the landlord fixes the roof, but 51% of the leased area is to State or county agencies then that landlord better be filing certified payroll. And when there's no specific contracting agency, they have to file with us. And that means if there's a mistake there's no opportunity for that good cop bad cop. It's a penalty. I normally don't do word for word representations in the slides at all but I felt it was interesting to put the definition of public works. Now we just had a law that actually changed the definition from this particular site to 104-1 so if you want to make a notation. 104-2(a) is now, public works is now defined in 104-1, which is really just a housekeeping thing. But if you're looking at this definition of public works and you're reading it. I hope you're what you're saying is that's anything. Anything at all. That's such a broad definition and that's my point. It is a very broad definition. So the money that are grants for construction, whatever you want to call any type of money. Tax breaks. There was a bill this year that offered tax breaks for hotels who remodel. And that would have triggered a certified payroll submission because they're getting a benefit from the State or county. So watch out how you word things because public works are a broad category of things.

Slide 16

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Okay so what's in and what's out? Here's the standard paragraph. Activity performed by a laborer or mechanic. So it has to be somebody doing something. A laborer or mechanic is doing something. It's not somebody holding a piece of paper or just a supervisor whose not actually doing anything. The laborer or mechanic also has to be at the construction site. Now at the construction site is in red as well because you can have several construction sites, which includes obviously the main site, but if a contractor sets up a storage place or a facility for a specific job then they've just created an additional construction site. Now if they're using their regular place of business that is not part of the construction site, but if they set up a facility that is just for the duration of that project, that is part of the construction site. So, it also includes activities that are an integral part, I love that, integral part or in conjunction with a construction contract, or if there is substantial construction activity with the supply, service, or other type of non-construction contract. And the greatest example of this I can think of is that a couple of years ago they were issuing a contract to produce energy for 20 years at several different sites. And there was a protest on the bid award and as part of the settlement of the protest, they split up the original contract into three different locations. And some of the locations just would lay down these panels, photovoltaic panels on existing roofs that were there and very minimal construction. And there was one location of the three that there was no place to put it. So they actually had to build a temporary roof for 20 years to lay down these panels. Well there was kind of an uproar because they said well how come that's not construction activity. There were a lot of things. And this is really important for the people who are listening that are actually writing the contracts or are participating in developing the contracts to go out for bid. The actual request was for the production of energy. So it was for a service. As part of that requirement. They had to lay these panels down. And as I mentioned, in most of the locations they were putting them in places that already existed, and one location it did not exist. They would have to develop something that wasn't there. So in the development of that RFP for service of electricity. There was a lot of discussion about construction and it really muddied the waters especially when the contract was separated into different locations because clearly there was some locations where there was zero construction activity. And then this last place there was a lot of construction activity at least for a small period of time. And that's one of the things that this last part of the paragraph relates to - the overall concept.

Slide 17

And this next slide is exactly how we determine if it's in or out. So in this particular example that I'm explaining about we had a contract for the production of electricity over 20 years. Now the cost of these panels that the contractor was purchasing to create the electricity was a substantial part of the funding. And the amount of construction to build this one part that didn't have anything to put the panels down on was so small in relationship to the cost of the panels, the amount of time of the contract. So there are elements in the this flow chart that caused us to say that this was not a construction project. There was not substantial construction activity in relationship to many of those things. So that was a great example for those people to are drafting the scope of work or the RFPs to think about and to look at this flow chart to understand what it is you're actually contracting for. And if it smells like construction and it looks like construction, it's probably going to be construction. Okay? So this flow chart is also available online but I do believe it was part of your handouts.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Slide 18

So here are some of the included activities that obviously we've had problems with in the past and so we list them to let you know that you should be aware. Warranty work except when done by the manufacturer on defective products or equipment. So suppose the project is done and for example one of the cases that this came around was a fire alarm company had installed, which was covered work, a fire alarm system and after the construction was all done the fire alarm system was faulty and they had to come back and do some warranty work. So that warranty work that the manufacturer came back and fixed the defective product that was installed was not included as construction. That's a limited environment. If the construction is still going on, you can't have warranty work. So if somebody is participating in construction by providing an aspect of the building and the construction is still going on, to be able to use this warranty work exception is not probably going to happen. So don't be fooled.

This manufacturing or furnishing of materials or equipment on the job site. Now it's very interesting how contractors structure their work for this particular included activity. Suppose there is a building that orders a whole slew of koa benches. And the contractor brings all the koa to the construction site and builds the koa benches on site. Well all that work is included because the material is brought to the site; they're doing all the building on site for the koa benches. Now what if the contractor built the koa benches at their regular place of business and then just transported the koa benches and installed them whether they're permanently installed or they just have to be placed in certain places. The only thing that's included then is that bringing the material and installing them. So you're going to see these kinds of things on a lot of custom made cabinets, custom places where contractors can choose to make the materials at their regular place of business and just bring them to the site and install them and only have the transportation and installation included. Or they can choose to bring all the materials to the site and build that custom stuff on site and have it all included. So understand those differences.

Again demolition is usually a part of construction if you're trying to clear a space to build something new.

Here in Hawaii we have termite treatment and usually that is included in a lot of renovation material we see that. We have some memos online and remember I pointed out at the first slide of the website that we had guidelines and that's basically what this is referring to these guidelines.

Survey work is kind of an interesting job because people that do survey work that may not be included because architects use survey tools and architect work would not be included because they're just kind of saying dig here or do this here. Where an operating engineer who uses survey tools and would do survey work is saying we have to make the grade this much. So dig more. The grade's not right. So we have a memo a guideline on figuring out some of those differences and what categories of classification.

Again, we also have another memo on signal man, which has been a very interesting area. A signal man would include the person who stands in the big hole in the road and directs the traffic around the big hole. So the contract probably had some kind of a safety issue that said okay we need a contractor that's going to build a big hole in the road and so part of that says you have to make sure nobody falls in the hole. So you have to have some kind of safety concern to direct people around the hole. That would be

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

an integral part of construction is having those safety people to direct people around the hole. Now the signal man would be included in that. So they would be considered a laborer too in the memo that you can check that. And that would be an indication of an integral part of construction. Now the other thing that people try to do to keep people away from the danger is they set up cones. And often times people subcontract out the laying of cones to companies and they say oh this is a service. Well it isn't a service if the company who brings the cones drives down the road slowly drops off one cone, goes a little further, then drops off another cone, then goes a little further and drops off another cone. As in comparison to the company that comes and dumps off all the cones in one spot and then somebody working at the site picks up all the cones and puts the cone in one spot and goes a little further and puts another cone in another spot. So I hope you're hearing the difference between setting up the cones and dumping the cones off. If you're setting up the cones like that you are in an included signal environment and you're going to be included in the contract and we want to see those people on the certified payroll.

Installation of prefab items. That's similar to building stuff on the site. Obviously you can build it at your place of business and then bring it in and just install it. And only that installation would be included. I know some other states do different things.

Slide 19

Okay we're doing good on the time here. I think we're okay. So truck drivers. Trucks are always problems because they're moving targets. And that would make sense because they're trucks. Now remember I mentioned that you can create a construction site by making an exclusive dedicated site for a particular project. So truck drivers are included when they're transporting materials, supplies or equipment. So one time we had a problem where we had a truck driver who was moving things from outside the fence to inside the fence, or inside the fence to outside the fence. So it doesn't matter whether they're inside or outside the fence. What matters is are they moving them there because that was part of the project. So in fact had the contractor created a dedicated spot if they left all their supplies in a particular spot which happens often. And a lot of small contractors who get a big job, they'll rent a warehouse for the job and start building stuff or dumping supplies. So they have created that dedicated site. So all the work between the regular public works site and that dedicated site would be included.

There's the reference on the rules - Hawaii Administrative Rules 12-22-1.1 – is the relationship to that and this is different than the feds. The feds would not require you to include the transport of the materials, supplies, or equipment. What happens in this environment where we see a lot of problems is particularly painters. So they have all their employees meet them at their regular place of business. And everybody loads up the truck with the paint or whatever equipment they need, ladders. And then they all hop in the truck and drive to the construction site. And then they unload the stuff and they start working on the construction site. And then at the end of the day everybody loads the stuff back in the truck and they drive back to the regular place of business and then the next day the same thing happens. Well typically what we find is that those painters only get paid for the time that they're on the construction site. And that half hour that they met at the regular place of business and then loaded and drove to the construction site and then at the end of the day drove from the construction site to the

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

regular place of business, they've left out an hour of time that they should be included in under the way it's arranged. Now contractors can always have their employees meet them at the construction site. That's perfectly fine in which case they don't have to pay for that time that they were met at the regular place of business and did the transport. So there are lots of different ways to arrange work which may or may not be included.

Again, when you look at the wage rate schedule, which was one of your handouts, the wage rate schedule, you'll see there's lots of different types of trucks and people should be selecting the correct truck.

Slide 20

So we're really getting down to some specifics now. And if you printed out the wage rate schedule, you can take a look at it right now. And you can see that there are different types of classifications. And what we want to see on the certified payroll is - if it doesn't exist on the wage rate schedule, we don't care - we want to see what category. A great example is equipment operator and then it has to be a particular group. The equipment operators have a listing of what the groups refer to and that's a separate listing. But it's also available on the same wage rate schedule. So I think as project managers, and I hope as project managers, you're familiar with construction and what kind of jobs that you're going to see. Remember that the Department of Labor Wage Standards Division, we are accountants. Many of us have had jobs in the construction industry but we're basically accountants. And so we learn about construction every time we get a complaint. So in this environment, we want to see the category of the classification off the wage rate schedule.

Notice here we have Carpenter (foreman). Carpenter is the important part that we want to see. The fact that somebody added foreman, it probably means they're getting paid more than the regular carpenter. Whenever you get paid more than the category, more is always fine. It's less that is what we're worried about.

And finally on this listing of examples we have the roofer apprentice. Contractors have to be in formal apprentice programs. So they should be able to supply a certificate that says when the apprentice was indentured, what level they are or step. And you should keep that on file and make sure that information is part of the certified payroll. This is a big problem area and if people are not part of a formal program, they won't have a level, percentage, or step. They'll say something like trainee or other things like that but there are several apprentice programs where you do not have to be a union member to be in a formal apprentice program. There are apprentice programs out there that are merit based grouped.

Slide 21

The most important thing on this slide is this number right here, 586-8877, this number is to Edgar Fernandez who is in charge of the apprentice program at Workforce Development Division. So these people are not in the Wage Standards Division. They're not part of our agency. They're part of a different division. And they are the Department of Labor but they're in a different area. They're federally

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

funded. And Edgar at 586-8877 is the man to call to determine whether or not you have a legitimate apprentice, okay? And if people have not put in their apprentice rates correctly, you can just use that name call Edgar and see whether or not that person's registered.

So the other problem with apprentices we have is not only are they not registered, but whenever you have an apprentice, you have to have a journeyman on the page as well. The journeyman has to be there when the apprentice is there as well. And I know that recent procurement laws pass where people get an advantage if they include apprentices on their program. So I'm sure that this use of apprentices probably increasing based on recent procurement changes. And you have to make sure they have the right amount of journeymen to apprentices. And Edgar is also the person to call if you're concerned about that, okay. That's documentation and that's the step they need.

Slide 22

Alright so this is, I know I said this a couple of times that the wage rate changes. Oh see look I forgot to change it. The current wage rate schedule is 483. See I made a mistake here. This says 481. The current wage rate schedule is 483 and it was issued I think February 17, 2014. So I know that the wage rate schedule is issued every February and September. So if this is 81, this would have been 82, and new February is 83. So they're all listed on the same page. The current one will come up at the top and if you go further down you'll see the archives. But typically if you're working on a current project you're always going to want the current one. It's updated twice a year, around February 15 and September 15. And it is available on our website.

So here's another area where some of the contracting agencies get fooled. You have to understand that the law says the contractor has to follow the current wage rate schedule. And if you're looking at the wage rate schedule, you printed it out, you'll notice there are dates, forward dates, where we have information about increases. The contractor has to anticipate those increases. And so just because the amount changed does not obligate you to increase whatever you're paying that contractor. There have been instances in the past where there's been anomalies or problems where contracting agencies have done the right thing and have awarded additional amounts for specialty issues but it's not required by the law.

Slide 23

One more slide before the break. So the wage rate schedule bulletin, see 483. Now here's the number you can call if you want to get on their email list. So every time they, the Research and Statistics Office, every time they issue a new one, they will email it out to you if you call that number and get on their list. And so that's a great reminder. It's a great way to build that relationship with your contractor, to give them this phone number to have them be on that list so that they get a regular update. It just reminds everybody. It's a great thing.

Slide 24

So I have 2:29. I said it was going to be about an hour. I know the break comes at the joke. It's the only joke I have in the whole presentation and it's a joke about classification. The toothbrush says,

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

“Sometimes I feel that I have the worst job in the world!” And the toilet paper goes, “Ya...right!” So with that I will relieve you for 10 minutes and we’ll go offline. I’m going to look at the questions and come up with some answers and we’ll be back at 2:40, okay?

So you had some good questions and I reviewed them over the break so I’m going to go over the questions and hopefully they will be answered and if not, we’re going to have another opportunity to ask questions at the end.

Q: Does this apply only to the labor workers?

A: Yes, Chapter 104 Prevailing Wage only applies to laborer/mechanics working on the construction site. It doesn’t apply to people standing around not doing anything. It doesn’t apply to architects observing. It doesn’t apply to suppliers. Only to laborers and mechanics.

Q: If the owner of the contracting company is working on a job, if he is paid a salary, does that person need to be on the CPR, certified payroll, handed in?

A: Yes, and this was one of the differences in the federal vs. state that owner-occupant truckers and other owners, they think they don’t have to be listed on the CPR. But remember everybody has to be listed and they have to be identified as doing the job and it has to be made sure that they are getting paid the prevailing wage for the job they’re doing. Often times many owners of contracting companies, especially the subcontractors, they work on the job and they don’t pay themselves as much as they’re paying everybody else because their working so difficult. So you need to help those subcontractors and make sure they list themselves as paying themselves the prevailing wage. So yes, they do. If they don’t put that they’re paying themselves the prevailing wage, then they are going to be a red flag for a problem. So I know it doesn’t make sense. We have a similar question.

Q: Is the owner/subcontractor working on a project reportable?

A: Yes, that’s the same question. And that is further clarified that as the owner of the subcontractor business may work himself. So yes, I’m saying yes, we need to include those people because this whole law is about an even playing field. So that means that if you’re doing the job, you need to pay yourself the same amount that anybody else would get on that job. And so that’s why the owners of the subcontractor have to be showing that pay themselves. And as investigators, if we have that salary number there, they’re going to go in and see how much hours that individual worked and divide that by the hours of work they drew that week and make sure they paid them. And it seems silly that if they didn’t pay themselves enough they’re going to have to pay them more but the whole concept of making sure that it’s a level playing field and everybody doing that job gets paid the same. So it does get a little silly but it’s important to show that hourly rate is paid.

Q: For OT in excess of 8 hours a day, if the contractor has an agreement with the union to work 4 by 10’s, does OT apply?

A: Yes, it does and that’s why I included that specific example because we often get that excuse, well we had an agreement with the union that we could work four 10-hour days. Well we don’t care if you had

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

an agreement with the union because the law says if you work after 8 hours, then you need to be paid overtime. So you can't make an agreement that is a contravention of the law. In fact at the end I have a reference to an actual bill that passed that specific yet obvious provision. We call that a housekeeping thing. But a lot of people try to say that well we have an agreement. You cannot make an agreement that is against the law. So 4x10's build an automatic 2 hour overtime schedule.

Q: This question relates to the PV panel installation that I spoke about, that example. Would the installation of the panels regardless of roof / no roof be considered construction?

A: You know, this was a highly fact oriented situation and that's why I wanted to explain about the whole contract, the providing of energy. So whenever somebody says regardless of roof / no roof be considered construction, it's very difficult to say that – I would say generally installation of panels in new construction would be considered part of the construction. But there are situations and especially now-a-days where most of the buildings have a lot of these panels and they would be included on that. But this was a contract for the generation of electricity and a 20 year contract. If you're just installing panels, that sounds like construction to me and I hope that I'm clarifying the difference in those two statements rather than having a 20 year contract for the provision of electricity. The installation of the panels sounds like they belong to the building. The provision of electricity means the panels belong to the people providing the electricity. So these fact situations always differ and so the answer usually depend on what those facts are. We're always available if you want to call us. We have the resources on the last slide. You can always call and we're happy to discuss these things before they go out to bid because once we get an agreement, we're not going to go back on our agreement, but often times we have a problem where people have not even consulted with us and said a project was in or out when it really was on the line and they thought it was out and we thought it was in and that's a big problem.

Q: Signal men. Most contractors believe that hiring an outside security firm for signaling is exempt from Chapter 104.

A: Well, security firms, to me, indicates somebody standing around at the end of the day to make sure the equipment is not being stolen overnight. They're not doing anything; they're standing around, they're watching. That is different. Security firm. Now some contractors also believe that hiring an outside firm for the provision of signaling equipment would be a service and that is not. The one exception is if you hire a cop. A lot of the county policemen do provide signaling services to direct traffic around the hole in the road. The only people that are exempt in that environment are those county employees that are police.

Q: Truck driver. A third party company delivering aggregate to a roadway project - Chapter 104 applies?

A: It goes to the whole, are you delivering the aggregate and dumping it. Usually aggregate is an integral part of the construction. So I'm hesitant to say that it's not included. I would say that based on facts, mostly delivering aggregate would be included in Chapter 104 stuff. I can't think of a situation where aggregate wasn't an integral part of the construction project. But again the fact situations would have to be more fleshed out and I'd love to put you in touch with one of our compliance guys to go through some of the fact pattern stuff.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Q: The difference between a mechanic fueling, maintaining equipment on site, versus one repairing the equipment.

A: Well, a mechanic that is on site keeping the equipment running is probably going to be included. A person who comes by and fills the tank may be considered a supply person. Now, depending on what that person who does those jobs is doing elsewhere. So if a person is going from site to different construction site with a can of gas filling all the machines, it's likely that person filling the cans is not going to be included because they're just delivering that and they're going. Now if that person who fills the tank is stopping to fill the tank because they ran out of gas, that filling of the tank is going to be included because that person on the job site needs that to happen. So it depends on again the fact situation and I hope I'm kind of going over some of these examples to give you the idea of the kind of facts that would change the situation. So is the repair person always on the site because it's a temperamental piece of machinery that needs coddling or is it somebody who comes from a garage that doesn't even belong to the contractor and comes and fixes it and then goes away. Probably not included that mechanic. I hope that helps.

Q: Is the ratio 1-1? That is one journeyman to one apprentice.

A: I wish I could tell you yes. But this ratio changes which is why that phone number of Edgar is really important. Typically the contractor should know because they belong to the formal program. I think it's a great idea if you have a lot of people using apprentices to check in regularly with Edgar on what the current ratio is for those categories. I think sometimes it can go to as much as 3 to 1 both ways, 3 apprentices to 1. Usually it's 3 journeymen to 1 apprentice. It really depends on I think the level of work that they have and what available work they have.

Q: Again somebody also pointed out that I got the wrong link to research and statistics on the wage rate schedule.

A: Thank you very much to the person who provided the correct link. And it's right here. I'll open that for everybody so they can see. That's the page. You'll notice this is wage rate schedule bulletin 483 and the correct link is <http://labor.hawaii.gov/rs/home/wages/72-2/>. That's the page; I recognize the page. And they've obviously changed it. I'm sorry I missed that for you folks. And thank you for providing the new link. Thank you for that observation.

Q: If you notice OT not being paid on the certified payroll and you bring it to the contractor's attention and they revise the certified payroll to remove the OT hours, does any additional documentation need to be supplied?

A: The thing that entertains me about this question is that you notice as the contracting agency that OT is not being paid, which means that you have observed people working probably Saturday or Sunday or on State holidays or perhaps more than 8 hours a day. You as the project manager have noticed this and you say, oh you haven't been paying OT. So they remove the OT hours. OT is not being paid, okay. And you bring it to their attention and they revise to remove the OT hours. See that's so funny. They can't revise the certified payroll to remove the OT hours unless they made a mistake, right. But you've already

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

observed they're working overtime, they're not paying it. So all they can do is amend the certified payroll to show the OT and pay the OT, and pay the additional amount. So maybe I didn't understand the question correctly but they can't just remove the OT hours if you've already noticed they're working it, alright. What would be needed is to amend the certified payroll. Now it says if the role is reversed, generally a restitution receipt needs to be submitted. And I'm not quite sure that's probably a procurement thing. That is if you pay too much money to them. Maybe they would have to be paid back to you, but the whole concept about if you notice OT is not being paid, you can't change the documentation to say that there was no OT. You have to pay the OT. That's how it has to work. Okay. And but you can file an amended certified payroll. And typically if you said to somebody, wow we noticed there was overtime worked the other day and it doesn't show up on the certified payroll so you need to amend your certified payroll. If they give you back the new certified payroll that says oh yeah we did have two hours of overtime and we have to pay these people extra. If they don't pay those people the extra that's falsification. If they report that they paid OT to people and they didn't pay them, that's falsification. The penalty is suspension these days.

Okay, we're going to do some of these after. I think I went through all the original questions. So we're going to get back to the program the regular program and then I'll get back to some of these other questions. So everybody saw the joke, the classification joke who has the worst job, right.

Slide 25

So this part of the class is really going to be focused on how as project managers you can monitor your certified payroll and things to check for and how to understand what the certified payroll is supposed to be showing. The law says the contractor has to keep the records for 3 years and that's 3 years from when the project ends. So if a subcontractor works on a project at the very beginning but the whole project lasted probably a year then that subcontractor is obligated to keep records for three years after the end of the project. Again we went over classification. We only want to see the titles of classification that appear on the wage rate schedule. We also covered that we're going to see weekly pay requirements. The certified payroll has to be submitted on a weekly basis, it has to be paid on a weekly basis. These things should not be difficult, alright. We're going to go into prevailing wages is our next category.

Slide 26

Yes, okay, the prevailing wage is a term that we use and it describes two separate things. It describes the basic hourly rate plus the fringe benefits. For those people who actually printed out the wage rate schedule and you're looking at it, you'll notice that each area has three columns and it's a big number and then the basic hourly rate and the fringe benefits rate. Now I always refer to the prevailing wage as the big number, alright the big number. That's what we're looking for all the time. We don't care if you pay everything in cash and you pay no fringe benefits. We don't care how you get that money to them. What we care about is that the big number for each hour worked gets paid the prevailing wage. And the new thing is that the fringe benefits used to calculate the prevailing wage, they have to be itemized on the certified payroll and that form that we talked about with DAGS has a place that makes it really easy to check for that.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Slide 27

So if we look at an example from the wage rate schedule 483, which is the current one, you can see that the basic hourly rate for the carpenter is \$40.75 and the fringe hourly rate \$20.42. For a total of prevailing wage \$61.17. Now I forgot to mention I'm sorry on the last slide what I like to say is there's only one reason why the prevailing wage is split up and that is to compute overtime. So we're going to get to that but remember that the big number \$61.17. That's what we have to see paid per hour to your carpenter. So here's the different examples, right. You can pay the basic and provide the amount, or pay the whole thing directly, or any amount of that.

Slide 28

Oh here's the example. See I posted an example because I can't see that you're you actually looking at it. So for people that didn't print it out here's what I'm talking about the category. Now this is from bulletin number 481. Okay, so this is not quite current. And so this is current for last year. And then here they've projected, see, out from the year. For this example here under plumber, we saw that as of January 6, 2013, the prevailing wage was \$80.86. And then in July 7, 2013, it's \$60.86. And then in July, it was \$61.86. So then in January of this year it went up to \$62.11. Now for the people who actually have a copy of the wage rate schedule 483, I would check to see whether the plumbers are getting \$62.11 currently because the rate that is applicable is the wage rate schedule 483 and this rate should be in this slot right here, the current area right here, for the wage rate 483. So I hope that you can see that when we have this forward information we try to project it. I thought it was interesting here in this roofer note two increases in 2013 and plumber note two increase in 2013. So they try to let you know okay see that there were two increases and so pay attention. And then here's the particular page we can see the different categories of the dump truck that we have. One other thing I would point out, see these remarks, see page 6-7. There's all these like little comments and for example I know in the electrician environment, it might say if you work above a certain height, you get this much more. But these notes relate to the certain special rules for this category and they're available at the end of the list. Okay, so when you're in a union environment, probably a union contractor is going to be paying their plumber \$37.60 and then paying the union \$23.26 in fringe for every hour that person works and the union has a trust fund and so they're going to see that. Now is a nonunion environment, you might see that they're getting paid \$58.86 because they're taking some credit for a fringe but basically they're looking at this number and they're taking credit for some fringe benefits but it may not be as great as a union environment.

Slide 29

So how do we know what's a good fringe benefit? These are the whole idea of what is a fringe benefit that's allowable. It has to be irrevocable, to a trustee or third person based on a fund, plan or program. The perfect example is health care. HMSA, Kaiser. The employer, the contractor, gives money to Kaiser or HMSA and they are not going to give it back. That's irrevocable. And the employee has the ability to retrieve those benefits based on a structured plan that they have the rule by and they know that they can go in and get services by taking certain steps. Now in a union environment, you're always going to

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

have the trustee party who might be the contractor with the health benefits. But even in a nonunion environment, you can have this structure so that you have legitimate fringe benefit amounts.

Slide 30

Fringe benefits have to fall into certain categories. The A, B, and C area. They first have to be in one of these kinds of categories. They have to be for the benefit of the employee. That's health and welfare, that's like health insurance. So if you have life insurance that you provide, that would be a legitimate contractor expense. Vacation and holiday pay, that's legitimate and we have issues around some vacation and the way they pay it may be problematic and so for example in the nonunion environment you might have somebody saying that oh they're giving a dollar an hour for vacation. But yet the vacation is awarded say, 2 weeks after a year of work. Well, that's problematic because it's not irrevocable because if that person doesn't get to a year, then they're not going to get that vacation. So in a nonunion environment there has to a structure set up where that person earns that vacation on at least a monthly basis and those payments are made to maybe a trust account or some kind of other environment so that if that person quits, they get that vacation pay. So there are ways to do it. When you have a nonunion environment, you have kind of pay particular attention. You might want to ask certain questions to make sure they're aware of those differences. Again it has to be made monthly, we have problems in this environment on pension programs. Pension programs are normally made on a quarterly basis. And so that falls out of the category is has to be made monthly. And it has to be paid for all hours worked, including overtime. We've said that a couple times and everybody thinks, how does that work?

Slide 31

Anyway, we'll get to that in a minute. The first think you have to do is for nonunion environment, when people want to take a credit and they're not paying fringe benefits on an hourly basis, right. You have to figure out what's the credit you can take on an hourly basis. And we're not like the feds, where you have to figure out how many hours did they all work. Or how many this. We just take the number 173 and we take whatever the employer contributed and we divide that by 173. And there's the reference to the rule because it's likely that contractors will not like that and you can refer them to the rule and they'll understand that that's how to do it. Now this is an area probably you're not going to get into as the project manager for the contracting agency, but you should understand how these are arrived at because these are the kind of areas where complaints come from and if you can at least steer people in the right direction about what the problem could be, then it can be very helpful. So the example here is, suppose somebody has a monthly health premium for \$173 so they divide it by 173 and they have a dollar an hour they can take the credit for the prevailing wage so that they would be paying somebody cash wages of \$59.17 and they would be showing \$1/hr for fringe. So it would be \$58.17. I thought I updated this. This is an old amount right. Didn't we say that the new rate is \$61.17? Okay so sorry about that the slide didn't get updated. But the math is the same okay. You take a dollar away from what they, so the cash wage would be \$58.17 because the prevailing wage and is \$59.17. So here this one has the current rate.

Slide 32

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

So we said that it divided to determine overtime and we also have to make sure the fringe benefits are paid for every hour worked. So now this is how we do that. This is how understanding these numbers is really important. When you have the union environment as I mentioned you're probably going to see them paying straight time \$40.75 and for overtime, it's going to be \$61.12, this is for carpenters okay. This is the current 43. Now you're also going to be seeing that they're paying the union \$20.42 for all hours worked. Right. So in essence the straight time is \$61.17 because even though this \$20.42 is going to the union the fringe benefit part is going for all the straight time hours and all the overtime hours. Okay so what if you have a merit based situation where there's no union they want to take a credit for the fringe benefit. This is how it would work. So here you have the prevailing wage and now you have, let's use that example, the possible fringe benefit was a dollar for health care and then you subtract that. So they're paying \$61.17 with a dollar fringe benefit. So you're going to see this for straight time. And now we go over to overtime. So for overtime you have \$81.545 but remember this is not paid hourly as in the union environment. This is paid on a monthly and we took a credit. So now you can't take that credit on the overtime. So for overtime in a merit based situation you're going to see this number being paid. They can't take the credit on the overtime in a merit based unless they're paying on an hourly basis. We know of some companies that actually set up programs for merit based companies that allow them to pay benefits on an hourly basis. But typically you're going to see a situation like this where they're taking monthly. So when you have a nonunion company, watch the overtime number, watch the credits being taken and what fringe value they're claiming. It's really important to check.

Slide 33

Okay, so there's no standard format of certified payroll. That's what I said. We worked with DAGS to get a form that is a link to that. It's on the Public Works division page and it has some things they need it has the things we need and I know that DOE has used that as a model and modified something that they're using now. Anybody is free to use that and use something that works for them. Again the federal form 347, we see a lot of that. I know there are a lot of programs out there that contractors have that may fulfill your needs and you can use those too. But the most important thing is to understand what you're looking at and make it easy so you could check to see what people are doing and how they're doing it.

Slide 34

Okay, this is an old form. This is the original form and it's similar to the one that is now on the DAGS website. And this is the statement of compliance. This is a big deal, this page. This is where the contractor says I certify that what I'm submitting is true. And a lot of times what contractors try to do is they try to get their clerk to sign here. And remember this is an important document and I know that a lot of you already do this. And if you don't do this you should identify the people that can bind the company. So it's okay if a clerk signs this if the owner of the company has said oh these people are binding the company. It just makes it a lot easier when they are trying to cheat you. Or cheat their employees. Because we will go after them. So recognizing who's eligible to submit this form is very important. We like to see the owner. We'd like to see somebody that binds the company or that you recognize. So this whole form says okay what's today's date that you're turning it in, at Honolulu or wherever you are, and I, whoever the contractor is usually the company name, do certify the individual,

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

do certify under penalty of perjury that everything is correct and that I paid these people on this project, employed by my company on the project, during the payroll week of whenever the week ended. And then you know you did all these wonderful things. And then here's this new thing. Okay this is just to check somebody signed it, did they itemize the fringe benefits? Okay, here we have \$17.58 total fringe. So when we look to the other side to see what they paid, we're going to add this fringe amount to whatever it is they paid hourly and get the big number and determine whether they're in range of what they should be paying. So this is a visual right. You see one right away. They're submitting it this date for this week, are they a week apart? Are they not a week apart? If they're not a week apart you need to work with this contractor to submit them timely. These dates should be no more than a week apart. A lot of times we see these dates are submitted because they want to get paid and you guys pay on a monthly basis. But these have to be submitted on a weekly. So try to get them in the pattern of doing it correctly. And this is a visual, okay they listed them. If people don't list them, if they only have one number here and they haven't articulated what the amounts are and a lot of unions don't do this because they don't actually know what the numbers are. This is a nonmonetary violation. They might have paid this number but they didn't list their itemized fringe benefit and that's a penalty that they can get and they would get a first NOV.

Slide 35

So, let's look at this. So you'll see this form that we created with DAGS. It's just really three different worksheets on an excel sheet. So you can change and everything. So here we go. This is the certified payroll. So remember I said okay so here's the straight time, \$34.95. We would add that \$17 whatever it was. And we would get to see whether or not they're actually paying the amount that they're paying. And that's how you see. This amount plus the other amount on the fringe benefit and you add that to the big number. Okay so now we have this form. We have Rocco, Kenneth, and Keone here. And looks like Rocco was a carpenter, Kenneth was an electrician line wire installer, and Keone was an iron worker. So we had some diverse work on this project and this is the Hasbeens Contractor. So they're the contractor and it says the payments were made on the same date for all employees and the date paid to employee was the 26th of October 07. So, this report was submitted on the 26th of October 07. And this was for the week that ended on the 20th. So look they are within a week of each other. Great, we love that. So this is probably timely prepared and submitted. Wonderful, wonderful, wonderful. Now this project is the Cherry Courthouse remodel for new technology and this was the kind of work that we saw. Well that's reasonable that we had different types of work. So I'm just looking generally at what's going on here. I don't know anything about this project. I don't know anything about the Cherry Courthouse, but I know it's a remodel and I know we had a carpenter, electrician and an iron worker. Sounds like maybe they have things going on. With this form, I can look at it and see okay I have no 10s. I have nothing above 8 so I know that's good. Oh, here I have a 10, but look 2 hours of overtime. So when you have a form that you can eyeball quickly, you can check things quickly. Alright we have Saturday overtime. Oh we have a problem right here, right. Saturday overtime. 6 hours. This should have been up here. This should have been 8 hours of overtime and 32 hours of straight time. So they still make mistakes. These are quick easy things you can check and ask them to fix it and make sure that they make the payments accordingly. So understanding the form and understanding what you're looking for make it easy to make individual spot checks for different contracts. So the last part of the form that we

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

worked with on the DAGS people is this employee information. This part of the form and the compliance statement are public documents. These are documents that if anybody asks for it, you must give it to them. So if the individuals' addresses are here, or social security numbers, you're going to have to redact all that stuff.

Slide 36

So if you train your contractor to put all this private information on to this separate page then you don't have a lot of redactions. Here we have the addresses and social security. A lot of us don't even collect the whole social security number anymore because of the liability and if you have a requirement that requires you to do that, you can do that. But the last four numbers is fine. Now the thing I didn't talk about is this vendor code that appears on some of the other things. That's something that the DAGS put on there. The vendor code here. It's not required by the 104 law, but the vendor code, and a lot of subcontractors may not have a vendor code because they're going to get paid by the contractor, this was something that DAGS put on and the way that they modified this form to make it easier for them. So that's why I encourage you to adopt a form that makes your checking in your review much easier for you.

Slide 37

So I think, oh great, okay I have a demonstration. So first what I want to do, and I'm sorry I don't have it on the slide, is we had a handout and I hope you printed it out. We had page one and page two of a painter's certified payroll. Before find the mistakes here, the page that's on the screen, I wanted you to take a look at the page one and on the page one, the statement of compliance, that's where you have a listing and it says April 30, 2014 at Honolulu, Jill Cooper the clerk submitted for Painting Specialists, LLC, for the elementary school four classroom building repaint. And the week ending March 29th. Well it looks like this is a monthly submitter. So the March 29, 2014 is for that week. They only submitted it a month later. So if I were the project manager, I would get on these people. Although I'm hoping that the project manager would notice that they didn't get any certified payrolls for a month and they would be on that already. But on this form we also see that the painters are getting health and welfare for \$2.00 an hour and vacation and holiday pay for \$2.50. Well right off the bat this looks to me like a nonunion environment. So I might want to do a little checking just to make sure that we're not going to have any problems down the line. And to make sure that they understand the vacation process, that it has to be paid and can't be conditional. And let them know that. Now I also see painter trainee and I'm suspecting a nonunion environment. So I'm not quite sure whether this is going to be a legitimate apprentice. So again I might want to consult with the contractor and say A. Is this a real apprentice and if it is give me the certification and what step they are, what's the level, and then get them onboard. And again I have the Jill Cooper signed as a Clerk Typist. I want to make sure in my paperwork that this person is an authorized person to bind the company. So we've checked the statement of compliance and now we're going to look at the actual what they paid, certified payroll report. So now we're on to this slide that says find the mistakes. And I hope you can see this but you also have the actual handout which is a little bit easier to read. So here we're looking at this. Let's pretend we know nothing about this project. So what are we going to do? We're looking at this project and we're seeing okay it's a painting project.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

They're repainting the classroom. So what have we got? We have a painting specialist, painting company and how many painters are on the job. So we're looking there. Jane is a painter. Got a couple laborers and we got a painter trainee. So on a painting of four classrooms we have one painter. If that is not suspect people have to understand that you can look at this. It's a painting job you only have one painter. You're going to have a problem, you're going to have a red flag. Okay it says it's the final one and maybe they're doing different stuff, but in a painting project we would want to see mostly painters. We already identified a problem with the painter trainee. We might have to investigate the apprentice status with Mel down there on the bottom, Mel Bando. So we don't know whether or not he's going to be an actual apprentice or not. So if he's not, he's going to be bumped up to the regular painter journeyman rate. So for this example if you have the printout you'll see that I listed the painter rate and the laborer rate at the bottom or ease of using the experiment. And this whole exercise is not so much to check whether the amounts are correct. This exercise is about spotting a possible error. Alright and not having to do the math so much as looking at the way they're doing it and identify problems of a bigger scope. So let's see. Jane is a painter and she worked on Sunday. And Sunday was straight time. And the contractor would say but she only worked 16 hours for the week. But she worked on a Sunday. So that Sunday, those 8 hours have to be recorded as overtime. So that's a problem I can see right away. So now maybe this contractor doesn't really understand about that. Oh look we have a laborer down below. Same problem, working on Sunday. Sunday again Albert. Everybody who worked on Sunday's going to be paid overtime. Let's see. Well let's suppose that Mel is an apprentice and maybe they just didn't write down the level and the indenture date that he's an apprentice. So let's see Mel worked on Sunday, Monday, Wednesday and Thursday. So who worked with Mel? Well looks like everybody was working on Sunday so we're not going to have an apprentice journeyman ratio problem. And it looks like he had a couple people working on Monday. And then he worked on Wednesday. He worked with other people. They were laborers, look, and not painters. So he didn't work with any painters on Monday, Wednesday or Thursday. He didn't work with any painters. So he's going to be bumped up to a journeyman rate even if he's a legitimate apprentice because his ratio wasn't met, which is unfortunate. Now automatically we spotted these problems. Well I picked this particular week. This is the week ending March 29, 2014. So this was 23rd, 24, 25, 26, 27, 28, 29. And if anybody has a calendar in front of them they will know there with a holiday that week. And that holiday was Kuhio Day. So everybody who worked on Kuhio Day needs to be paid overtime. And I think it was Wednesday, 26th? So all those people who worked on Wednesday need to be paid overtime. Picking one of these obscure State holidays, is a great way, see this Wednesday. All these people need to be paid overtime because it was a State holiday. And this is a great way to do spot checks on some of these certified payrolls that you look at because when you see that people work that got paid overtime on a State holiday, it's an indication that they understand how it works. And that's a good thing. It's a good spot check if you can't check everything. So we already know from this. We don't know anything about the project; we haven't been there. We already really know that we have a painting project with only one painter working two days and everybody else who worked on it was not a painter. So this is probably a problem. Before we even get how much they were paid, we already know that they didn't get paid overtime. So I would recommend pointing out these problems to the contractor and asking for them to fix them and make the additional payments that have to be made. And file an amended form. You'll notice up here there's a check mark for this amended form. And that's a legitimate correction that people can have and not get a

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

penalty if they fix it. You and the contractor can fix it without getting a penalty because we are interested in compliance, not getting people in trouble. Again we have this date problem right. Although they're submitting it late, it looks like they paid. Here's week ending the 29th, but they paid April 4th. They're paying on a timely basis weekly but they're just not submitting timely. I don't understand why that wouldn't happen. If they haven't paid them, they can submit the paperwork. So I hope this exercise helps you look at there are ways to be able to make spot checks that don't take a lot of time and will help you get your projects done on a timely basis. Now I have a couple more slides.

Slide 38

I wanted to point out that the penalty structure has been changed. This current SB2260 CD1 went to the governor and we suspect the governor will sign it. So now when people are suspended, not only will they have suspension for three years, they will also have to pay a \$10,000 penalty to get back on the list after that three years. The notification of violation structure has not changed. We believe this is a complicated law and we try to maintain the opportunity for those contractors who are trying to comply to provide reasonable penalties - first, second, or third depending on how many mistakes you've made within a certain amount of time. We rarely got a third violation and which is why we invoke this suspension for delay or certification of falsified payrolls. So if you have people that are working 10 hours a day 6 days a week and they're reporting that their employees are working 4 hours a day for five days a week that's falsification. Alright, that is cause for suspension. If they're reporting less hours on their certified payrolls than they are actually working, that's a violation and you're going to say, how are you going to find out? How are we going to find out? We're not out there. Sometimes you're not even out there. How we find out is that there are people that are out there that are watching. And they're making sure that the people that are on that job are going to show up on that certified payroll. The other way we're going to find out is that the employee no longer works for the contractor and typically that happens after the job and that employee comes to us and makes a complaint and says oh no he did that all the time he would put us down as working for 4 hours but we really were working for 10 or 8 hours a day all the time. And we go and investigate and we find out that that's the case. Well that is going to take a long time to prove and to go through because those types of omission cases are a problematic so I would be sure to monitor your contracts and your work so that we don't have this kind of cheaters. But these are the kind of people that we want to defend.

Slide 39

This is my summary page and if you're not working on a project or you forget about this, these are five things that you can do to check your certified payroll that'll be helpful in the future if you think about. Number one overall if you have a painting job, do you have painters? If you have an electrician job, do you have electricians? Look at the overall work that you saw the week before and is it reflected on the certified payrolls by the classifications you're seeing? Look at the apprentice ration. This is a big problem. Make sure that everybody's covered. The third thing on the list is wages - overtime. If you see anybody working on Saturday and Sunday, State holidays, are they getting paid overtime? If they're more than 8 hours a day, overtime. Is it timely? If you can monitor these four things, it's likely that your contractors are going to get the issues correct. And we saw how easy it is to check these things without

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

having to spend too much time. So the fifth thing, the signature and the itemized fringe benefits. These are nonmonetary problems. If people don't do this they can get a penalty and they did everything right. So these are things that are easy to check just by eyeballing. And finally the bonus and I give a similar class to contractors as well which is why I say protect employees and reduce redaction. For the contractors, they're protecting they're employees. They don't want to have private information on public documents. And I say reduce redaction as contracting agencies require your contractors to remove that private information and reminding them these are public documents. You still have to have that information but put it on a separate sheet. And keep that confidential information separate.

Slide 40

As a little bonus, this is legislative updates that are pending governor's approval. We expect all these to be signed in our office. We have that SB2260 which I mentioned previously expands the penalties and has other housekeeping issues that aren't going to substantially change except for the penalty issue the way the law is currently enforced. So it may be unnoticeable. We also had this bill passed which we feel is already covered. It talks about public-private partnerships being covered. We thought okay that is just articulating a different way. But you saw how broad that Public Works definition is. And so we would consider these public-private partnerships already covered. The other thing is, this doesn't relate to prevailing wage directly, but pay cards were passed as an acceptable form as long as employees voluntarily wanted to do that. And there's a whole bunch of different requirements that they have to do with the notification and fees and all that stuff. And everybody I'm sure heard that the minimum wage has changed but at the prevailing wage environment, we're so far away from \$10.10 that this isn't going to affect what you guys are doing but of understanding that these things are going on I thought was important for you all.

Slide 41

Now this is my last slide so what I'm going to do is go over the slide and then I'm going to go back to the questions. And I'm going to answer the questions from where I left off. Now I pointed out our website. That 586-8771 number is right to my secretary so you don't get the general number. And I have a blog called Inside Hawaii Wage Standards and the DLIR which has some interesting information on it about different things. You might want to check that if you're looking for something. Or you could follow me and see if anything comes up. And the facebook is mostly for the kids because we do child labor as well. And when we leave from this, there will be a popup evaluation that we encourage you to fill out because SPO needs that very much and we actually respond to that as well. So now I'm going go to the questions that I left off at.

Q: According to 12-22-2B, truck drivers are exempt from Chapter 104 if they are hauling excavated material from a public works site for disposal if they are only on the public works site to have their trucks filled. Has this changed?

A: No exactly they're only on the site to have their trucks filled and to dump somewhere else. Now if they're dumping the material to another public site. That changes the facts. But if they're taking the material away for another reason, this is something where they would be not included.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Q: Similar question to the third party delivering aggregate. What about third party trucking service hauling excavated material offsite?

A: That's actually a similar question to the one we just talked about. It does depend on where they're hauling it to and what the contract is for and the excavated material, what it's going to be used for. So again I'm not going to say that it's never included. I'm going to say that's typically the best case scenario for it to be excluded.

Q: CPR shows 8.5 and they revise to 8 hours.

A: If the certified payroll shows 8.5 hours and they didn't show overtime and now they revise it to 8 hours, I would question that. Did they downgrade it so they didn't have to pay overtime, which is falsification, okay. If you observe them working 8.5 hours and they're not including half an hour overtime, that's falsification. Remind them that falsification for one time and you get suspended for three years. So if see 8.5 hours and say to them oh you didn't pay overtime and the form that you get back says 8 hours make sure that they really just made a mistake, but if you saw them working 8.5 hours, I would tell them they have to pay the half an hour overtime because that's falsification what they just did.

Q: Please clarify how is delivering cones from a slow moving truck to set up a lane closure and then leave different from a truck delivering cement? The truck driver for the cement truck has to work levers to deliver the cement.

A: I think they're the same. They're both included. I think that the two situations are very similar and I know there are some situations where cement trucks are not included and I don't want to go into some details about specific instances. But I would love for this person to call our office and speak with Wes Lum about these fine differences. As I said truck drivers are always problematic and many cement truck drivers are included so that's my answer to that one.

Q: The OT hours situation can come up even if the PM has not observed the hours, can show up on the CPR.

A: The OT question can come up and a lot of times the project manager has not observed it. So that's why we need to have people certify that these are the hours that worked and that this is what I paid them. So I agree that you can't observe everything. If you have information that you know things are untrue on the certified payroll then you need to have that rectified. Believe me the problems come after the job and you're trying to close the job and we have an employee who's complaining about something and now we're saying whoa, whoa, whoa we have this problem and you can't close the job because now we're going to say you need to withhold \$50,000, \$100,000 because we have a problem. So you don't want to do that. So if you suspect those types of problems even if you didn't observe it try to rectify that beforehand.

Q: Okay here's a reworded question. If you notice OT not being paid on the CPR, certified payroll shows employee worked 8.5 hours in a day but paid no OT and you bring it to the contractors attention and they revise the CPR to remove the OT hours (now only shows 8 hours). Is this acceptable?

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

A: I think that question answered. I hope it is. If they actually worked 8.5 hours and now it's revised to show only 8 hours either they made a mistake; they only worked 8 hours. Or they just don't want pay overtime. So I would clarify that and I would talk to the employee on the timing of that got changed if you suspect. I think some people know who the bad guys are and who the slimy ones are. So you need to exercise some control to get your project done on a timely basis and try to keep us out of it. We want to help, but we also don't want to have employees come at a point where all we're going to do delay your finishing of the project.

Q: The amount to pay for straight time \$61.17, bottom showed \$60.17.

A: Okay in that slide I was showing how somebody who pays a fringe benefit on a monthly basis may be able to take a credit for the fringe benefits they're taking. So they're not paying hourly to say a union but instead they're paying monthly and we figured out that we used the example from the previous slide where the employer was paying \$173 to HMSA for health care benefits and so when you use that number divided by 173 you get a dollar an hour benefit so that the \$60.17 would be the prevailing wage number that we want to see if that employer was taking a dollar credit for the straight time. I hope that's clear. Feel free to call and we can go over those details. I know that's a confusing thing it's confusing for contractors too, which is why I think if you understand how works maybe you can help them.

Q: Can no work performed certified payroll be submitted to include multiple work weeks if they are concurrent?

A: That's an interesting thing. The law does not require you to submit a certified payroll report if you did not work. The contract probably does. So the contract that you sign with your contractor, the contract may say you have to submit certified payrolls for every week. So if it says that then that agreement that you have with your contractor is between you and your contractor. The law only requires you to submit the certified payroll for the weeks that you worked. So that's why a lot of times the contracting agency puts it in their contract that they want to see that you didn't work. And that's fine. That's an agreement that you can have in your own agency and I know a lot of agencies do require that but that's a contractual thing and not within the law. If you actually worked, you could never submit a certified payroll for more than one week.

Q: Is this form mandatory or can a version of this form suffice if the wording is not the same does not have "penalty of perjury" or the reaffirmation of the information provided, would that lessen the vendor's liability if the document submitted was to represent certified payroll?

A: I would caution you that if you're going to change the language of the statement of compliance that you consult with your AG or you're county attorney that you have to make sure that you give the proper language for the type of requirement that the law says that they have to. So I would consult with your agency AG on that question.

Q: You need to wrap this up.

A: I agree.

SPO 185 - Prevailing Wage, Certified Payroll & Contracting Agency Responsibilities

Q: What is a pay card?

A: That is something that is like a debit card instead of a paycheck.

Q: How do we handle part time employees?

A: Only report the hours that they work on the certified payroll.

Q: Please repeat the contact information to discuss the concrete delivery truck driver.

A: Wes Lum you can call 586-8771. He is the compliance branch chief and he is full of information and a great contact to have.

Q: How can we get copied of the slides?

A: If you go to SPO 185 on the SPO webpage for the workshop the slides are there. Oh Andrew answered that. Click on the second link. So, great.

So I think that's all there is right. You're welcome. Someone said thank you. You're welcome and I hope that this has made it an easier thing for you all. And we are always available to discuss the specific problems to your agency and we are an enforcement team and we do want to be your bad cop. We hope you can be your good cop. Let us be your hammer and you guys get everything that you need. So I'm going to close this out. And you're going to fill out your evaluation. So thank you very much everyone.