

SENATE BILL NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 1/23/95

Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to settlement and payment of claims for minimum wage and
2 overtime compensation claims and to liquidated damages and attorney fees for
3 minimum wage and overtime compensation 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) - (f) of**
9 **this 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 **prevailing party** [PLAINTIFF], allow costs of the action and
13 reasonable attorney fees to be **determined according to court rule. When the**
14 **commissioner is the prevailing party in an action brought under this section, the**

1 commissioner shall remit the recovered attorney fees [PAID BY THE
2 DEFENDANT. THE ATTORNEY FEES IN THE CASE OF ACTIONS BROUGHT
3 UNDER THIS SECTION BY THE COMMISSIONER SHALL BE REMITTED BY
4 THE COMMISSIONER] to the Department of Revenue. The commissioner may not
5 be required to pay the filing fee or other costs. The commissioner in case of suit has
6 power to join various claimants against the same employer in one cause of action.

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

8 (d) In an action under (a) of this section to recover unpaid minimum wages,
9 unpaid overtime compensation, or liquidated damages, if the employer shows to the
10 satisfaction of the court that the act or omission giving rise to the action was made in
11 good faith and that the employer had reasonable grounds for believing that the act or
12 omission was not in violation of AS 23.10.050 - 23.10.150, the court may decline to
13 award liquidated damages or may award an amount of liquidated damages less than
14 the amount set out in (a) of this section. The court shall, in a manner consistent with
15 applicable federal and state law, determine whether good faith has been established.
16 This subsection does not apply to an action brought under this section by the
17 commissioner.

18 (e) The commissioner may supervise the payment of the unpaid minimum
19 wages or unpaid overtime compensation owing to an employee under AS 23.10.060
20 or 23.10.065. Payment in full in accordance with an agreement by an employee to
21 settle a claim for unpaid minimum wages, unpaid overtime compensation, or liquidated
22 damages constitutes a waiver of any right the employee may have under (a) of this
23 section to unpaid minimum wages, unpaid overtime compensation, or liquidated
24 damages.

25 (f) In a settlement that is not supervised by the department or the court, an
26 employee is entitled to liquidated damages under (a) of this section unless the
27 employee and the employer enter into a written settlement agreement in which the
28 employee expressly waives the right to receive liquidated damages. The waiver must
29 be knowing and voluntary. A waiver may not be considered to be knowing and
30 voluntary unless the settlement agreement

31 (1) is written in a manner calculated to be understood by the employee;

- 1 (2) specifically waives rights or claims arising under (a) of this section;
2 (3) advises the employee to consult with an attorney or with the
3 department before entering into the agreement;
4 (4) allows the employee at least seven calendar days to consider
5 whether to accept the offer of settlement; and
6 (5) provides for a period of at least five days after the employee enters
7 into the agreement in which the employee may revoke the agreement; the settlement
8 agreement may not become effective or enforceable until the revocation period has
9 expired.

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

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

14 (c) Except as provided in (a) and (b) of this section, to the extent constitutionally
15 permitted, this Act applies to actions commenced on or after the effective date of this Act.