

HB

1027

**Effect of amendment.** — The 1974 amendment added the language beginning "or \$2.60 an hour" to the end of the first sentence and added the second and third sentences.

This section is based on the federal Fair Labor Standards Act of 1938 and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

A prisoner is not an "employee" of the state under the federal Fair Labor Standards Act of 1938, and therefore is not so by virtue of this section. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

The legislative history indicates that Congress did not intend the Fair Labor Standards Act to cover prisoners, and there is no indication that the state statute was not meant to have parallel "noncoverage." *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

**Inmates not entitled to minimum wage.** — Neither the rehabilitation directive of the Alaska Constitution nor its due process clause requires the holding that inmates are entitled to a minimum wage. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

**Sec. 23.10.145. Definitions.**

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. *McGinnis*

*v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

**Article 4. Equal Pay for Women.**

Section  
185. Definitions

**Sec. 23.10.155. Wage discrimination against women. ✓**

**Purpose is not to render all wage differentials illegal.** — The clear purpose of the Equal Pay for Women Act is to prohibit sex-based wage discrimination, not to render any wage differential as between the sexes illegal per se. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**"Occupation".** — The definition of occupation in AS 23.10.185(4) does not state that only working in an industry, trade or business constitutes an occupation, but merely indicates that among the activities which constitute an occupation are those in an industry, trade or business. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

The Wage and Hour Act is directed toward a situation distinct from that of the Equal Pay for Women Act. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

The fact that the Human Rights Act prohibits wage discrimination using the same language as the Equal Rights for Women Act, yet excludes nonprofit educational institutions, could support an

inference that the legislature specifically immunized schools in one statute but not the other because it intended the provisions to have different scopes. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Discrimination not justified on basis of distinction between profit-making and nonprofit institutions.** — There is no meaningful distinction between a nonprofit educational institution and a profit-making institution such that one may discriminate in the payment of wages on the basis of sex while the other may not. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Consideration of non-sex-based factors.** — The legislature could not have intended that women be paid the same wages as men doing comparable jobs regardless of non-sex-based considerations such as merit or seniority. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

This section necessarily allows an employer to provide nondiscriminatory justification for salary discrepancies between women and men performing comparable work. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

Although administrators have the right to make discretionary decisions regarding salaries and to consider factors other than sex in arriving at such decisions, administrative discretion does not in itself justify salary discrepancies as between the sexes. There must be some showing by those faced with evidence of unequal salaries that factors other than sex in fact explain the discrepancy. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

The University of Alaska is in fact a "business" within the definition of occupation in AS 23.10.185(4). *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Employees of University of Alaska not exempted.** — Had the legislature meant to exempt the University of Alaska from an obligation to pay equal wages to men and women for comparable work it could have done so expressly. However, the supreme court not willing to read a specific exclusion into a provision as important as the Equal Pay for Women Act when the legislature had not seen fit to do so. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

Other statutes which can be looked at for guidance as to a legislative intent that this section prohibits the University of Alaska from discrimination in the payment of wages on the basis of sex, are AS 14.40.050, which prohibits discrimination by the University on the basis of sex, color and nationality, and AS 18.80.255(1), which prohibits the state and its subdivisions from such discrimination. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

This section prohibits the University of Alaska from discrimination in the payment of wages on the basis of sex. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Recovery of back pay limited to 2 years.** — A recovery of back pay for discrimination under the Equal Pay for Women Act is limited to that earned within

2 years prior to commencement of her suit. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

The applicable statute of limitations for a discrimination action under the Equal Pay for Women Act might possibly be tolled where a plaintiff had brought suit within 2 years of discovery of the discrimination, but not where suit was brought some 5 years after the discovery. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Burden of proof on employer after prima facie case made.** — Under this section, once plaintiff in an action under the Equal Pay for Women Act made a prima facie showing that her salary was lower than that of men doing comparable work, the University of Alaska, her employer, then had the burden of going forward with evidence showing that the discrepancy was based on factors other than sex, and moreover, the University also had the burden of proving by clear and convincing evidence that the salary discrepancy was based on factors other than sex. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

Where the University of Alaska had not provided a satisfactory explanation as to why a female professor's salary was consistently lower than those of her male colleagues, her prima facie showing of discrimination against her in the payment of wages stood un rebutted, allowing recovery against the University for discrimination in the payment of wages under this section. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Plaintiff allowed to furnish evidence of pattern of discrimination.** — In cases involving alleged employment discrimination, a plaintiff must be allowed to furnish evidence not only that the employer discriminated against him or her, but also that there exists a pattern of similar discrimination by the employer. Such evidence of a discriminatory pattern is not to be considered as part of the plaintiff's prima facie case, but is to be viewed as evidence that the nondiscriminatory justification given by the defendant is in fact a pretext. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

Sec. 23.10.185. Definitions. In §§ 155 — 185 of this chapter

(4) "occupation" includes an industry, trade, business, or any employment or class of employment in the industry, trade, business or branch;  
(am § 34 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment deleted "or branch of industry, trade, business or branch" following "industry, trade, business" near the beginning of paragraph (4).

As the rest of the section was not affected by the amendment, it is not set out.

**Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Activities listed in paragraph (4) not exhaustive.** — The definition of "occupation" in paragraph (4) does not

state that only working in an industry, trade or business constitutes an occupation, but merely indicates that among the activities which constitute an occupation are those in an industry, trade or business. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

The University of Alaska is in fact a "business" within the definition of occupation in paragraph (4). *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978).

**Article 7. Employment of Children.**

<b>Section</b>	<b>Section</b>
332. Authorization for children under 17 to work	350. Employment of children under 18
340. Children under 16	355. Persons under 19
345. [Repealed]	360. Regulations for minimum standards and work opportunities

**Sec. 23.10.332. Authorization for children under 17 to work.** Except for employment exempted under § 330 of this chapter and other employment specifically exempted by regulations adopted by the department, no minor under 17 years of age may be employed or allowed to work without the written authorization of the commissioner unless authorized under § 360 of this chapter. The department shall adopt regulations necessary to implement this section. (§ 3 ch 112 SLA 1976)

**Effective date.** — Section 8, ch. 112, SLA 1976, makes this section effective June 4, 1976, in accordance with AS 01.10.070(c).

**Sec. 23.10.340. Children under 16.**

(b) Repealed by § 7 ch 112 SLA 1976.  
(am § 7 ch 112 SLA 1976)

**Effect of amendment.** — The 1976 amendment, effective June 4, 1976, repealed subsection (b), which read "No minor under 16 years of age may be

employed or allowed to work in a restaurant."

As the rest of the section was not affected by the amendment, it is not set out.

**Sec. 23.10.345. Exemptions for minors over 16 or who have graduated from high school.**

Repealed by § 7 ch 112 SLA 1976, effective June 4, 1976.

10.165

§ 23.10.170 LABOR AND WORKMEN'S COMPENSATION § 23.10.185

155—185 of this chapter, the department may take an assignment of the wage claim in trust for her and may bring any legal action necessary to collect the claim, including the liquidated damages provided by this section.

(c) The court in the action shall, in addition to a judgment awarded to the plaintiff, allow a reasonable attorney fee to be paid by the defendant, and costs. The department may not be required to pay the filing fee or other cost in the action under this section; the fees and costs shall be advanced by the person seeking a remedy by legal action. The department may join various claimants against the same employer in one cause of action. The attorney general may prosecute all civil cases arising under §§ 155—185 of this chapter which are referred to him by the department for that purpose. (§ 4 ch 29 SLA 1949)

Sec. 23.10.170. Records and reports. An employer of women shall make, keep, and maintain the records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by him, and shall preserve the records for the periods of time, and shall make the reports from them which the department prescribes. (§ 5 ch 29 SLA 1949)

Sec. 23.10.175. Retaliation by employer. No employer may, for the purpose of dissuading an employee from preferring charges or giving information against him under §§ 155—185 of this chapter or testifying against him in an action brought under these sections, threaten termination of the employee's job or other retaliatory action, or take retaliatory action. (§ 6 ch 29 SLA 1949)

Sec. 23.10.180. Criminal penalties. In addition to his civil liability under § 165 of this chapter, a person who wilfully and knowingly violates a provision of §§ 155—185 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500. (§ 7 ch 29 SLA 1949)

Am. Jur. reference.—81 Am. Jur., Labor, § 178.

Sec. 23.10.185. Definitions. In §§ 155—185 of this chapter

- (1) "employ" includes to suffer or permit to work;
- (2) "employee" means a female individual employed by an employer;
- (3) "employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee;
- (4) "occupation" includes an industry, trade, business or branch of industry, trade, business or branch, or any employment or class of employment in the industry, trade, business or branch;
- (5) "wage rates" includes accommodations for board, room and other advantages when they are furnished for the convenience of the employer. (§ 2 ch 29 SLA 1949)

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## Article 5. Discrimination in Employment.

Section 190 [Repealed]	Section 195—235. [Repealed]
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192. Discrimination prohibited

**Sec. 23.10.190. Discrimination prohibited.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 1, ch. 18, SLA 1953; § 1, ch. 114, SLA 1957.

**Sec. 23.10.192. Discrimination prohibited.** Discrimination in the employment of a person because of race, religion, color, national origin or age is prohibited as set out in AS 18.80.220. (§ 7 ch 117 SLA 1965)

Am. Jur. reference.—31 Am. Jur., Labor, §§ 8, 12.

**Sec. 23.10.195. Civil right.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 2, ch. 18, SLA 1953.

**Sec. 23.10.200. Unlawful labor practices.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 4, ch. 18, SLA 1953.

**Sec. 23.10.205. Filing complaint.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 5, ch. 18, SLA 1953.

**Sec. 23.10.210. Investigation and conciliation.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 6, ch. 18, SLA 1953.

**Sec. 23.10.215. Hearing on complaint.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 6, ch. 18, SLA 1953.

**Sec. 23.10.220. Enforcement of order.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from § 7, ch. 18, SLA 1953.

**Sec. 23.10.225. Appeal from order.**

Repealed by § 8 ch 117 SLA 1965.

Editor's note.—The repealed section derived from §§ 8, 9, ch. 18, SLA 1953.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

AND

THE ANCHORAGE EQUAL RIGHTS COMMISSION

I. PURPOSE

The purpose of this memorandum of understanding is to provide for efficient coordination and cooperation in the handling of discrimination complaints pursuant to AS 18.80.010 et seq., and Title 5 of the Anchorage Municipal Code (AMC).

II. LEGAL AUTHORITY

- A. The Alaska State Commission for Human Rights (ASCHR) is responsible for the administration and enforcement of the provisions of the Alaska Human Rights Law (AS 18.80.010 et seq.). That law prohibits discriminatory practices in employment, public accommodations, sale or rental of real property, financing practices, and practices of the State of Alaska or its political subdivisions, on the basis of race, religion, color, national origin, age, sex, marital status, changes in marital status, pregnancy, or parenthood. Said law further prohibits discrimination in employment on the basis of physical handicaps.
- B. The Anchorage Equal Rights Commission (AERC) is responsible for the administration and enforcement of the Anchorage Equal Rights Ordinance (AMC 5.10.010 et seq.). That ordinance prohibits discriminatory practices in employment, housing, public accommodations, education, financing practices, and practices of the Municipality of Anchorage, on the basis of race, color, sex (including pregnancy and parenthood), religion, national origin, marital status, age, or physical handicap.

III. FILING COMPLAINTS OF DISCRIMINATION

- A. In order to facilitate the goals of the laws cited herein, ASCHR and AERC each designate the other as its agent for the purpose of receiving discrimination complaints.
- B. Each agency will inform complainants of their right to file with the other agency, and will endeavor to aid any person alleging discrimination to draft a charge in a manner which meets the requirements of the other agency.
- C. Each agency will forward all appropriate complaints to the other agency within 48 hours of filing or as soon thereafter as is practicable.

- D. The delegation of authority to receive complaints contained in paragraph III. A. does not include the right of one agency to determine the jurisdiction of the other agency over a complaint.

IV. DIVISION OF INITIAL COMPLAINT PROCESSING RESPONSIBILITIES

- A. Because of the need to meet the demand for services with the limited resources available, both agencies have concluded that the intent of the laws they administer can be served best by reducing duplication of effort through a division of primary responsibility for the resolution of complaints.
- B. AERC will initially process all complaints except those for which responsibility is assigned to ASCHR in paragraph IV. C. below.
- C. ASCHR will initially process the following categories of complaints:
1. All complaints which are filed more than 120 days after the occurrence of the alleged discriminatory conduct;
  2. All complaints alleging discriminatory conduct within the State of Alaska, but not within the Municipality of Anchorage;
  3. All complaints in which an agency of the State of Alaska is a party;
  4. All complaints against respondents which may be designated for initial processing by ASCHR in a supplementary memorandum to this memorandum of understanding;
  5. All complaints filed by the Executive Director of ASCHR and related individual charges;
  6. Any complaint where ASCHR is a party to a conciliation agreement or a consent decree which is relevant to the disposition of the complaint; and
  7. Any complaint alleging retaliation for filing a complaint with ASCHR or for cooperating with ASCHR.
- D. Notwithstanding the provisions of paragraphs IV. B. and C., ASCHR or AERC may request and be granted the right to initially process any complaint. Such variations shall be consistent with the objectives of this memorandum of understanding.
- E. If for any reason either agency determines it cannot process a complaint for which it bears initial responsibility pursuant to this agreement, that agency will inform the other agency of its inability to process the complaint as soon as is practicable after the complaint is filed.
- F. ASCHR and AERC will implement their division of initial complaint processing responsibilities with due regard to the agency preferences of complainants.

V. RESOLUTION OF COMPLAINTS

- A. In order to expedite the resolution of a complaint initially processed by one agency, that agency will made available upon request by the other agency any information developed concerning the complaint that may be disclosed pursuant to applicable law. The agency accepting information will comply with any confidentiality requirements imposed on the agency forwarding the information.
- B. Each agency will provide the other with notice of all final actions taken with respect to complaints filed with both agencies under this agreement, and copies of all determinations made with respect to the merits of such complaints.
- C. When one agency does not concur with the result reached by the other agency, the former agency will inform the latter agency of the reasons for its nonconcurrence.
- D. In determining whether reasonable cause exists to believe that unlawful discrimination has occurred, each agency will, subject to applicable law, accord substantial weight to the findings and orders of the agency having initial responsibility for the resolution of the complaint. Similarly, each agency will, subject to applicable law, accord substantial weight to resolutions by the other agency, including monetary settlements, which occur prior to a determination on the merits of a complaint.
- E. In the event that a case originally filed with ASCHR is initially investigated by AERC, and AERC determines that there is reasonable cause to credit the allegations of the complaint, AERC will promptly notify ASCHR of the status of the case, and in the discretion of AERC, it will request ASCHR to take any and all actions necessary to resolve the dispute, including the convening of a public hearing. AERC will then defer further action on the dispute until such time as ASCHR has concluded its proceedings.

VI. IMPLEMENTATION OF WORKSHARING

- A. Each agency will designate one person as a liaison official for interagency contacts concerning day-to-day operations pursuant to this memorandum.
- B. The agencies will monitor the allocation of complaint processing responsibilities to insure that they serve the purposes of paragraph IV. A. If it appears that a realistic division of complaint processing responsibilities will not be met by the assignments in paragraphs IV. B., IV. C., and V. E., said paragraphs will be modified to facilitate a practicable division of responsibilities and rapid resolution of complaints.
- C. AERC and ASCHR will confer periodically during the operation of this agreement to ensure that open cases on file with either agency are receiving expeditious

processing. It is anticipated that one agency or the other may at times be better equipped for various reasons to give more prompt attention to any given case or group of cases. In such circumstances, the agencies may mutually agree to transfer principal processing responsibility from one agency to the other, notwithstanding any initial responsibilities established by this agreement.

- D. ASCHR and AERC will support each other in all reasonable efforts to secure sufficient funding to effectively enforce the applicable state and local civil rights laws.
- E. This agreement shall become effective on the first day of May, 1980, and will remain in effect until the last day of April, 1981. Thereafter, it may be renewed with or without amendment by mutual consent of the parties.

DATED at Anchorage, Alaska, this 25th day of April, 1980.

ALASKA STATE COMMISSION  
FOR HUMAN RIGHTS

ANCHORAGE EQUAL RIGHTS  
COMMISSION

By \_\_\_\_\_

By \_\_\_\_\_