

Sec. 23.10.070. Exemptions from minimum wage.

To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 – 23.10.150 of

(A) (1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time that are fixed by the commissioner; and

(B) (2) an apprentice at the wages that are approved by the commissioner; or

(B) (3) a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the commissioner.

Sec. 23.10.050. Public policy.

It is the public policy of the state to

(C) (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being, and

(D) (2) safeguard existing minimum wage and overtime compensation standards that are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards that do not provide adequate standards of living.

Observable Conflicts:

(A): An individual deemed to be impaired by physical or mental deficiency, age, or injury is not expected to overcome such to achieve a status which will warrant receiving a higher compensation for their duties. By allowing for the commissioner to limit the potential earnings of someone due to their perceived capabilities rather than demonstrated abilities, this statute allows for discrimination against a group of people for their implied ability or lack thereof rather than their demonstrated capability. Furthermore, an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury is only such because of AS 23.10.070 which allows for their earning capacity to be limited. A federal minimum wage was established by the Fair Labor Standards Act (FLSA) of 1938, and although it has undergone a multitude of amendments (including a June 26, 1940 amendment to prescribe the establishment of special industry committees to determine the minimum wage levels applicable in Puerto Rico and the U.S. Virgin Islands as to avoid damage to their economies), the minimum wage remains as a tool to support wagedworkers and decrease class stratification.

(B): An individual deemed to be an apprentice, by definition, is "a person who is learning a trade from a skilled employer, having agreed to work for a fixed period at low wages." A learner, by definition, is "a person who is learning a subject or skill." Both categories of individuals can be reasonably expected to increase their skill set and eventually expect to receive higher wages upon successful completion of their respected and agreed-upon apprenticeship or training program. Furthermore, the skill level of apprentices or learners is to be determined by the employer, not the commissioner. An agreement to work for low wages is not comparable to mandated low wages.

(C): A minimum wage compensation standard is set for workers consistent with their health, efficiency, and general well-being; however, having a disability does not implicate that the disabled individual is inefficient at their assigned duties, is not of sound health, and is not in a state of general well-being. These assumptions are discriminatory in-nature as they are based on a foundation that is not inherently demonstrable or able to be charted and displayed in a manner by which a standard can be created and enforced; therefore, the interpretation of an individual's health, efficiency, and general well-being cannot directly correlate with one's diagnosed disability. Furthermore, individuals can suffer from undiagnosed conditions which drastically impact their health, efficiency, and well-being due to emotional distress or related factors; these are realities among all people, not just groups officially labeled to be impaired by physical or mental deficiency, age, or injury. If an employer should choose to not hire an individual, or terminate their employment, due to an individual's inability to complete work tasks, that has been determined to be an acceptable practice; however, hiring and firing operations (without regard to equal opportunity transgressions) remain the sole responsibility of the staffing agencies, whereas enforcing minimum wage requirements remains the responsibility of the legislature and appointed commissions.

(D): Safeguarding minimum wage compensation standards that are adequate to maintain health, efficiency, and general well-being of workers is severely negatively impacted when said workers are permitted to be paid less than the determined living wage; inversely, if the qualm of the legislature is to protect workers against the unfair competition of wage and hour standards that do not provide adequate standards of living, then all workers should be paid the minimum wage to avoid a business from hiring strictly workers deemed to be worthy of being compensated less than the minimum wage. Regardless of how one should approach the protection aspect, the crucial understanding in this matter is the damage inflicted upon all workers when specific groups are targeted and deemed less worthy than their fellow workers and compensated accordingly.