



Representative Chris Tuck

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MEMORANDUM

March 1, 2022

TO: House Judiciary Committee
Chair Rep. Matt Claman

FROM: Rep. Chris Tuck

SUBJ: Re: Alaska Wage and Hour Act – Sec 23.10.050 and Sec 23.10.055

Article 3. Alaska Wage and Hour Act.

Sec. 23.10.050. Public policy.

It is the public policy of the state to

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

(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.

Sec. 23.10.055. Exemptions; compensation of executives, administrators, and professionals.

(a) The provisions of [AS 23.10.050](#) — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, or delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating, farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the handpicking of shrimp;

(4) an individual employed in domestic service, including a babysitter, in or about a private home;

(5) an individual employed by the United States or by the state or a political subdivision of the state, except as provided in [AS 23.10.065\(b\)](#), including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the nonprofit activities of a nonprofit religious, charitable, cemetery, or educational organization or other nonprofit organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis and are related only to the organization's nonprofit activities; in this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed

(A) in a bona fide executive, administrative, or professional capacity;

(B) in the capacity of an outside salesman or a salesman who is employed on a straight commission basis; or

(C) as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week;

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple;

(13) an individual who drives a taxicab, who is compensated for taxicab services exclusively by customers of the service, and whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based on flat contractual rates and not

based on a percentage share of the individual's receipts from customers, and whose written contract with owners of taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that the contract places no restrictions on hours worked by the individual or on areas in which the individual may work except to comply with local ordinances;

(14) a person who holds a license under [AS 08.54](#) and who is employed by a registered guide-outfitter or master guide-outfitter licensed under [AS 08.54](#), for the first 60 workdays in which the person is employed by the registered guide-outfitter or master guide-outfitter during a calendar year;

(15) an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of [AS 47.27](#) (Alaska temporary assistance program);

(16) an individual who

(A) provides emergency medical services only on a voluntary basis;

(B) serves with a full-time fire department only on a voluntary basis; or

(C) provides ski patrol services on a voluntary basis;

(17) a student participating in a University of Alaska practicum described under [AS 14.40.065](#);

(18) an individual who is employed by a motor vehicle dealer and whose primary duty is to

(A) receive, analyze, or reference requests for service, repair, or analysis of motor vehicles;

(B) arrange financing for the sale of motor vehicles and related products and services that are added or included as part of the sale; or

(C) solicit, sell, lease, or exchange motor vehicles.

(b) Notwithstanding (c) of this section, an individual employed in a bona fide executive, administrative, or professional capacity shall be compensated on a salary or fee basis at a rate of not less than two times the state minimum wage for the first 40 hours of employment each week, exclusive of board or lodging that is furnished by the individual's employer.

(c) In (a)(9) of this section,

(1) "bona fide executive, administrative, or professional capacity" has the meaning and shall

be interpreted in accordance with 29 U.S.C. 201 — 219 (Fair Labor Standards Act of 1938), as amended, or the regulations adopted under those sections;

(2) “computer systems analyst, computer programmer, software engineer, or other similarly skilled worker” has the meaning and shall be interpreted in accordance with 29 U.S.C. 201 — 219 (Fair Labor Standards Act of 1938), as amended, or the regulations adopted under those sections;

(3) “outside salesman” means an employee

(A) who is customarily and regularly away from the employer's place of business; and

(B) whose primary duty is making sales or contracts for sales, consignments, or shipments, or obtaining orders for services or for use of facilities for which consideration will be paid by the client or customer;

(4) “salesman who is employed on a straight commission basis” means an employee

(A) who is customarily and regularly employed on the business premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales or contracts for sales, consignments, shipments, or obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose primary duty is making sales or contracts for sales, consignments, shipments, or obtaining orders for service or the use of facilities for which a consideration will be paid by the client or customer.

(d) In (a)(18) of this section,

(1) “lease” means a contract by which a person owning a motor vehicle grants to another person the right to possess, use, and enjoy the motor vehicle for a specified period of time in exchange for periodic payment of a stipulated price and in which the use of the vehicle is granted for a period of at least 12 months;

(2) “motor vehicle” has the meaning given in [AS 45.25.990](#);

(3) “motor vehicle dealer” has the meaning given in [AS 08.66.350](#), except that, in this paragraph, notwithstanding the definition of “motor vehicle dealer” given in [AS 08.66.350](#), “motor vehicle” has the meaning given in this section.