

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 2ND COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 101

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to prescribe minimum wage and over-
7 time compensation standards for employees
8 to be known as the "Alaska Wage and Hour
9 Act", exempting certain classes of employees
10 providing for enforcement; defining viola-
11 tions and prescribing penalties and remedies
12 repealing Chapter 185, SLA 1955; and pro-
13 viding for an effective date."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 Section 1. DECLARATION OF STATE PUBLIC POLICY: ALASKA WAGE
16 AND HOUR ACT. The public policy of the state declared in this
17 Act, which may be cited as the "Alaska Wage and Hour Act", is (1)
18 to establish minimum wage, and overtime compensation standards
19 for workers at levels consistent with their health, efficiency
20 and general well-being, and (2) to safeguard existing minimum
21 wage and overtime compensation standards which are adequate to
22 maintain the health, efficiency and general well-being of workers
23 against the unfair competition of wage and hour standards which
24 do not provide such adequate standards of living.

25 Sec. 2. EXEMPTIONS: DEFINITIONS. (1) This Act shall not
26 apply to:

27 (a) any individual employed in agriculture which
28 shall include farming in all its branches and, among other
29 things, includes the cultivation and tillage of the soil,

1 dairying, the production, cultivation, growing, and harvesting
2 of any agricultural or horticultural commodities, the raising
3 of livestock, bees, fur-bearing animals, or poultry, and any
4 practices (including any forestry or lumbering operations)
5 performed by a farmer, or on a farm, as an incident to, or
6 in conjunction with, such farming operations, including
7 preparation for market, delivery to storage, or to market,
8 or to carriers for transportation to market;

9 (b) any individual employed in the catching,
10 trapping, cultivating or farming, netting or taking of any
11 kind of fish, shellfish, or other aquatic forms of animal
12 and vegetable life;

13 (c) any individual employed in the hand picking
14 of shrimp;

15 (d) any individual employed in domestic service
16 (including baby-sitters) in or about a private home;

17 (e) any individual employed by the United States,
18 or by the state, or any political subdivision thereof;

19 (f) any individual engaged in the activities of
20 a non-profit religious, charitable, cemetery or educational
21 organization where the employer-employee relationship does
22 not, in fact, exist, and where services rendered to such
23 organizations are on a voluntary basis;

24 (g) any employee engaged in the delivery of
25 newspapers to the consumer;

26 (h) any individual employed solely as a watchman
27 or caretaker of any premises, property or plant that is not
28 in productive use for a period of four months or more;

29 (i) any individual employed in a bona fide executive,

1 administrative or professional capacity or in the capacity of
2 an outside salesman or any salesman who is employed on a
3 straight commission basis;

4 (j) any individual employed in the search for
5 minerals of economic value; or

6 (k) any individual, under eighteen years of age
7 employed on a part-time basis not more than 20 hours in any
8 week in a motion picture theatre.

9 (2) Terms as used in this Act shall be defined, where
10 applicable, in the manner that they are defined in the federal
11 Fair Labor Standards Act of 1938, as amended, or regulations
12 adopted pursuant thereto.

13 Sec. 3. OVERTIME HOURS. No employer who employs employees
14 engaged in commerce, or other business, or in the production of
15 goods or materials in Alaska, shall employ any of his employees not
16 acting in a supervisory capacity, either male or female, for a work-
17 week longer than forty hours or for more than eight hours per day,
18 except that should the employer find it necessary to employ any em-
19 ployee in excess of the hours provided for, compensation for such
20 overtime at the rate of one and one-half times the regular rate of
21 pay shall be paid, and this provision shall be deemed to be included
22 in all contracts of employment entered into hereafter; provided that
23 the provisions of this section shall not apply with respect to:

24 (1) any employee exempt under Sec. 13(a), (b) and (c)
25 of the Fair Labor Standards Act of 1938, as amended;

26 (2) any employee employed at a guaranteed salary of
27 more than five hundred fifty (\$550.00) dollars a month in a bona
28 fide executive, administrative, or professional capacity as
29 defined by regulation of the Commissioner;

1 (3) any employee employed in handling, processing,
2 curing, or storing (including cold storage) of any kind of fish,
3 shellfish, or any other aquatic forms of animal or vegetable life,
4 or any by-product thereof;

5 (4) any employee employed in handling, packing, storing,
6 pasteurizing, drying, preparing in their raw or natural state,
7 or canning of agricultural or horticultural commodities for market,
8 or in making cheese or butter or other dairy products;

9 (5) any employee of an employer engaged in small mining
10 operations where not more than eight employees are employed, insofar
11 as an employee is employed not in excess of twelve (12) hours a day
12 or fifty-six (56) hours a week during a period or periods of not
13 more than fourteen (14) workweeks in the aggregate in any calendar
14 year during the mining season, as the season is defined by the
15 Commissioner;

16 (6) any person subject to the provisions of the U. S.
17 Railway Labor Act, 45 U.S.C.A. 151-188, as amended.

18 Sec. 4. MINIMUM WAGES. Every employer, except as may be
19 otherwise provided in this Act, shall pay to each of his employees
20 wages at a rate of not less than \$1.50 an hour.

21 Sec. 5. HANDICAPPED WORKERS: APPRENTICES: LEARNERS. To the
22 extent necessary in order to prevent curtailment of opportunities
23 of employment, the Commissioner may by regulations or by orders,
24 provide, by issuance of special certificates, for the employment
25 at wages lower than the minimum wage presented in this Act:

26 (1) of individuals whose earning capacity is impaired
27 by physical or mental deficiency, age, or injury, at such wages
28 and subject to such restrictions and for such period of time as
29 shall be fixed by the Commissioner; and

1 (2) of apprentices at such wages as are approved by
2 the Commissioner; or

3 (3) of learners at such wages and subject to such
4 restrictions and for such periods of time as shall be fixed by
5 the Commissioner.

6 No individual shall be employed at wages fixed pursuant to
7 this section except under special certificate issued under appli-
8 cable regulations of the Commissioner.

9 Sec. 6. ADMINISTRATIVE AGENCY: POWERS: DUTIES: ADMINISTRATIVE
10 PROCEDURES ACT.

11 (1) There shall be in the Department of Labor a
12 division known as the "Wage and Hour Division", which division
13 shall be in charge of a Director, responsible to the Commissioner,
14 whose function it shall be to administer this Act. The Commis-
15 sioner shall have the authority to appoint the Director and such
16 assistants and other employees as may be necessary for the proper
17 enforcement of this Act, and to fix their compensation, subject
18 to the provision of law applicable to the appointment and compen-
19 sation of employees of the state. The Director may delegate to the
20 duly authorized representative his powers, functions and duties
21 under this Act.

22 (2) The Director, or his authorized representative,
23 shall have full power and authority; and it shall be his duty:

24 (a) to investigate and ascertain the wages and
25 related conditions and standards of employment of any
26 employee in the state.

27 (b) to enter the place of business or employment
28 of any employer at reasonable times for the purpose of
29 inspecting any payroll records that relate to the question

1 of wages paid or hours worked;

2 (c) to require and subpoena from any employer full
3 and correct statements in writing, when the Director or his
4 authorized representative deems necessary, of hours worked
5 by and the wages paid to all persons in his employ, such
6 statements at the discretion of the Commissioner or his
7 authorized representatives to be under oath;

8 (d) to question any employee in his place of
9 employment during work hours with respect to the wages paid
10 and the hours worked by such employees; and

11 (e) to compel the attendance of witnesses and the
12 production of books, papers and documents by subpoena when
13 necessary for the purpose of any hearing or investigation
14 provided for in this Act.

15 (3) The Director shall have the power to issue, amend
16 or rescind such administrative regulations, not inconsistent with
17 the purposes and provisions of this Act as may be necessary for
18 the efficient administration of any provision of this Act. Such
19 regulations, without limiting the generality of the foregoing,
20 may define terms used in this Act, may include such terms and
21 conditions, including the restriction or prohibition of industrial
22 homework or of such other acts or practices, as the Director finds
23 necessary or appropriate to carry out the purposes of the Act,
24 or to prevent the circumvention or evasion thereof, and may
25 permit deductions by an employer from the minimum wage applicable
26 under this Act to his employees for the reasonable cost, as
27 determined by the Director on an occupation basis, of furnishing
28 board or lodging if such board or lodging is customarily furnished
29 by the employer and used by the employee.

1 (4) All regulations adopted or hearings conducted,
2 pursuant to this Act shall be adopted or conducted and be subject
3 to judicial review, in accord with the Administrative Procedures
4 Act which shall apply to all procedures hereunder.

5 (5) The Commissioner may adopt such regulations and
6 interpretations as are made or issued by the Administrator of
7 the Wage and Hour Division of the Federal Department of Labor
8 which are not inconsistent with this Act.

9 Sec. 7. KEEPING OF RECORDS. Every employer shall keep for
10 a period of not less than three (3) years in or about the premises
11 wherein any employee is employed a record of the name, address,
12 and occupation of each of his employees, the rate of pay and the
13 amount paid each pay period to each such employee, the hours
14 worked each day and each workweek by each such employee, and such
15 other payroll information as the Commissioner may by regulation
16 or order prescribe. The Commissioner or his authorized representa-
17 tive may copy such records at any reasonable time. Every employer
18 shall furnish to the Commissioner or his authorized representative
19 on demand a sworn statement of such records, and if the Commis-
20 sioner shall so require, upon forms prescribed or approved by him.

21 Sec. 8. POSTING OF SUMMARY OF THE ACT. Every employer
22 subject to this Act shall keep a summary or abstract of this Act,
23 approved by the Commissioner, posted in a conspicuous place in
24 or about the premises wherein any person subject thereto is
25 employed. Employers shall be furnished copies of such summary
26 by the state on request without charge.

27 Sec. 9. ENFORCEMENT.

28 (1) PROHIBITED ACTS. Any employer who hinders or
29 delays the Commissioner or his authorized representative in the

1 performance of his duties in the enforcement of this Act, or who
2 refuses to admit the Commissioner or his authorized representative
3 to any place of employment, or who fails to keep or falsifies any
4 record required under the provisions of this Act, or who refuses
5 to make such record accessible, or to furnish a sworn statement
6 thereof, or to give information required for the proper enforcement
7 of this Act, upon demand, to the Commissioner or his authorized
8 representative, or who fails to post an abstract of this law
9 as required by Section 8 of this Act, or who discharges or in
10 any other manner discriminates against any employee because such
11 employee has filed any complaint, or has instituted or caused
12 to be instituted any proceeding under or related to this Act, or
13 has testified or is about to testify in any such proceeding,
14 shall be deemed to have violated this Act.

15 (2) PENALTIES. Any employer who wilfully violates
16 any provision of this Act, or of any regulation or order of the
17 Commissioner issued under the authority of this Act, shall, upon
18 conviction thereof, be punished by a fine of not less than one
19 hundred (\$100.00) dollars nor more than two thousand (\$2,000.00)
20 dollars, or by imprisonment for not less than ten nor more than
21 ninety days, or by both such fine and imprisonment. Each day any
22 such violation occurs shall constitute a separate offense.

23 (3) EMPLOYEES' REMEDIES.

24 (a) Any employer who violates any provision of
25 Sec. 3 or 4 of this Act shall be liable to the employee or
26 employees affected in the amount of their unpaid minimum
27 wages, or unpaid overtime compensation, as the case may be,
28 and in an additional equal amount as liquidated damages.

29 (b) Action to recover such liability may be

1 maintained in any court of competent jurisdiction by any one
2 or more employees for and in behalf of himself or themselves
3 and other employees similarly situated, or such employee or
4 employees may individually designate in writing an agent or
5 representative to maintain such action for them and such
6 consent shall be filed in the court in which such action is
7 brought. At the request of any person paid less than the
8 amount to which he is entitled under the provision of the
9 Act the Commissioner shall take an assignment in trust for
10 the employee of the full amount to which he is entitled under
11 this subsection and may bring any legal action necessary to
12 collect such claim.

13 The court in any action brought under this subsection
14 shall, in addition to any judgment awarded to the plaintiff
15 or plaintiffs, allow costs of the action and reasonable
16 attorney's fees to be paid by the defendant. Such attorney's
17 fees in the case of actions brought under this subsection
18 by the Commissioner shall be remitted by the Commissioner
19 to the Department of Revenue. The Commissioner shall not
20 be required to pay the filing fee, or other costs, in
21 connection with such action. The Commissioner in case of
22 suit shall have power to join various claimants against the
23 same employer in one cause of action.

24 (4) INJUNCTION PROCEEDINGS. Whenever it shall appear
25 to the Commissioner that any employer is engaged in any act or
26 practice which constitutes or will constitute a violation of any
27 provision of this Act, or of any provision of any regulation
28 thereunder, he may in his discretion bring an action in the
29 District Court or its successor, to enjoin such act or practice.

1 and to enforce compliance with this Act or with such regulation,
2 and upon a proper showing a permanent or temporary injunction,
3 decree, or restraining order shall be granted without bond.

4 (5) SUBPENA ENFORCEMENT. In cases of failure of any
5 person to comply with any subpoena lawfully issued under Sec. 6
6 of this Act, or on the refusal of any witness to produce evidence
7 or to testify to any matter regarding which he may be lawfully
8 interrogated, it shall be the duty of any District Court, or its
9 successor, or the judge thereof, upon application of the Commis-
10 sioner, or his authorized representative, to compel obedience
11 by proceedings for contempt, as in the case of disobedience of
12 the requirements of a subpoena issued by such court or a refusal
13 to testify therein.

14 Sec. 10. RIGHT OF COLLECTIVE BARGAINING PROTECTED. Nothing
15 in this Act shall be deemed to interfere with, impede, or in any
16 way diminish the right of employees to bargain collectively
17 through representatives of their own choosing in order to establish
18 wages or conditions of work in excess of the applicable minimum
19 under this Act, or to establish hours of work shorter than the
20 applicable maximum under this Act.

21 Sec. 11. STATUTE OF LIMITATIONS. Any action to enforce
22 any cause of action for unpaid minimum wages, unpaid overtime
23 compensation, or liquidated damages under this Act must be commenced
24 within two years after the cause of action accrued, and every
25 such action shall be forever barred unless commenced within two
26 years after it accrued.

27 Sec. 12. DETERMINATION OF COMMENCEMENT OF ACTIONS. In
28 determining when an action is commenced for the purposes of Sec.
29 11, it shall be considered to be commenced on the date when the

1 complaint is filed; in the case of a collective or class action
2 instituted under Sec. 9 (c) of this Act, it shall be considered
3 to be commenced as to any individual claimant on the date when
4 the complaint is filed, if he is specifically named as a party
5 plaintiff, or if his name does so appear, on the subsequent date
6 on which his name is added as a party plaintiff.

7 Sec. 13. EFFECTIVE DATE. This Act shall take effect
8 immediately upon its passage and approval or upon its becoming
9 law without such approval.

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