

## Ben Mulligan

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**From:** Scavera, Paula D (DOL) [paula.scavera@alaska.gov]  
**Sent:** Wednesday, February 10, 2010 10:46 AM  
**To:** Ben Mulligan  
**Subject:** FW: Request from H-FIN Committee

Answers to your questions.

1. Would those employing signature gatherers under an hourly wage fall under the basic labor rules of other employers? i.e. have to pay minimum wage, unemployment insurance, etc.

Employment Security Division

Answer: Yes, under the Employment Security Act, the circulators would be receiving remuneration for services performed, therefore the payments would fall under the definition of "wages" as provided in AS 23.20.530(a). In addition, under the proposed language, the circulators would most likely not meet the criteria for exclusion under AS 23.20.525(a)(8)(A),(B),(C) as independent contractors.

The only exclusions available might be under the provisions of AS 23.20.526(a)(3) if the service performed during the quarter was outside the employer's trade or business, performed by an individual that was not regularly employed and the remuneration was under \$50. An exclusion might also exist under AS 23.20.525(a)(4) if the employer is a non-profit organization that pays any individual less than \$250 a quarter and has less than 4 employees during the current or preceding calendar year.

Division of Labor Standards and Safety

Answer: The method of payment, whether on a per signature rate or hourly rate basis, does not affect minimum wage status. The key issue from a minimum wage perspective is whether the individual is an employee or an independent contractor. Although the payment of an hourly wage tends to indicate an employer/employee relationship due to limitations on the alleged employee's ability to have a profit or loss based on their managerial skill, it is not sufficient to make a determination without considering other factors. These factors must be considered as a whole to determine whether an individual is indeed in business for themselves rather than simply working for and at the direction of an employer. The following criteria established by the Alaska Supreme Court in *Jeffcoat v. State, Department of Labor*, Sup Ct. Op. No. 3162 (File No. S-1444), 732 P.2d 1073 (1987):

- The degree of the alleged employer's right to control the manner in which the work is to be performed;
- The alleged employee's opportunity for profit or loss depending on their managerial skill;
- The alleged employee's investment in equipment or materials required for their task, or their employment of helpers;
- Whether the service rendered requires a special skill;
- The degree of permanence of the working relationship; and
- Whether the service rendered is an integral part of the alleged employer's business.

2. The way the bill is currently written, it gives signature gatherer employers the option of giving bonuses as well as hourly, I don't know if that makes a difference to labor. What employers responsibilities would these initiative groups now fall under in regards to labor laws?

Employment Security Division

Answer: Under the proposed language, these bonuses payments are based on service performed by the circulator and would also fall under the definition of wages.

Division of Labor Standards and Safety

Answer: If the signature gatherers were employees and the employer had four employees or more, then a non-discretionary bonus payment would affect the hourly rate and require an additional overtime payment for any overtime hours worked during the time period over which the bonus was earned. (The full explanation of the impact of bonus payments on overtime pay is complex, so I have only given a limited explanation).

This is the answer to both questions from the Workers Compensation Division.

The entity employing the person could be an employer and the initiative circulator could be an employee under the broad definition contained in the Workers' Compensation Act (AS 23.30.395(19) and (20)). Initiative circulators or similar persons are not specifically exempted under AS 23.30.230(a), .237 - .242. However, AS 23.30.230(b) provides that "the exclusion of certain persons under (a) of this section may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter." I would err on the side of inclusion and carry workers' compensation absent a specific exclusion by the legislature.

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**From:** Ben Mulligan [mailto:Ben\_Mulligan@legis.state.ak.us]  
**Sent:** Tuesday, February 09, 2010 8:24 AM  
**To:** Scavera, Paula D (DOL)  
**Subject:** Request from H-FIN Committee

Ms. Scavera,

Yesterday in the House Finance Committee we were deliberating House Bill 36, relating to initiatives: contributions/procedures. In Section 10 of the bill they change the way a initiative circulator is paid from a pay per signature basis to an hourly wage with some options. The committee had some questions regarding this section and I thought Dept. of Labor would be a good start.

- Would those employing signature gatherers under an hourly wage fall under the basic labor rules of other employers? i.e. have to pay minimum wage, unemployment insurance, etc.
- The way the bill is currently written, it gives signature gatherer employers the option of giving bonuses as well as hourly, I don't know if that makes a difference to labor. What employers responsibilities would these initiative groups now fall under in regards to labor laws?

Here is the link to the current version of the bill: <http://www.legis.state.ak.us/PDF/26/Bills/HB0036C.PDF>.

Thank you for your assistance.

Ben Mulligan  
Staff to Rep. Stoltze  
House Finance Committee Aide