

**SENATE CS FOR CS FOR HOUSE BILL NO. 459(JUD) am S(fld S)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE JUDICIARY COMMITTEE

**Amended: 5/9/94
Offered: 5/6/94**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

**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; and amending Alaska Rule of
4 Civil Procedure 82."

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

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

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

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

12 (c) The court in an action brought under this section shall, in addition to a
13 judgment awarded to the prevailing party [PLAINTIFF], allow costs of the action and

1 reasonable attorney fees to be paid by either party. The court shall award full
2 reasonable attorney fees to the prevailing party. When the commissioner is the
3 prevailing party in an action brought under this section, the commissioner shall
4 remit the recovered attorney fees [PAID BY THE DEFENDANT. THE
5 ATTORNEY FEES IN THE CASE OF ACTIONS BROUGHT UNDER THIS
6 SECTION BY THE COMMISSIONER SHALL BE REMITTED BY THE
7 COMMISSIONER] to the Department of Revenue. The commissioner may not be
8 required to pay the filing fee or other costs. The commissioner in case of suit has
9 power to join various claimants against the same employer in one cause of action.

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

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

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

29 (f) In a settlement that is not supervised by the department or the court, an
30 employee is entitled to liquidated damages under (a) of this section unless the
31 employee and the employer enter into a written settlement agreement in which the

1 employee expressly waives the right to receive liquidated damages. The waiver must
2 be knowing and voluntary. A waiver may not be considered to be knowing and
3 voluntary unless the settlement agreement

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

5 (2) specifically waives rights or claims arising under AS 23.10.110(a);

6 (3) advises the employee to consult with an attorney or with the
7 department before entering into the agreement;

8 (4) allows the employee at least seven calendar days to consider
9 whether to accept the offer of settlement; and

10 (5) provides for a period of at least five days after the employee enters
11 into the agreement in which the employee may revoke the agreement; the settlement
12 agreement may not become effective or enforceable until the revocation period has
13 expired.

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

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

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

20 * Sec. 5. The provisions of sec. 2 of this Act have the effect of changing Alaska Rule of
21 Civil Procedure 82 by requiring the court to award full reasonable attorney fees to the
22 prevailing party in actions brought under AS 23.10.110.