

HOUSE BILL NO. 255

IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 4/9/03

Referred: Labor and Commerce, Finance

A BILL**FOR AN ACT ENTITLED**

1 **"An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour**
 2 **plans, the provision of training wages, and the definitions of certain terms; and**
 3 **repealing the exemption in the Act from the payment of minimum wages for learners."**

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

5 * **Section 1.** AS 23.10.055(9) is amended to read:

6 (9) an individual employed in a bona fide executive, administrative, or
 7 professional capacity or in the capacity of an outside salesman or a salesman who is
 8 employed on a straight commission basis; **for purposes of this paragraph,**
 9 **"executive capacity," "administrative capacity," and "professional capacity"**
 10 **have the meanings given in the federal regulations defining those terms as used in**
 11 **sec. 13(a)(1) of the Fair Labor Standards Act of 1938, as amended;**

12 * **Sec. 2.** AS 23.10.060(a) is amended to read:

13 (a) An employer who employs employees engaged in commerce or other
 14 business [,] or in the production of goods or materials in the state may not employ an

1 employee for a workweek longer than 40 hours or for more than eight hours a day.
 2 This section does not apply to the employment of a person acting in a supervisory
 3 capacity. **In this subsection, "supervisory capacity" means the primary duties**
 4 **performed by an employee who is employed solely for the purpose of regularly**
 5 **assigning and directing the activities of other employees and is responsible for**
 6 **results of the work performed.**

7 * **Sec. 3.** AS 23.10.060(d) is amended to read:

8 (d) This section does not apply with respect to

9 (1) an employee employed by an employer employing less than four
 10 employees in the regular course of business, as "regular course of business" is defined
 11 by regulations of the commissioner;

12 (2) an employee employed in handling, packing, storing, pasteurizing,
 13 drying, preparing in their raw or natural state, or canning agricultural or horticultural
 14 commodities for market, or in making cheese or butter or other dairy products;

15 (3) an employee of an employer engaged in small mining operations
 16 where not more than 12 employees are employed if the employee is employed not in
 17 excess of 12 hours a day or 56 hours a week during a period or periods of not more
 18 than 14 workweeks in the aggregate in a calendar year during the mining season, as
 19 the season is defined by the commissioner;

20 (4) an employee engaged in agriculture;

21 (5) an employee employed in connection with the publication of a
 22 weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

23 (6) a switchboard operator employed in a public telephone exchange
 24 that has fewer than 750 stations;

25 (7) an employee in an otherwise exempted employment or proprietor
 26 in a retail or service establishment engaged in handling telegraphic, telephone, or radio
 27 messages for the public under an agency or contract arrangement with a telegraph or
 28 communications company where the telegraph message or communications revenue of
 29 the agency does not exceed \$500 a month;

30 (8) an employee employed as a seaman;

31 (9) an employee employed in planting or tending trees, cruising, or

1 surveying, or bucking, or felling timber, or in preparing or transporting logs or other
2 forestry products to the mill, processing plant, railroad, or other transportation
3 terminal if the number of employees employed by the employer in the forestry or
4 lumbering operations does not exceed 12;

5 (10) an individual employed as an outside buyer of poultry, eggs,
6 cream, or milk in their raw or natural state;

7 (11) casual employees as may be liberally defined by regulations of the
8 commissioner;

9 (12) an employee of a hospital whose employment includes the
10 provision of medical services;

11 (13) work performed by an employee under a flexible work hour plan
12 if the plan is included as part of a collective bargaining agreement;

13 (14) work performed by an employee under a voluntary flexible work
14 hour plan if

15 [(A)] the employee and the employer have signed a written
16 agreement [AND THE WRITTEN AGREEMENT HAS BEEN FILED WITH
17 THE DEPARTMENT; AND

18 (B) THE DEPARTMENT HAS ISSUED A CERTIFICATE
19 APPROVING THE PLAN THAT STATES THE WORK IS FOR 40 HOURS
20 A WEEK AND NOT MORE THAN 10 HOURS A DAY; FOR WORK OVER
21 40 HOURS A WEEK OR 10 HOURS A DAY UNDER A FLEXIBLE WORK
22 HOUR PLAN NOT INCLUDED AS PART OF A COLLECTIVE
23 BARGAINING AGREEMENT, COMPENSATION AT THE RATE OF ONE
24 AND ONE-HALF TIMES THE REGULAR RATE OF PAY SHALL BE
25 PAID FOR THE OVERTIME];

26 (15) an individual employed as a line haul truck driver for a trip that
27 exceeds 100 road miles one way if the compensation system under which the truck
28 driver is paid includes overtime pay for work in excess of 40 hours a week or for more
29 than eight hours a day and the compensation system requires a rate of pay comparable
30 to the rate of pay required by this section;

31 (16) an individual employed as a community health aide by a local or

1 regional health organization as those terms are defined in AS 18.28.100;

2 (17) work performed by a mechanic primarily engaged in the servicing
3 of automobiles, light trucks, and motor homes if the mechanic

4 (A) is employed as a flat-rate mechanic by a nonmanufacturing
5 establishment primarily engaged in the business of selling or servicing motor
6 vehicles;

7 (B) has signed a written agreement with the employer that
8 specifies the mechanic's flat hourly rate of pay and the automotive manual or
9 manuals on which the flat rate is to be based;

10 (C) is compensated for all hours worked in any capacity for
11 that employer up to and including eight hours a day and 40 hours a week at an
12 hourly rate that is not less than the greater of

13 (i) 75 percent of the flat hourly rate of pay agreed upon
14 by the employer and employee under (B) of this paragraph; or

15 (ii) twice the state minimum wage; and

16 (D) is compensated for all hours worked in any capacity for
17 that employer in excess of eight hours a day or 40 hours a week at one and
18 one-half times the rate described in (C) of this paragraph;

19 (18) work performed by an employee under a voluntary written
20 agreement addressing the trading of work shifts among employees if

21 (A) the employee is employed by an air carrier subject to
22 subchapter II of the Railway Labor Act (45 U.S.C. 181-188), including
23 employment as a customer service representative;

24 (B) the trading agreement is not a flexible work hour plan
25 entered into under (13) or (14) of this subsection;

26 (C) the trading agreement is filed with the employee's
27 employer; and

28 (D) the trading agreement states that the employee is not
29 entitled to receive overtime for any hours worked by the employee when the
30 employee voluntarily works those hours under a shift trading practice under
31 which the employee has the opportunity, in the same or other work weeks, to

1 reduce hours worked by voluntarily offering a shift for trade or reassignment.

2 * **Sec. 4.** AS 23.10 is amended by adding a new section to read:

3 **Sec. 23.10.072. Training wages.** (a) Notwithstanding AS 23.10.065, an
4 employer may pay a newly hired employee who is less than 20 years of age a wage
5 that is not less than \$5.15 an hour during the first 90 consecutive calendar days after
6 the employee is initially employed by the employer. An employer may not take an
7 action to displace an employee, including partial displacements such as reduction in
8 hours, wages, or employment benefits, for purposes of hiring individuals at the wage
9 authorized in this subsection.

10 (b) The wage authorized by (a) of this section does not apply once the
11 employee has attained 20 years of age.

12 * **Sec. 5.** AS 23.10.070(3) is repealed.