

CS FOR HOUSE BILL NO. 115(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 3/24/95

Offered: 3/17/95

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to settlement and payment of claims for overtime compensation
2 claims and to liquidated damages and attorney fees for overtime compensation
3 claims."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 23.10.110(a) is amended to read:

6 (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is
7 liable to an employee affected in the amount of unpaid minimum wages, or unpaid
8 overtime compensation, as the case may be, and, except as provided in (d) of this
9 section, in an additional equal amount as liquidated damages.

10 * **Sec. 2.** AS 23.10.110(c) is amended to read:

11 (c) The court in an action brought under this section shall, in addition to a
12 judgment awarded to the plaintiff, allow costs of the action and, except as provided
13 in (e) - (h) of this section, reasonable attorney fees to be paid by the defendant. The
14 attorney fees in the case of actions brought under this section by the commissioner

1 shall be remitted by the commissioner to the Department of Revenue. The
2 commissioner may not be required to pay the filing fee or other costs. The
3 commissioner in case of suit has power to join various claimants against the same
4 employer in one cause of action.

5 * **Sec. 3.** AS 23.10.110 is amended by adding new subsections to read:

6 (d) In an action under (a) of this section to recover unpaid overtime
7 compensation or liquidated damages for unpaid overtime, if the defendant shows by
8 clear and convincing evidence that the act or omission giving rise to the action was
9 made in good faith and that the employer had reasonable grounds for believing that the
10 act or omission was not in violation of AS 23.10.060, the court may decline to award
11 liquidated damages or may award an amount of liquidated damages less than the
12 amount set out in (a) of this section.

13 (e) If the plaintiff prevails in an action for unpaid overtime compensation
14 under (a) of this section, the court shall award reasonable attorney fees to the plaintiff
15 unless the defendant shows by clear and convincing evidence that the act or omission
16 giving rise to the action was made in good faith and that the defendant had reasonable
17 grounds for believing that the act or omission was not in violation of AS 23.10.060,
18 in which case

19 (1) the court may award attorney fees to the plaintiff in accordance
20 with court rules; or

21 (2) if the defendant would be entitled to attorney fees if the action were
22 subject to the standards under court rule offers of judgment, the court may not award
23 attorney fees to either the plaintiff or the defendant.

24 (f) If the defendant prevails in an action for unpaid overtime compensation
25 under (a) of this section and had previously made an offer of judgment to the plaintiff,
26 the court shall award attorney fees to the defendant unless the plaintiff proves to the
27 satisfaction of the court that the action was both brought and prosecuted in good faith
28 and that the plaintiff had reasonable grounds for believing that the act or omission was
29 in violation of AS 23.10.060. If the court awards attorney fees to the defendant, the
30 award shall be made in accordance with court rule.

31 (g) Failure to inquire into Alaska law is not consistent with a claim of good

1 faith under this subsection.

2 (h) Subsections (d) - (g) of this section do not apply to an action brought
3 under this section by the commissioner.

4 (i) The commissioner may supervise the payment of the unpaid overtime
5 compensation owing to an employee under AS 23.10.060. Payment in full in
6 accordance with an agreement by an employee to settle a claim for unpaid overtime
7 compensation or liquidated damages for unpaid overtime compensation constitutes a
8 waiver of any right as to this claim the employee may have under (a) of this section
9 to unpaid overtime compensation or liquidated damages for unpaid overtime
10 compensation.

11 (j) In a settlement for unpaid overtime compensation that is not supervised by
12 the department or the court, an employee is entitled to liquidated damages under (a)
13 of this section unless the employee and the employer enter into a written settlement
14 agreement in which the employee expressly waives the right to receive liquidated
15 damages. A private written settlement agreement under this subsection is not valid
16 unless submitted to the department for review. The department shall review the
17 agreement and approve it if it is fair to the parties. The department shall approve or
18 deny an agreement within 30 days of receipt. A waiver of liquidated damages may
19 not be a condition of employment.

20 * **Sec. 4. APPLICATION OF ACT.** (a) AS 23.10.110(i), added by sec. 3 of this Act,
21 applies to agreements entered into on or after the effective date of this Act.

22 (b) AS 23.10.110(j), added by sec. 3 of this Act, applies to written agreements entered
23 into on or after the effective date of this Act.

24 (c) Except as provided in (a) and (b) of this section, this Act applies to wages earned
25 for hours worked on or after the effective date of this Act.