HB

223

# Legislators enter fray over overtime pay

by Bill White
Times Juneau Bureau

Juneau — A bill that would deny oilfield workers from $5 million to $50 million in back pay has become the battleground for labor and management forces in this year's legislative session.

"This is the most obnoxious piece of special interest legislation that I have seen in my 11 years in the legislature," said Rep. Hugh Malone, D-Kenai, of the bill.

But backers of the bill say the pay rules were changed unfairly, with little notice to them.

If the bill fails to pass, "the impact on the business climate in Alaska could be nothing less than devastating," warned Chuck Becker of the Alaska Support Industry Alliance, in a hearing on the measure.

The bill would forgive oil industry businesses for paying their workers too little overtime between 1978 and when the proposal becomes law.

That forgiveness provision is "unfair and arbitrary," according to the state Labor Department. It is likely unconstitutional, said Ron Lorensen, deputy attorney general, and Tom Sofo, a lawyer for the legislature.

Rep. Charlie Bussell, R-Anchorage, introduced the bill last February. When asked why, he said, "I didn't know anything about it until I got into it." He said he sponsored it at the urging of Dresser Industries officials and Mitch Gravo, lobbyist for the Petroleum Equipment Suppliers Association.

Bussell is chairman of the Judiciary Committee, which passed out the bill last week.

Its next stop is the Labor and Commerce Committee. But as soon as that panel got the proposal, its chairman, Rep. Walt Furnace, R-Anchorage, asked permission for the bill to skip his committee and go right to the full House. That request caused a furor among opponents of the measure, and Furnace withdrew his request.

The issue came up in 1979 when Clyde Woody, through the Labor Department, sued Dresser Industries Inc. over $3,957 in back pay.

Woody was paid under what is known as the flexible work week arrangement and by the other 49 states. But it was outlawed in Alaska in a 1978 regulation.

FWW is a method of computing overtime pay in the oil industry. Normally, a worker who is paid $10 an hour is paid $15 — one an one-half times his regular pay — for every hour over 40 he works. He would get $475 for 45 hours of work.

But under FWW, he would be paid $467 for that 45-hour week. That figure is derived by dividing the 45 hours into $400 — the total if he'd worked only 40 hours — to get an hourly rate of $8.89, not $10. He would get $13.34 an hour — one an one-half times the $8.89 — not $15 an hour for overtime.

Under FWW, the more hours he works, the less money he is paid.

Woody won his case in September 1981 in the state Supreme Court.

But while his case was in court, Dresser and other companies continued to pay according to FWW.

Eight lawsuits, three of them class action suits, have been filed against businesses that use FWW.

Tony Sholty, a lawyer with the firm that is representing the workers, estimates the businesses owe between $5 million and $10 million in back pay. That figure would be doubled because businesses that break the regulations must pay twice the actual damages.

Becker and other industry spokesmen estimate they might owe as much as $50 million, or $100 million when the double liability is factored in.

The regulation "has created an enormous managerial and employee compensation problem that is not conducive to a healthy business climate. This regulation has created a potentially disastrous unjust economic impact on my firm and others operating in this state," John Martin, area manager for Dresser Atlas, told lawmakers

"The nature of the oil and gas service business makes work hours next to impossible to predict," he said. "The fluctuating work week system lends itself perfectly to this work environment."

Bussell said he didn't pay much attention to the bill as it cruised through his committee. But now, as reporters have begun asking questions about the bill, he is well versed in the proposal.

"I am now convinced that the Department of Labor did something improperly" in issuing the regulations in 1978, he said. The department inadequately notified the businesses using FWW the regulations were coming, and after the new rules were final they did a poor job of announcing the fact, Bussell said.

Labor Department records concerning the regulations have disappeared mysteriously, he charged. The announcement in 1978 of public hearings on the then-proposed regulations used the word "overtime" rather than the more familiar "flexible work week," he said.

When asked why the department would conspire to dupe the industry, Bussell said he didn't know.

Alaska State Legislature
HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

# Committee on Judiciary

MAY 4th, noon:

CHARLIE: -Today's Committee Agenda----: (I'm working on HB 7 w/Jeff Day & Jeff Bush,AG)

1-- HB223..Has fiscal note & could be voted out;

2--Doc Fritz will be here for HB 338, Payment of Overtime"--It has zero fiscal note, letter and form from Al Gay of Seair, and my memo to you and all committee members in file.

3--HB 352--Doc Fritz here for that, too. Has Zero Fiscal Note, HESS Dept. position paper and HESS Committee Do Pass Report

4--HB 334--Admin. Procedures Act change of language...Zero fiscal Note, my memo to you and committee members, and Xeroxed case of Supreme court where federal authority (Moore) suggests language, which I bracketed and underlined in case footnote. Peter Froelich of Dept. of Law, civil, may be here to say a few words on it.

5--HB 282--Steve worked on that & will clue you on that one.

Joe

4/11/83, JUNE, ANC LIO, MSG :306

TO: REPRESENTATIVES BARNES, HAYES, LISKA, AND RUSSELL

FROM: SONJA ALEXANDER, 5378 SILLARY CIRCLE, ANCHORAGE, AK 99504
(H) 338-3204 (W) 561-1344

I WOULD LIKE TO SUPPORT HB 223. I DON'T BELIEVE ALASKA COMPANIES SHOULD BE PENALIZED WHEN THEY ARE ALREADY PAYING FAIR AND EQUITABLE WAGES. WINDFALL GIFTS IS NOT THE ANSWER.

STATE OF ALASKA
DEPARTMENT OF LABOR

# A F F I D A V I T

I, DONALD R. WILSON, being first duly sworn and deposed, say that,

1. I am Donald R. Wilson,

2. that I currently am employed by the State of Alaska as Deputy Director of the Labor Standards and Safety Division,

3. that sometime in the early part of 1979, to the best of my recall in the middle or latter part of January, 1979, I caused to be delivered to the following three companies notice of promulgation of regulations in Title 8 of the Administrative Code concerning a prohibition on the use of the fluctuating workweek as an overtime plan in the State of Alaska; specifically, these regulations were published in Register 68 of the Administrative Code and specifically addressed in 8 AAC 15.100 (d)(1), (2) and (3):

1. Dresser Atlas, at their office on the Kenai Peninsula,

2. Dowell, a Division of Dowell Chemical Company, at their office on the Kenai Peninsula, and

3. Otis Engineering, at their office on Fireweed Lane in Anchorage.

The notice to Dowell and Dresser Atlas were sent by mail. The notice to Otis was hand delivered by myself to their manager in Anchorage.

Further affiant sayeth naught.

Dated this 13th day of April, 1983 at Anchorage, Alaska.

Donald R. Wilson

Donald R. Wilson

Subscribed and sworn to before me this 13th day of April, 1983.

Sherry A. Ithal

Notary Public in and for the State of Alaska
My Commission Expires: 4-5-85

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 5-4-83 SPONSOR: Fritts

SUBJECT(S): HB 352

| NAME | REPRESENTING | ADDRESS | PHONE | OBSERVER | WITNESS | FOR | AGAINST |
|---|---|---|---|---|---|---|---|
| E.L. Rabeau | DHoSS | HOB Room H-06 | 3090 | | ✓ | ✓ | |
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POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

# Committee on Judiciary

REVISED - May 4, 1983
Week of May 1, 1983
1:30 p.m., Room 124, Capitol

Monday, May 2

| | | |
|---|---|---|
| | HB 312 | An Act relating to harming a police dog. aut |
| | SSHB 7 | An Act relating to motor vehicles; and providing for an effective date. |

Tuesday, May 3

| | | |
|---|---|---|
| | SSHB 7 | An Act relating to motor vehicles; and providing for an effective date. |

Wednesday, May 4

| | | |
|---|---|---|
| | HB 223 | An Act relating to methods for the payment of overtime; and providing for an effective date. aut |
| | HB 282 | An Act relating to notices for occupational safety and health violations. aut |
| ** | HB 334 | An Act relating to stays during appeals of administrative orders under the Administrative Procedure Act (AS 44.62). aut |
| | HB 94 | An Act relating to the seizure of items used in or in aid of fish and game violations. |
| ** | HB 338 | An Act relating to the payment for overtime; and providing for an effective date. aut |
| | HB 352 | An Act relating to the definition of death; and providing for an effective date. aut |

Thursday, May 5

| | | |
|---|---|---|
| ** | HB 375 | An Act relating to access to certain criminal justice information. |
| ** | HB 360 | An Act relating to permits issued for games of chance and contests of skill. |
| | HB 84 | An Act relating to smoking in public places and vehicles. |

Friday, May 6

| | | |
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| | HB 126 | An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers. |
| ** | HCR 33 | Proposing the addition of a preamble relating to the ethics to the Uniform Rules of the Alaska State Legislature. |
| ** | HCR 34 | Proposing certain amendments to the Uniform Rules of the Alaska State Legislature. |

14 THE WALL STREET JOURNAL
Wednesday, May 4, 1983

# Charter Co. Increases Tesoro Petroleum Stake

By a WALL STREET JOURNAL Staff Reporter

SAN ANTONIO, Texas — Charter Co. raised its stake in Tesoro Petroleum Corp. closer to an agreed limit of 30% by buying 948,800 common shares, according to a filing with the Securities and Exchange Commission.

According to SEC figure, the purchase raised Charter's stake in Tesoro to 30.2%, but according to Tesoro's calculations, the Charter holding is 26.2%. The difference is in the way the SEC and the company count preferred shares, a Tesoro spokesman said.

Charter's filing said it holds 2,397,285 shares of Tesoro common plus 2,875,000 preferred shares convertible into 2,500,100 common shares. Charter is based in Jacksonville, Fla.

In Jacksonville, a Charter spokeswoman said the oil and insurance company raised its stake for investment purposes and doesn't intend to take over Tesoro.

April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, AK 99811

Dear Sir:

I would like you to know that I support HB 223. I feel it is a law that we need.

Sincerely,

David C. Sharp

David C. Sharp
SRA Box 1153
Anchorage, AK 99502

Jim Robison
Business Manager/Secretary-Treasurer

Joe J. Thomas
President

ALASKA STATE DISTRICT COUNCIL OF LABORERS

Laborers International Union of North America, AFL-CIO

P. O. Box 899 • 2501 Commercial Drive
Anchorage, Alaska 99510 • 907/276-1640
Telex 26-540

April 16, 1983

TO: Representative Charlie Bussel
Representative John Liska
Representative Ramona Barnes
Representative Don Clocksin
Representative Joe Hayes
Representative Hugh Malone
Representative Ron Wendte

Legislative Hearing on House Bill No. 223

House Bill No. 223 poses two alterations in the present Wage and Hour Act. First, Section 2 of the Bill allows an employer to avoid liquidated damages through ignorance of the Wage and Hour laws. Secondly, the Bill would retroactively extinquish hundreds of employee's wage claims sought from several employers found in violation of the Wage and Hour Act.

Senate Bill 223 follows Senate 886(1982) as the second attempt made to excuse several employer's unlawful wage formulas. This legislation would retroactively reverse the decisions of the Alaska Department of Labor, the Supreme Court for the Third District, the Alaska Supreme Court and the United State Supreme Court. Despite the arguments of Attorneys Harper and Kuhn of Houston, Texas, the employee's claims and

the Alaska Wage and Hour Act itself were upheld and affirmed. A retroactive attack on these decisions by its proponents is an abuse of our legislative process with serious constitutional implications.

The Wage and Hour Act has prohibited the use of the fluctuating work week as a means of determining a person's wage. The public policy behind this wage protection is to safeguard existing minimum wage and overtime standards which are necessary to maintain the health, efficiency and general well being of workers against unfair wagecutting competition. This proposed Bill is directly contrary to this policy.

Theoretically, the fluctuating work week would accomodate employees with work hours that may vary above or below a 40 hour workweek by providing a regular salary basis. If the amount of hours differ the employee still receives the same straight-time compensation by, after the fact, readjusting the hourly rate of pay so that it computes to the basic sum. Therefore an employee may earn a different hourly rate each and every week.

In practice however, virtually <u>every</u> use of the fluctuating work week approach has been used to <u>lower</u> an employee's hourly rate. This system is only utilized by those companies who employ their worker well <u>beyond</u> a 40 hour work week.

Regarding Section 2 of the Bill, which detracts from the present liquidated damage provisions, the practical impacts are obvious. From experience, I can say that requiring the employee to also show a bad faith motive for an employer's failure to pay the proper wage will seriously weaken protection and enforcement of a worker's rights. Proof of this element will require costly litigation for employees and discourage voluntary compliance and settlement, thereby placing further demands on the Department of Labor's resources. And, to say the least, it would encourage employer ignorance of the Wage and Hour laws as a means of defense to wage claim actions.

Respectfully submitted,

Kevin Dougherty
General Counsel
Alaska State District
Council of Laborers

HB 223

# AFOGNAK LOGGING, Inc.

P.O.Box 682 Kodiak, Alaska 99615 (907) 486 - 3544

April 19, 1983


The Honorable Charlie Bussell
Chairman
Alaska State House of Representatives
Committee on Judiciary
Pouch V (Mail Stop 3100)
Juneau, AK 99615

Dear Representative Bussell:

Afognak Logging is an Alaska corporation involved in logging timber on Afognak Island near Kodiak, Alaska. We support House Bill 223 and urge you that you should actively support it as well. We also support the Committee Substitutes which eliminate Section 1 and which would allow flexible pay plans to be used in Alaska.

In the logging industry, as with other industries in Alaska which require employees at remote locations, some flexibility in the pay system is an absolute must. In some job classifications an employee spends only a few hours a day doing actual work. There is little for him to do in his own free time and, therefore, a flexible pay method benefits both him and his employer.

House Bill 223 will eliminate an unfair situation for many companies unaware that the payment methods they had used for years had been changed without their knowledge. House Bill 223 with its "good faith" sections is definitely needed and makes common sense.

I ask your support for this bill, and am sure that you will agree that to impose a devastating financial burden on employers in this state, and then to automatically double that burden, is grossly unfair.

Please vote in favor of House Bill 223. Please actively urge everyone you can to support it.

Very truly yours,

AFOGNAK LOGGING, INC.

Al Schafer

Al Schafer, President

AS:bw

LAW OFFICES OF

**Kalamarides, MacMillan & Richard**

628 F STREET

ANCHORAGE, ALASKA 99501

JOSEPH A. KALAMARIDES
TIM MACMILLAN
JOHN MARSTON RICHARD

TELEPHONE:
(907) 276-2135
279-4018


March 22, 1983

Rep. Charlie Bussell
Pouch V
Juneau, Ak 99811

RE: House Bill 223

Dear Mr. Bussell:

I have read the House Bill 223 and wish to state my objection to it. House Bill 223 legalizes what has been illegal since 1978. That is, the use of the fluctuating work week formula. That formula allows an employee who is hired on a weekly pay basis to have his overtime computed by dividing the number of hours which he works into his weekly wage. Thus, under this formula the rate at which overtime is paid decreases as the employee's hours increase. This is presently illegal and should not be adopted. Employees of this State deserve better treatment.

Subsection 3 also is appalling. It allows all those employers who have intentionally violated the current law to escape liability for large sums of money that are due and owing employees. In considering this bill, I would urge that you examine all the factors in question, especially the effect on employees in the State.

Sincerely yours,

KALAMARIDES, MACMILLAN & RICHARD

Joseph A. Kalamarides, Esq.

JAK/acs

NORMAN C. BANFIELD
OF COUNSEL
MICHAEL R. HOLMES
WILLIAM B. RUSSELL
LAWRENCE J. FEENEY
CHARLES B. O'NEILL
ANTHONY S. GHOLTZ
JAMES B. WEEKS
JOHN A. CLOUGH, III
GREGORY J. COOK

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

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DENALI TOWERS NORTH
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RANDALL J. WEDDLE
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. McKEEVER
RICHARD L. WAGG
ROBIN G. WILCOX


March 11, 1983


Representative Charlie Bussell
Chairman, House Judiciary Committee
Capital Building, Room 126
Pouch Y
Juneau, Alaska 99811

Re: House Bill 223

Dear Chairman Bussell:

John and Robert Eshleman, who met with you on the afternoon of March 10, asked me to write to you concerning some of the comments you made to them about HB 223. A close reading of the bill indicates that it may, in its current form, have some highly undesirable impacts.

First, the Eshlemans received the impression that you felt HB 223 would not affect anything which was "in adjudication". If the quoted phrase is intended to encompass law suits which have already been filed and are now pending in the courts, then I think the statement is incorrect. HB 223 does affect pending litigation. Section 3 states:

> An employer is not liable in a civil or criminal action if the employer used methods prohibited in sec. 1 of the Act during the period beginning December 9, 1978, and ending on the effective date of this Act unless the action was pending on the effective date of this Act, <u>in which case the employer is liable for costs of the action and reasonable attorney fees.</u>

Section 4 makes sections 1, 2 and 3 retroactive to December 9, 1978 and extinguishes "any penalty, forfeiture or liability incurred or right accruing or accrued" under the current law which, among other things, makes illegal the use of a fluctuating work week overtime compensation scheme.

Without question, sections 3 and 4 would take away from the employee who has a lawsuit pending the overtime wages he was entitled to be paid under the law and was not paid. The employee's wages would be kept by the employer who illegally failed to pay them to its employee. The only recovery section 3 would leave to the wronged employee is the costs of litigation and reasonable attorney's fees the employee incurred because his employer violated the law. Of course, if the employer had obeyed the law, the employee would never have incurred those expenses.

The effect of HB 223 can be dramatically demonstrated by an example. An employee works, between January 1, 1979, and December 31, 1980, for an employer who illegally computes overtime according to an FWW scheme. The difference, over those two years, betwen the amount actually paid to the employee and the amount the employee was entitled to be paid under the law is $20,000. In June, 1981, the employee sues for $20,000. Between June, 1981, and the date HB 223 becomes law, the employee incurs $3,000 in legal expenses and attorney's fees. Once HB 223 becomes law, the employee can recover his $3,000 in legal expenses, which presumably he will pay to his lawyer, he loses the $20,000 he had earned under the law, and the employer keeps the $20,000 which rightfully belongs to the employee.

Second, the Eshlemans indicated you thought wronged employees, such as the Eshlemans, would be entitled to representation by the State on their overtime compensation claims if HB 223 passes. While that is a desirable result, HB 223 does not accomplish this. HB 223 says nothing about State representation of employees. The Alaska Wage and Hour Act, at AS 23.10.110 authorizes the Commissioner of Labor to take an assignment of an employee's claim for violation of the Wage and Hour Act. The Commissioner is not required to take the assignment. The regulation promulgated under AS 23.10.110 limits the ability of the Commissioner to accept assignments of claims. 8AAC15.175(b) states:

> The department will not accept an assignment of a claim under AS 23.10.050-23.10.150 in excess of $5,000, excluding liquidated damages.

HB 223 does nothing to alter this regulation.

Finally, you indicated that prohibiting FWW by statute rather than regulation would give the prohibition more teeth. If that is all HB 223 would do, there would be no problems with it. As discussed above, HB 223 does much more. And the

regulation itself does have teeth. See the enclosed Alaska Supreme Court decision, which upheld the regulation prohibiting FWW.

I appreciate your consideration of these comments. I would be very happy to further discuss this with you, or your staff, at a time convenient to you.

Very truly yours,

Tony Sholty

Anthony M. Sholty

AMS:rh

Enclosure

cc: Bob Eshleman
Box 8035 NRB
Kenai, AK 99611

John Eshleman
Box 1145
Wasilla, AK 99687

bcc Randy Weddle

DRESSER INDUSTRIES, INC. 5600 'B' STREET, SUITE 201, ANCHORAGE, ALASKA 99502



3833 Locarno Drive
Anchorage, Alaska 99504
March 22, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Capitol Building, Room 126
Pouch Y
Juneau, Alaska 99811

Regarding House Bill 223

Dear Chairman Bussell:

By now you should be receiving large contingencies of support for House Bill 223. As I review the opposition, I see only plaintiffs anticipating windfall gifts and attorneys from one firm seeking avenues of profitability through glitches in our governmental system.

The Wage and Hour Administration of the Department of Labor has created a monstrous problem through the promulgation of a poorly planned and administrated regulation. This type of promulgation is an insult to industry operating in and supporting our state.

I assure you that there is strong support for the passage of HB 223, not only from the support industry, but also from other astute business people in our community. Public Opinion Messages and letters should be confirming this fact.

I fully realize your schedule is hectic and prioritizing must be extremely difficult. I encourage you to do whatever you can to hastily push HB 223 through your committee and on through the House system for ratification.

Best regards,

John R. Martin
Alaska Area Manager
Dresser Atlas

JRM:tjs

DOWELL DIVISION OF DOW CHEMICAL U.S.A.
4665 Business Park Blvd., Anchorage, Alaska 99503



March 21, 1983

Dear Rep. Charlie Bussell

I would like to take this opportunity to express my support of House Bill No. 223. This bill is an opportunity for the Legislature to create a more positive business climate in Alaska.

House Bill 223 would:

1. Make the Alaska labor laws more consistent with the laws of the other 49 states.

2. Eliminate penalties against employers that in good faith entered into agreements with employees and paid a fair wage.

3. Not deprive employees of the right to recover unpaid overtime or unpaid minimum.

Your favorable consideration to this bill would be perfectly appreciated.

Yours truly,

J.A. Parks
District Manager

JAP/gk

**TRI-STATE OIL TOOL INDUSTRIES, INC.** Shreveport • Bossier City
Reply to: P. O. Box 4-2095, Anchorage, Alaska 99503 • Telephone (907) 279-6511


March 24, 1983

Honorable Charlie Bussell
Representive
House of Judiciary
Capitol Room 126
Juneau, Alaska 99811

Subject: House Bill 223

I wanted to let you know that I support House Bill 223. I feel that the employees of these companies have been paid fair and equitable wages and had full knowledge of these wages and type of pay when they took their respected jobs.

We have too many workers today that expect a days pay without a days work. This has brought our country to its knees. I think it is time we stand up and get things back in perspective and get a days work and then the days pay.

Sincerely,

John P. Davis
Alaska Regional Manager

cc: Chuck Becker, The Alliance

DRESSER INDUSTRIES, INC. 5600 'B' STREET, SUITE 201, ANCHORAGE, ALASKA 99502

3833 Locarno Drive
Anchorage, Alaska 99504
March 25, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
Capitol Building, Room 126
Pouch V
Juneau, Alaska 99811

Dear Chairman Bussell:

I have heard through the Alliance and PESA associations that House Bill 223 will have a Judicial Committee hearing sometime during the week of April fourth. This is great! Testimonies have already been drafted and practice sessions taking place.

On other matters, as one of your district's constituents, I want to assure you of my support. I appreciate your obvious follow through of campaign commitments concerning a straight forward, practical and factual approach to government. You are proving Charlie Bussell will not bow down to the "status quo" that runs so rampant through most of our legislative and subsequent governmental affairs.

Keep up the good work, you have a lot of folks waving your flag.

Best regards,

John R. Martin

JRM:tjs

**Arctic Hosts, inc.**


March 18, 1983

Charlie Bussell, Representative
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

Through our affiliation with the Alaska Support Industry Alliance, it has been brought to our attention that the House Judiciary Committee is currently holding a hearing on HB223 which is a bill that will correct a great injustice that has been done to several members of the oil support industries. Even though Arctic Hosts, Inc. is not affected by this bill, we feel very strongly that your support of this bill is necessary to maintain a reasonable work environment for corporations and companies doing business in the State of Alaska.

HB223 addresses a problem with the fluctuating work week method of computing overtime payment that has been an acceptable method of payment under Federal Wage and Hour Acts for many, many years and was very commonly in use throughout the United States including Alaska for many years prior to 1978. However, in December of 1978 the State Department of Labor instituted a change in their regulations which prohibited the use of this plan; later some employees filed suit against various support companies who had used this plan and are claiming absurd amounts of past overtime pay due. All of these employees had been more than fairly compensated for their wages and the companies felt that they were legally and morally correct in the way they were paying them. It is simply a case of some prior employees trying to capitalize on a quirk in the regulations

Your support of HB223 is very much desired, and we will sincerely appreciate your efforts in vote on this matter.

Sincerely,

William F. Webb
President

4790 Business Park Blvd., Bldg. D, Suite 4, Anchorage, Alaska 99503/(907) 562-HOST


To: Representatives,
Charlie Bussel
John Lindauer
Patrick Rodey
Arlis Sturgulewski
AK State Legislature
Pouch V
Juneau, AK 99811

From: Tom Standley
6841 Cheryl
Anchorage, AK 99502

This letter is being written to ask for your support of House Bill 223. My reasons are as follows:

A. The legislation enacted in 1978 23.10.060 through 23.10.110 was poorly publicized with only one hearing held and no attendes available to date to confirm attendance.

B. Should the bill not be approved, the oil service industry and ultimately the oil companies themselves will be adversly affected in a substantial manner.

C. Past employees and current employees such as myself worked under the FWW plan of pay and were more than fairly paid. My pay for 77'-35K, 78'-38K, 79'-40K, with many other known employees making in excess of 50K in 81' to date under FWW.

D. The current law creates a windfall profit of 250K+ EA for present and past employees who worked under the plan.

E. Only in Alaska is FWW banned.

F. Current law creates a pay system whereby employees cannot count on a minimum livable salary as we could with FWW.

In summery, please support this bill. I have worked in the oil industry since 1972 as a warehouseman, serviceman, expeditor, etc., what I see happening is not fair. This not only to the worker who has chosen not to take advantage of these windfall profits and remain loyal to their employer, but also to the industry as a whole that is now seeing the most dramatice downturn ever.

Please consider this request with much thought as much as we may or may not like it, oil has made our lives much nicer in Alaska.

Sincerely,

T. Standley

March 21, 1983


Charlie Bussell
State Capital
Pouch U
Juneau, Alaska 99811

Dear Charlie Bussell:

We need your support for HB223. The state took away basic security for our work force when they out lawed FWW pay plans.

Under the FWW our work force had a weekly pay check even when they were not working. It was nice to be able to have a check even when they were sick or on days off. They do not enjoy that security now.

Please support HB223. Why penalize companys who in good faith paid FWW wages?

J. E. Wright
10820 Kamishak
Anchorage, Alaska 99502

# TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

02056 POM ANCHORAGE AK 15 03-23 1028 AST

PMS REP CHARLIE BUSSELL

JUNEAU

I ENGOURAGE YOU TO DO EVERYTHING YOU CAN TO SUPPORT HOUSE BILL

223.

G KENT EDWARDS

2113 DUKE DR

ANCHORAGE AK 99504

1983 MAR 23 PM

MAR 1983 RECEIVED

MSG 83-00-03408 PRTY 4 03/24/83 19:02:25 ORIG: LA01 IN= 0013 OUT= 0020
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

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3/24/83 JUNE, ANC LIO, MSG 3408

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SARAH STANLEY, 6841 CHERYL STREET, ANCHORAGE, AK 99502
(H) 349-2986 (W) NONE

PLEASE SUPPORT HB 223. I DO NOT BELIEVE THAT A WINDFALL GIFT TO EMPLOYEES WILL CREAT A FAVORABLE BUSINESS CLIMATE IN OUR STATE. IT IS IMPERATIVE THAT THIS BILL PASS.

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MSG 83-00003640 PRTY 1 03/25/83 16 14:40 ORIG: LA01 IN= 0013 OUT= 0032
FROM: JEAN ANCH LTD

MSG 83-00003684 PRTY 1 03/25/83 17:50:40 ORIG: LL00 IN= 0017 OUT= 0108
FROM: DEE,SOLDOTNA . TO: JUNEAU, INFO.
TARGET: LJHL SUBJ: P.O.M.

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TO: ALL REPRESENTATIVES

FROM: ART BURDICK
RT. 1. BOX 353-16
KENAI, AK. 99611 (H) 776-8693

AS A LEADER OF GOVERNMENT IN ALASKA. I URGE YOU TO SUPPORT HB-223, WHICH UNDERSCORES ALASKA'S COMMITMENT TO AN IMPROVED BUSINESS IMAGE. WIND FALL GIFTS ARE NOT THE ANSWER TO DEVELOPING A FAVORABLE BUSINESS CLIMATE IN OUR STATE. WIND FALL GIFTS ARE A DISGRACE TO THE STATE.

DWL-284-A
PRINTED IN U.S.A.

DOWELL


March 23, 1983

Mr. Charlie Bussell

This is to inform you that Im in favor of H.B. 223. As Chairman Im sure you understand how important its passage is to all business in alaska.

Thanks for your help

Richard F. Crull

7818 Raymar Circle
Anc. Ak. 99502
Dist 10-B

BAKER PACKERS
COMPLETION DIVISION
A BAKER OIL TOOLS COMPANY

P.O. Box 3048 Houston, Texas 77001 Telephone (713) 923-9351 Telex 76-2833

REPLY TO:

5401 Fairbanks Street
Suite 6
Anchorage, Ak. 99502

907 561-1939



March 21, 1983

Honorable Charlie Bussell
Representative
House Judiciary Committee
Capitol Room 126
Juneau, Alaska 99811

Subject: House Bill 223

Dear Mr. Bussell,

As the Alaska Manager for Baker Packers, I feel it is in the best interest for the non-salaried field employee to see HB 223 enacted as soon as possible.

Our field people work on equal time on job and equal time off. This relates to six months on and six months off.

Under the present law when the men are off, they receive absolutely no salary or wages.

If any class action suit for wage settlements were made against Baker, it would only result in reduction of people and higher prices for our commodities, and this would be of no help to the vast majority of our employees.

Sincerely,

W. J. Deen

W. J. Deen
Alaska Region Manager

c

SG 03-03003273 PRT\ 1 03/24/93 14:42:25 ORIG: LA01 IN= 0010 OUT= 0073
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: PON

3/24/93, SHIRLEE ANC LIO, 3273

TO: REPRESENTATIVES [redacted], LISKA, HAYES, BARNES,
UEHLING, AND CLOCKSIN

SENATORS FISCHER AND JOSEPHSON

FROM: TONI STEVENS, 1427 P STREET, ANCHORAGE 99501 H 279-1128
W 563-3233

YOUR SUPPORT OF HOUSE BILL 223 IS NEEDED. WHY PENALIZE
ALASKA COMPANIES WHO PAID FAIR AND EQUITABLE WAGES. A
POSITIVE CLIMATE TO KEEP AND ATTRACT BUSINESS IN ALASKA IS
NEEDED. HOUSE BILL 223 WILL HELP CREATE SUCH A CLIMATE.

**********

3/22/83, SHIRLEE ANC LIO, 2276

TO REPRESENTATIVES BUSSELL, LISKA, HAYES, PHILLIPS AND BARNES

FROM EVERETT KENT, P. O. BOX 1535, EAGLE RIVER 99577
H 694-3434 W 694-9012

PASS HB 223.

MSG 83-00003679 PRTY 1 03/25/83 17:23:16 ORIG: LL00 IN= 0016 OUT= 0104
FROM: DEE,SOLDOTNA TO: JUNEAU, INFO.
TARGET: LJHL SUBJ: P.O.M.

---

TO REPRESENTATIVES: [redacted], CATO, FRITZ, MALONE.

FROM: ART BUDICK
RT. 1 BOX 353-16
KENAI, AK. 99611 (H) 776-6382

YOUR SUPPORT OF HB-223 IS NEEDED. MANY ALASKAN COMPANIES ARE FACED WITH THE POTENTIAL OF ENORMOUS WIND FALL PAYMENTS TO EMPLOYEES WHO ACKNOWLEDINGLY RECEIVED FAIR AND EQUIVOCAL WAGES. I WENT TO WORK FOR DRESSER KNOWING HOW I WAS TO BE PAID AND FEEL I WAS FAIRLY PAID. THIS RETROACTIVE AWARD IS A DISGRACE TO THE STATE OF ALASKA.

---

3/23/93, SHIRLEE ANC LIO, 2910

TO: REPRESENTATIVES [redacted] LISKA, HAYES, AND BARNES

FROM: SPENCER SNEED, 4740 KENT, ANCHORAGE 99503
H 562-5369 W 274-3576

SUPPORT HOUSE BILL 223; AVOID WINDFALLS AT THE EXPENSE OF COMPANIES DOING BUSINESS IN ALASKA.

**********

3/23/83, SHIRLEE ANC ! IO, 2917 ·

TO: REPRESENTATIVES [redacted]L, LISKA, HAYES AND BARNES

FROM: LOUISE MARTIN, 3C33 LOCARNO D.IVE, ANCHORAGE 99504
H 562-4106

I TOTALLY SUPPORT HOUSE BILL 223. WHY PENALIZE ALASKA COMPANIES WHO IN GOOD FAITH PAID FAIR AND EQUITABLE WAGES?

**********


JIM Rhodes
664 HighLANDeL Cir.
ANch. AK 99502

DeAL Mr. BUSSELL

d want you to know that d strongly urge you to help get HB 223 passed.

The adverse impact of the Dept of Labor regulations concerning ant-lowing the fluxuating work week is felt by everyone. Not only did such action take industry in Alaska by surprise, it is a totally unfair action that simply results in the payment of unearned wages to employees who have ~~should~~ been fairly compensated

# TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

1983 APR 5 PM 4 36

02216 POM TDA EAGLE RIVER AK 15 04-05 1255P AST

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

OPPOSED TO HB223 BELIEVE IT IS NOT IN THE BEST INTEREST

OF ALASKAN WORKERS.

VIC MENICHETTIE

BOX 2515

EAGLE RIVER AK 99577

# TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

Ø2209 POM TDA EAGLE RIVER AK 15 Ø4-Ø5 1255P AST

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

OPPOSED TO HB223 BELIEVE IT IS NOT IN THE BEST INTEREST

OF ALASKAN WORKERS.

ANTHONY MENICHETTIE

BOX 2515

EAGLE RIVER AK 99577

# TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

02197 POM ANCHORAGE AK 15 04-05 1205P AST

1983 APR 5 PM 4 17

PMS REP CHARLIE BUSSELL

POUCH V

JUNEAU

STRONGLY OPPOSE BH223. PROVIDES FOR ILLEGAL PAYMENT OF OVERTIME AND ROBS ME OF WAGES EARNED.

RUSS GARTRELL

4101 WESTLAND

ANCHORAGE AK 99502

MSG 83-00005567 PRTY 1 04/05/83 11:33:30 ORIG: LA01 IN= 0009 OUT= 0051
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL.SUB': POM

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4/5/83, SHIRLEE ANC LIO, 5567

TO: . REPRESENTATIVES UEHLING, CLOCKSIN, [redacted]ELL, LISKA,
HAYES AND BARNES

FROM: BOB BRINK, P. O. BOX 91, ANCHORAGE 99510 H 274-1460
(SUNBURST CIRCLE) W 274-3576

PLEASE SUPPORT HB 223. THIS OVERTIME PAY PROVISION IS PARTICULARLY SUITED TO RESOURCE DEVELOPMENT AND SERVICE INDUSTRIES INVOLVING REMOTE WORK SITE STANDBY TIME. FORTY-NINE OTHER STATES AGREE.

**********

SG 83-00005666 PRTY 1 04/05/83 13:43:50 ORIG: LF01 IN= 0006 OUT= 0097
ROM: GAIL/FBX TO: JUNO INFO
ARGET: LJHL SUBJ: POM

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O: REP'S B[redacted]L, LISKA, HAYES, BARNES, MALONE, CLOCKSIN & WENDTE

R: JOHN ALLEN, P O BOX 1349, FBX 99707 PH: 452-7882

E: HB223

SG: I AM OPPOSED TO HB223 DEALING WITH THE FLEX TIME METHOD OF PAYMENT.

---EOM

MSG 83-00005724 PRTY 1 04/05/83 15:39:16 ORIG: LF02 IN= 0002 OUT= 0120
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POM

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TO: H JUD CMTE: REP'S BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN & WENDTE

FR: BARRY HAIGHT, FBX FIREFIGHTER'S ASSC., S R BOX 20184, FBX 99701
PH: 455-6293 (H), 452-1558 (W)

RE: HB 223

MSG: WE STRONGLY OPPOSE PASSAGE OF THIS BILL. A FLUCTUATING WORK WEEK WOULD BE DISASTROUS TO THOSE OF US WHO ALREADY WORK LONG SHIFTS AND WORK WEEKS. FIRE FIGHTERS ALREADY LACK PROTECTION UNDER THE LAW REGARDING WAGES, HOURS, AND WORKING CONDITIONS. THIS WOULD MAKE A BAD SITUATION WORSE.

----------EOM


126 W. Int'l Airport Rd • Anchorage, AK 99502 • (907) ~~276-3330~~ 562-2022

Dear Represenatative/Senator Barbie Bussell & Walt Gurnace.

I want you to know that we/I/our firm strongly supports the passage of House Bill 223. We believe that this is an important step in bringing about an even-handed balance to Alaska's labor laws. Passage of the Bill will ensure proper notice for all employers in Alaska that the Fluctuating Work Week ("FWW") and Belo Plan pay methods are improper. It also permits an employer to raise a good faith defense to a claim for double liquidated damages for unpaid overtime.

As you no doubt know, FWW and the Belo pay methods are legal under federal law. We personally believe they should be legal in Alaska. If, however, that is not to be the case, then, at the very least, they should be prohibited prospectively after passage of a law, and not by adoption of regulation which receives little or no publicity.

This Bill doesn't take anything away from an employee, except for a windfall that he never expected.

As an employer in Alaska, we are tired of dealing with regulations which seem bent on stopping or preventing business. This Bill helps to counter that movement. We ask that you give it your full support.

Very truly yours,

David Jordan President

**********

4/5/83, SHIRLEE ANC LIO, 5795

TO: REPRESENTATIVES [redacted], HAYES, BARNES, MALONE, LISKA, CLOCKSIN AND WENDTE

FROM: WILLIAM J. WHITAKER, 9499 BRAYTON, SP. 215, ANCH 99507
H 344-3879

IN REGARDS TO HOUSE BILL 223, AS AN ALASKAN AND FORMER EMPLOYEE OF TWO COMPANIES INVOLVED, I KNOW THAT THESE COMPANIES HOLD ALASKA, THEIR LAWS AND PEOPLE IN TOTAL DISREGARD IN SEARCH OF PROFITS. PLEASE DO NOT ALLOW THESE PEOPLE TO MANIPULATE US ANY FURTHER.

MSG 83-00005840 PRTY 1 04/05/83 19:03:04 ORIG: LA01 IN= 0032 OUT= 0190
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

---

TO: REPRESENTATIVES [redacted], LISKA, BARNES, CLOCKSIN, HAYES, MALONE, AND WENDTE

FROM: TIM DONOVAN, SRA BOX 1557D, ANCHORAGE 99507
RESIDENCE: 3861 TAIGA DRIVE, ANC
345-0720 H

WHEN A MAN ROBS A BANK IS HE THEN FREED WHEN HE SAYS HE'S SORRY, HE DIDN'T KNOW IT WAS AGAINST THE LAW. HB 223 SEEMS TO SAY THE SAME. IT SOUNDS LIKE BIG BUSINESS IS TRYING TO BUY ITS WAY OUT OF KNOWING BREAKING ALASKA LAW. PLEASE VOTE NO.

EOM

GL 6267 FBX LIO 4/7/83

TO REP. RUSSELL, REP. LISKA, REP. HAYES, REP. BARNES, REP. MALONE, REP. CLOCKSIN, REP. WENDTE

FR R. E. CARLSON, 409 WEDGEWOOD MANOR 39K, FBX 99701 PH. 456-5247

RE HB 223

MSG I OPPOSE HB 223 REGARDING FLEX TIME.

----------EOM

---

TO: REP. RUSSELL, REP. BARNES, REP. MALONE, REP. CLOCKSIN, REP. LISKA REP. HAYES, REP. WENDTE

FR: DONALD KELLY, 123 4TH AVE. FBX 99701 PH. 456-8909

RE: FLEX TIME

MSG: I AM OPPOSED TO HB 223 REGARDING FLEX TIME.

----------EOM

FR: , CHARLES ...; --

RE: HB 223

MSG: I OPPOSE HB 223 REGARDING FLEXTIME.

----------EOM

FR: JACK ROSENBAUM, 1546 CUSHMAN, #16, FBX 99701 PH: --

RE: HB 223& INTERTIE

MSG: I'M OPPOSED TO FLEXTIME, BECAUSE IT STARTS VOLUNTARY BUT SOON BECOMES MADATORY, LEAVING ME NO WAY TO PLAN MY OFF TIME.

WHY WAS THE INTERTIE DELETED FROM THE GOVERNOR'S BUDGET, SINCE THE INTERIOR NEEDS MORE ECONOMIC POWER AND THE LONGER IT'S DELAYED, THE MORE EXPENSIVE IT GETS?

----------EOM

FR: KATHLEEN BRENNAN, SPT. 630, NORTHWARD BUILDING, FBX 99707 PH: 456-8330

RE: HB 223

MSG: I OPPOSE PASSAGE OF HB 223. THE WORKING PEOPLE IN THIS COUNTRY NEED A BREAK. THIS BILL IS DESIGNED TO WEAKEN OUR UNIONS WHEN IT IS NOW THAT WE NEED STRENGTH.

----------EOM

FR: GUY GIORDANO, 89 SLATER DR., FBX 99701 PH:--

RE: HB 223

MSG: I OPPOSE BILL 223 BECAUSE IT'S NOT FOR THE PEOPLE, IT'S AGAINST THEM & I'M NOT FOR THAT.

----------EOM

FR: GORDON VALLY, 1546 CUSHMAN ST., FBX 99701 PH. ---------

RE: FLEX TIME HB 223

MSG: I OPPOSE HB 223 REGARDING FLEX.TIME.

----------EOM

FR: RON PUNTON, 851 6TH AVE, FBX 99701 PH: 456-4248 (W)

RE: HB 223/ AND INTERTIE

MSG: HB 223: I AM OPPOSED TO REP'S BUSSELL'S FLEXTIME BILL AND WOULD VERY MUCH LIKE TO SEE IT NOT GET OUT OF COMMITTEE. IT'S A STEP BACK FOR ALL ALASKANS.

ON THE INTERTIE, WHAT HAPPENED TO THE $40,000,000 THAT WAS IN THE GOVERNOR'S APPROPRIATIONS FOR INTERTIE CONSTRUCTION? WE IMMEDIATELY NEED ADDITIONAL FUNDING PUT BACK IN TO BEGIN CONSTRUCTION THIS YEAR.
----------EOM

FR: JOHN H COLE, 2640 KUSKOQUIM, FBX 99701 PH: 452-6444(H)

RE: HB 223

MSG: I FEEL ALL MEN AND WOMEN SHOULD GET PAID EQUALLY FOR THE HOURS THAT THEY WORK. IF A PERSON SHOULD WORK ANY OVERTIME, HE OR SHE SHOULD GET PAID FOR THE OVERTIME THEY WORKED AT OVERTIME SCALE.

THANK YOU.

----------EOM

FR: MARY F. MCBRIDE, 208 8TH AVE., FBX 99701 PH: 456-2781 (H)

RE: HB 223

MSG: I OPPOSE PASSAGE OF HB 223 BECAUSE IT IS NOT IN THE BEST INTERESTS OF THE WORKING PEOPLE OF OUR STATE.

----------EOM

MSG 83-00006325 PRTY 1 04/07/83 12:43:29 ORIG: LF01 IN= 0003 OUT= 0071
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

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TO: ALL OF\THE FOLLOWING POMS GO TO :
1) HSE JUDICIARY CMTE: REP'S BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAIVS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL OF THE FOLLOWING POMS ARE REGARDING HB223....

FR: TIMOTHY A. MASSEY, 3965 GEIST RD, BLDG F #7, FBX 99701 PH:--

RE: HB 223

MSG: I OPPOSE BILL 223 BECAUSE IT'S NOT FOR THE PEOPLE. I FEEL IT'S NOT RIGHT.

----------EOM

FR: JOHN REYNOLDS, 655 UNIVERSITY AVE., APT H3, FBX 99701 PH: 479-3846 H

RE: HB 223

MSG: I WOULD LIKE TO GO ON RECORD AS OPPOSING HB 223 AS I THINK THE POSSIBILITY FOR ABUSE IS TOO GREAT.

THANK YOU.

----------EOM

FR: LOTTIE MILLER, 120 FORTY MILE AVE., APT 5, FBX 99701 PH: 452-7299 H

RE: HB 223

MSG: I AM AGAINST THE ABOVE BILL.

----------EOM

FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

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ALL OF THE FOLLOWING MESSAGES GO TO HOUSE JUDICIARY AND INTERIOR DEL.

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION: REPRESENTATIVES [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, AND DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, M.W.MILLER,,,, AND SENATORS BENNET, FAHRENKAMP, MOSS

FROM: BOB HORAN, 455 3RD AVE., FAIRBANKS 99701 NO PHONE

RE: HB223

I OPPOSE HOUSE BILL 223 REGARDING FLEX TIME. I FEEL ADDITIONAL FUNDS SHOULD BE PLACED IN THE INTERTIE BUDGET (BETWEEN FBX. AND ANCH.) I CANNOT FIGURE OUT WHY THE GOV. DELETED THIS MONEY.

**********

FAIRBANKS, 4/7/83, 6265

FROM: ANDREW MCPHERSON, 2763 MACK ROAD, FAIRBANKS 99701 HOME 479-6870

RE: HB223

I OPPOSE HB223, REGARDING FLEX TIME, IF THIS TYPE OF WORKMAN HOURS IS PUT INTO EFFECT IT WILL DESTROY HARMONY, MORALE AND ANY CONSTRUCTIVE ABILITY FOR WORKMEN TO DO THEIR WORK, IN A GOOD MANNER.

ALSO, THE FUNDING FOR THE INTERTIE BETWEEN ANC. AND FAIRBANKS WAS DELETED BY THE GOV. IN THE AMOUNT OF 40,000,000 AND I WOULD LIKE TO KNOW WHY AND IT SHOULD BE PUT BACK IN THE BUDGET.

EOM**********

MSG 83-00006207 PRTY 1 04/07/83 10:18:11 ORIG: LM01 IN= 0001 OUT= 0012
FROM: MARTIE/MATSU TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: POM

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TO: REPRESENTATIVES BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE

POM: GALEN LEWIS
PO BOX 787
WASILLA 99687
PHONE: 376 2531

I'M TOTALLY OPPOSED TO HB 223, SPONSORED BY CHARLIE BUSSELL.

MSNG 6072 MARTTE/MATSU 4/06 12:45 PM

TO: REPS. [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: KELLY B. BROWN
PO BOX 3336
PALMER, 99645

MESSAGE NO. 3

INSTEAD OF FACING UP TO THEIR RESPONSIBILITY TO PAY IN ACCORDANCE WITH THELAW, THEY HAVE TURNED TO THE LEGISLATURE TO BAIL THEM OUT OF THEIR PROBLEM. HB223 IS A POKE IN THE EYE OF THE WORKING PEOPLE OF THIS STATE. THE IDEA THAT LAWS CAN BE BROKEN IN THIS MANNER AND THE WRONGED EMPLOYEE BE UNABLE TO RECOVER THE WAGES HE OR SHE HAS EARNED, MUCH LESS DAMAGES FOR BEING DEPRIVED OF THESE WAGES FOR SO LONG, HITS ME WRONG.

**********

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645

MESSAGE NO. 4.

RE: HB223
THIS BILL, IF ADOPTED, WOULD TAKE AWAY MORE THAN MONEY. IT WOULD TAKE AWAY THE RIGHT OF A WORKER TO BE PROTECTED BY THE LAW, FROM UNFAIR AND ILLEGAL PAY PLANS. I THINK THIS IS A QUESTION THAT WAS ANSWERED PLAINLY IN HIGHEST COURT. IF THERE ARE VIOLATIONS OF THE ALASKA WAGE AND HOUR LAWS, THERE IS A PENALTY OF DOUBLE DAMAGES. THE DETERRENT AGAINST NOT PAYING AN EMPLOYEE THE WAGES HE OR SHE IS GUARANTEED BY LAW, IS A PENALTY.

**********

FROM: KELLY BROWN
PO BOX 3336
PALMER 99645

MESSAGE NO. 2
IN SUCH A CASE, THE STATE OF ALASKA ON BEHALF OF HARLEY WOODY, TOOK DRESSER INDUSTRIES TO COURT IN OCTOBER 1979. THAT COURT RULED IN FAVOR OF MR. WOODY, AS DID THE SUPERIOR COURT AND THE UNITED STATES SUPREME COURT IN SEPTEMBER 1981 ALL UPHELD THE ANTI FWW REGULATION. DURING THIS LITIGATION, DRESSER INDUSTRIES AND A NUMBER OF OTHER COMPANIES CONTINUED TO USE THE FWW FORMULA. NOW THERE ARE AS MANY AS FIVE CASES PENDING ON THIS SAME QUESTION.

**********

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645
MESSAGE NUMBER 1.
I AM WRITING TO EXPRESS MY OPINION ON HOUSE BILL 223. I BELIEVE THIS BILL WOULD HAVE UNDESIREABLE IMPACTS ON THE PEOPLE IN ALASKA IF ADOPTED.
UNDER THE PRESENT ALASKA WAGE AND HOUR REGULATIONS, IT IS ILLEGAL TO USE A FLUCTUATING WORK WEEK FORMULA IN COMPUTING OVERTIME PAY. SINCE DECEMBER 1978 WHEN THE DEPARTMENT OF LABOR ADOPTED THIS LAW, SOME COMPANIES IN THIS STATE HAVE ILLEGALLY USED THE FWW PAY SCHEME. BECAUSE OF THEIR FAILURE TO COMPLY WITH THIS LAW, SOME OF THE COMPANIES HAVE BEEN SUED BY THEIR EMPLOYEES FOR OVERTIME WAGES NOT PAID IN COMPLIANCE WITH THE LAW.
EOM #1.

**********

MSNG 6072 MARTIE/MATSU 4/06 12:55 PM

TO: REPS. [redacted] LISKA, HEYES, BARNES, MALONE, CLOCKSIN, AND WENDTE

FROM: KELLY B. BROWN
PO BOX 3336
PALMER 99645


MESSAGE NO. 5

RE: HB 223

WHAT PROTECTION COULD THERE BE IF NO PENALTY EXISTS TO ENSURE THAT THE LAW IS ENFORCEABLE? HB 223 WOULD SERIOUSLY AFFECT AN EMPLOYEE'S CHANCES FOR RECOVERY OF WAGES EARNED FOR HOURS WORKED UNDER THE ILLEGAL FLUCTUATING WORK WEEK FORMULA. THIS BILL WOULD BENEFIT A FEW COMPANIES WHICH ARE UNWILLING TO COMPLY WITH THE ALASKA WAGE AND HOUR REGULATIONS. THOSE PEOPLE EMPLOYED BY THIS GROUP AND ANYONE ELSE WHO WORKS OVERTIME WOULD NLOSE THE CURRENT LAW'S PROTECTION.

I APPRECIATE YOUR TAKING THE TIME TO CONSIDER MY COMMENTS IN THIS AND PRECEDING MESSAGES, AND HOPE YOU WILL HELP.
KELLY B. BROWN

**********

4/8/83; SHIRLEE ANC L10; 5928

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN AND WENDTE

FROM: MARC DOBKOWSKI, P. O. BOX 1644, EAGLE RIVER 99577
H 694-3936 W 659-2815

RE: HOUSE BILL 223

I FEEL THAT THIS BILL IS UNFAIR TO ME BECAUSE WHILE STATING TO A FIRMER NOTE THAT THE FLEXIBLE WORK WEEK IS ILLEGAL, IT ALSO ALLOWS MY EMPLOYER TO ESCAPE ANY PENALTIES OR BACK WAGES THAT I AM ENTITLED TO WHEN THEY WILLFULLY BROKE THE LAW FOR NEARLY THREE YEARS.

/S/ MARC DOBKOWSKI

**********

FROM: GAIL/FBX TO: JUNO INFO
BUDGET: LJHL SUBJ: MORE POMS

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ALL OF THE FOLLOWING GO TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL OF THE MESSAGES ARE REGARDING **HB 223**

FR: WILLIE LEWIS, LABORERS LOCAL 942, 315 BARNETTE ST., FBX 99701
PH: 479-5842 (H), 452-3139 (W)

RE: HB 223

MSG: I TRULY OPPOSE THIS BILL BECAUSE IT INFRINGES UPON MY RIGHT AND THE RIGHTS OF OTHERS, AND IT'S THE WORST BILL FOR THE WORKING MEN AND WOMEN OF THIS STATE. IT WIPES OUT ANY RESPONSIBILITY OF MANAGEMENT AND DOESN'T HOLD THEM RESPONSIBLE FOR ANY PENALTY OR LIABILITY THAT WILL ACCRUE UPON THEM.

FR: DALE WARNER, 1100 CUSHMAN ST., FBX 99701 RM 211 PH: 452-4421

RE: HB 223

MSG: I'M IN OPPOSITION TO HB 223.

---EOM

FR: GARY POE, 1100 CUSHMAN, FBX 99701 PH: 452-4421

RE: HB 223 & INTERTIE FUNDING

MSG: I OPPOSE HB 223.

I WOULD LIKE TO SEE THE ADDITIONAL FUNDS PLACED IN THE INTERTIE BUDGET, AND I CANNOT FIGURE WHY THE GOVERNOR DELETED THIS FUNDING.

---EOM

FR: DANIEL E KUPISZEWSKI, S R BOX 30050, FBX 99701 PH: 456-8723

RE: HB 223

MSG: THIS BILL WAS DIFFICULT TO READ AND UNDERSTAND BUT IT IS CLEAR THAT THE BILL SHOULD NOT BE PASSED. THIS BILL IS NOT IN THE BEST INTEREST OF US WHO LIVE AND WORK IN ALASKA. OUR PAST AND CURRENT WAGE AND HOUR LAWS HAVE AND ARE SERVING ALASKANS WELL.

---EOM

POM #5 FBX 4/7/83 GL6353

FR: TERRIE LINNE WELLS, 1215 3RD AV., FBX 99701 PH: 456-1804 (H)

RE: HB 223

MSG: I OPPOSE PASSAGE OF THIS BILL AS I THINK IT'S VERY DISCRIMINATORY. I ALSO THINK IT BENEFITS THE EMPLOYER AND NOT THE EMPLOYEE, ALLOWING ME TO WORK LONGER HOURS FOR LESS PAY, ALLOWING THEM TO USE THE EMPLOYEE FOR THEIR BENEFIT.

----------EOM

FR: MARK LINDSEY, BOX 65, FBX 99707 PH: --

RE: HB 223

MSG: I OPPOSE THE HB 223 BECAUSE I DON'T WANT TO BE PUSHED AROUND LIKE A BUNCH OF GOATS.

----------EOM

FR: VERNON DALE OWENS, P O BOX 73503, FBX 99707 PH: 456-8134 (H)

RE: HB 223

MSG: I VERY STRONGLY OPPOSE HB 223. NEVER BEFORE HAVE I SEEN SUCH NONSENSE WRITTEN ON PAPER. IT NOT ONLY INFRINGES ON MY RIGHT AS A WORKER BUT IT IS A TREMENDOUS WASTE OF TIME, MONEY AND EFFORT ON THE LEGISLATURE'S SESSIONS. IT WOULD BE A DISASTEROUS STEP BACKWARDS FOR ALL PEOPLE CONCERNED. PLEASE STOP HB 223. AFTER ALL, I THOUGHT SWEAT SHOPS WERE ABOLISHED.

---

FR: MIKE J OWENS, P O BOX 1683, FBX 99707 PH: 479-8309 (H)

RE: HB 223

MSG: I AM DEEPLY CONCERNED TO HEAR OF A PROPOSED BILL (#223) THAT IS NOT IN MY BEST INTEREST OR THE BEST INTEREST OF ANY MAN OR WOMAN WORKING FOR AN HOURLY WAGE IN THE STATE OF ALASKA. THIS BILL DENIES AN INDIVIDUAL A JUST HOURLY WAGE.

----------EOM

MSG 83-0000635? PRTY 1 04/07/83 13:39:15 ORIG: LF02 IN= 0008 OUT= 0094
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ POD

---

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION
REPRESENTATIVES: [redacted] LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, AND DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, M.W.MILLER
SENATORS: MOSS, FAHRENKAMP, AND BENNETT

RE: HOUSE BILL 223

**********ALL OF THE FOLLOWING MESSAGES GO TO THE ABOVE MEMBERS**********

FAIRBANKS, 4/7/83, 6359

FROM: DON ILGENFRITZ, 929 COPPET ST., FAIRBANKS 99701
HOME 452-5641 WORK 452-8131

RE: HB223

I URGE YOU TO OPPOSE THIS BILL 223. WHEN WE HAVE LAWS TO TAKE CARE OF WAGES AND HOURS WORKED, THIS BILL SHOULD NOT BE ALLOWED ON THE FLOOR.

**********

FROM: WALTER N. WENT, P.O.BOX 1683, FAIRBANKS 99707 HOME 479-8309

RE: HB 223

I'M IN OPPOSITION TO THIS BILL. IT DOES NOT REPRESENT THE WORKING MAN'S VIEW HERE IN ALASKA AND TAKES ADVANTAGE OF HIS RIGHTS.

**********

FROM: JAMES A. SAMPSON, S.R. 51478, FAIRBANKS 99701 HOME 452-3207/
WORK 452-3139

RE HB 223

QUITE CONCERNED OVER HB 223 - THIS TYPE OF LEGISLATION SEVERELY HURTS OUR ALASKAN WORKING PEOPLE. WAGE AND HOUR LAWS SHOULD NOT BE MANIPULATED BY THE OIL COMPANIES AND THEIR SUPPLIERS. NOTHING BUT A BAIL OUT FOR DRESSER INDUSTRIES.

**********END OF ALL MESSAGES**********

FROM: BRADLEY LARSSEN, P.O.BOX 72942, FAIRBANKS 99707

RE: HB223

I OPPOSE HB223. HAVING BEEN TO LAW SCHOOL, I HAVE CONSIDERABLE EXPERIENCE READING STATUTES. I FIND THIS BILL "INTENTIONALLY" VAGUE. LABOR FOUGHT 50 YEARS FOR FAIR PAY FOR OVERTIME. THIS BILL ATTEMPTS TO REVOKE THIS FOR THE PRIVATE BENEFIT OF A HANDFULL OF COMPANIES SPONSORING THE BILL. IT ALSO SHAMELESSLY ATTEMPTS TO EXEMPT THEM FROM PAST VIOLATIONS OF EXISTING LAW.

**********

FROM: CARSON D. CRITES, BOX 94, FAIRBANKS 99707 HOME 452-5550

RE: HB 223

I WISH TO STATE MY OPPOSITION TO HB 223. BESIDES BEING POORLY WRITTEN, I VEHEMENTLY OPPOSE WHAT THIS BILL WILL DO TO THE ALASKAN WORKER. WORKING IN ARCTIC ALASKA IS DIFFICULT ENOUGH WITHOUT THE ADDED BURDEN OF WORKING FOR LONGER HOURS FOR NO EXTRA PAY. REMEMBER, DRESSER SELLS TO RUSSIANS.

**********

FROM: ALFORD JACKSON, 1913 TURNER, FAIRBNAKS 99701 HOME 456-5879

RE: HB223

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO URGE YOU TO VOTE AGAINST HOUSE BILL 223. THIS BILL IS A THREAT TO THE WAGES AND WORKING CONDITIONS OF ALL WORKING PEOPLE IN ALASKA. A FAIR HOURLY WAGE IS WHAT THE WORKING MAN HAS FOUGHT FOR ALL HIS LIFE AND ANY LAW THAT WOULD EFFECT THESE RATES AS WELL AS OVERTIME SEEMS TO BE UNFAIR AND UNNECESSARY. ESPECIALLY WHEN BIG COMPANIES WOULD BE RELIEVED FROM LIABILITY THEY ALREADY INCURRED.

**********

RE: HB 223

I AM AGAINST HB 223. I FEEL IT WOULD BE A GREAT BLOW TO THE WORKING MAN IN THE STATE OF ALASKA.

**********

FROM: RONALD D. CLONDUS, P.O.BOX 74514, FAIRBANKS 99707 HOME 479-8309

RE: HB 223

I AM COMPLETELY OPPOSED TO HB223 BECAUSE I BELIEVE THAT IT DOES NOT ACT IN THE BEST INTEREST OF LABOR OR THE WORKING MAN IN ALASKA AND ALSO HB223 TAKES ADVANTAGE OF THE WORKING MAN'S RIGHTS FOR A FAIR DAYS PAY FOR A FAIR DAYS WORK. PLEASE COUNT MYSELF AND MY FAMILY AS A OPPOSITION TO THIS BILL.

**********

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

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ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S [redacted], LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL ARE REGARDING HB 223.

POM # 9 FBX 4/7/83 GL 6338

FR: TOM KELTNER, S R 30564-L, FBX 99701 PH: 452-6965 (H)

RE: HB 223

MSG: THIS BILL WILL MAKE IT EASIER FOR CARPETBAGGERS FROM THE LOWER 48 TO GET OUR JOBS AND TAKE OUR PAYCHECKS OUT OF THIS STATE.

---EOM

POM #10 FBX 4/7/83 GL 6338

FR: GEORGE S LEWIS, 1629 MADISON, FBX 99701 PH: 479-5842 (H), 852-8466 (W)

RE: HB 223

MSG: I BELIEVE THAT THIS BILL IS UNJUST AND UNCONSTITUTIONAL. IN A WAY IT SOUNDS GOOD ALL THE WAY UP TO SECTION IV. THEN IT CONTRADICTS EVERYTHING IT SAYS AND TRIES TO MESS YOU OVER. BECAUSE OF THIS, I BELIEVE THIS BILL SHOULD BE OUSTED OR TROUBLE IN OUR COMMUNITY MAY START.

---EOM

FROM: GAIL/FBX TO: JUNO INFO
TARGET: L JHL SUBJ: POMS

---

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

POM #6 FBX 4/7/83 GL6338
RE: HB 223

FR: WILLIAM H DAWSON, 2218 MERCIER ST., FBX 99701 PH: 456-3462

MSG: WE ARE OPPOSED TO THIS BILL BECAUSE IT IS AGAINST THE WORKING PEOPLE.

----------EOM

POM # 7 FBX 4/7/83 GL 6338

FR: THOMAS BROSE, 401 SLATER, APT 8, FBX 99701 PH: 452-6569(H), 659-2611 (W

RE: HB 223

MSG: I FIRMLY OPPOSE HB 223 BECAUSE IF AFFECTS THE HOURLY WAGE. THAT WAGE SHOULD BE PROTECTED BY YOU FOR ALL WORKERS. MEN SHOULD NOT HAVE TO WORK OVERTIME AND NOT GET PAID A PREMIUM WAGE. THE BILL DOES NOT SERVE THE PURPOSE OF HELPING THE WORKING CLASS IN ALASKA, FOR OTHERS TO PROFIT AT THEIR EXPENSE.

----------EOM

POM #8 FBX 4/7/83 GL 6338

FR: DANIEL J SULLIVAN, P O BOX 73177, FBX 99707 PH: 479-5378 (H)

RE: HB 223

MSG: I OPPOSE BILL 223 FOR THE REASON IT IS GROSSLY UNFAIR & UNREASONABLE FOR ANY ALASKAN.

----------EOM

MSG 83-00006335 PRTY 1 04/07/83 12:52:38 ORIG: LF02 IN= 0007 OUT= 0081
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: FOM

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TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: [redacted], LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 4/7/83, 6335

FROM: STEVE REIDLINGER, 3020 CHINOOK DRIVE, FAIRBANKS 99701

RE: HB 223

THIS IS NOT IN THE INTEREST OF WORKING PEOPLE. BIG COMPANIES HAVE BEEN REAPING THE PROFIT LONG ENOUGH.

**********

FAIRBANKS, 4/7/83, 6335

FROM: SCOTT K. FULTON, P.O.BOX 80313, COLLEGE, ALASKA 99708
HOME 479-3833

RE HB223

STOP HOUSE BILL 223, IT GOES AGAINST EVERYTHING WE'VE WORKED FOR AND HURTS INCENTIVE TO WORK MORE AND WORK HARDER.

THANK YOU.

**********

FAIRBANKS, 3/7/83, 6335

FROM DAVID GUTTENBERG, LOCAL 942, BOX 80734, COLLEGE 99708
HOME 455-6394

RE HB 223

I'M VOICING MY OPPOSITION TO THIS BILL. IT WOULD NOT BE IN THE INTEREST OF THE COMMON MAN.

**********

TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: BUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 3/7/83, 6335

FROM: DAVID D. RASLEY, FAIRBANKS CENTRAL LABOR COUNCIL
819 1ST AVE., FAIRBANKS, 99701 WORK 452-8131

RE: HB 223

I URGE YOU TO VIGOROUSLY OPPOSE HB223. IT IS MY OPINION THAT THE SPONSOR OF THIS BILL, REP. BUSSELL, HAS A DIRECT FINANCIAL INTEREST IN THIS BILL. MANY BUSH WAGE EARNERS WILL LOSE THOUSANDS OF DOLLARS WHICH IN TURN WILL GO TO THOSE EMPLOYERS LIKE BUSSELL ELECTRIC. THEREFORE, IT IS A CONFLICT OF INTEREST AND IS ETHICALLY AND MORALLY IMPROPER, IF NOT TOTALLY UNCONSTITUTIONAL. AS REPRESENTATIVES OF ALL THE VOTERS OF ALASKA IT IS YOUR DUTY TO OPPOSE THIS TYPE OF SELF INTEREST LEGISLATION.

**********

FAIRBANKS, 3/7/83, 6335

FROM: LEE JOHNSON, BOX 1768 (2.8 MILE GILMORE TRAIL), FAIRBANKS 99707
HOME 456-2785

RE: HB 223

I DON'T THINK THIS BILL IS IN THE BEST INTEREST OF WORKING PEOPLE IF IT ALLOWS EMPLOYERS IN VIOLATION TO ESCAPE CIVIL OR CRIMINAL SUITS PENDING AGAINST THEM. SECTION 1(B) SOUNDS GOOD.

**********

FAIRBANKS, 3/7/83, 6335

FROM: GEORGE V. PHIPPS, P.O.BOX 183 (512 CRAIG ST.) FAIRBANKS 99707
HOME 456-2724

RE HB 223

I WOULD LIKE TO MAKE YOU AWARE OF MY OPPOSITION TO HB223. PASSAGE OF THIS BILL WOULD BE A GREAT DETRAMENT TO THE WORKING PERSON OF THIS STATE AND AFFECT OUR FUTURE PAY SCALE FOR YEARS.

**********

MSG 83-00006335 PRTY 1 04/07/83 12:52:38 ORIG: LF02 IN= 0007 OUT= 0081
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

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TO: HOUSE JUDICIARY AND INTERIOR DELEGATION:

REPRESENTATIVES: RUSSELL, LISKA, HAYES, BARNES, MALONE, CLOCKSIN, WENDTE, DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, AND M.W.MILLER
SENATORS: BENNETT, FAHRENKAMP, AND MOSS

FAIRBANKS, 3/7/83, 6335

FROM: NANCY C. STRAND, 2110 B. MCCULLAM, FAIRBANKS 99701
HOME 456-8804

RE: HB 223

I VEHEMENTLY OPPOSE PASSAGE OF HB223. THIS BILL UNDERMINES THE STRENGTH OF LABOR UNIONS IN THE STATE.

**********

FAIRBANKS, 3/7/83, 6335

FROM: JOE STEINAKER, P.O.BOX 2472, FAIRBANKS 99707 HOME 452-7811

RE: HB 223

AT THIS TIME I WOULD LIKE TO STATE MY OPPOSITION TO HB223 WHICH IS BEING REVIEWED TODAY. I AM OPPOSED TO THIS ON THE GROUNDS THAT FLEX TIME IS TOO BROAD OF A TERM FOR THE WORKING CLASS.

**********

FAIRBANKS, 4/7/83, 6335

FROM: LELAND D. CORKRAN, BOX 73324, FAIRBANKS 99707
HOME 456-5405 WORK 456-5421

RE: HB 223

PRESENT LAWS HAVE STABLISHED A WORK DAY AND THE WORK WEEK BOTH ATTHE STATE FEDERAL LEVELS. THIS BILL WOULD BE COMPLETELY CONTRARY TO THE INTENT OF THOSE LAWS.

I AM OPPOSED TO THE PASSAGE OF THIS BILL.

**********END OF ALL MESSAGES**********

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

---

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S BUSSELL, ISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

ALL ARE REGARDING HB 223.

POM #1 FBX 4/7/83 GL 6338

FR: JUDITH C JACOBY, P O BOX 1711, FBS 99707 PH: 456-8804 (H), 456-4584 (W)

RE: HB 223

MSG: I VEHEMENTLY OPPOSE PASSAGE OF HB 223. THIS BILL UNDERMINES THE STRENGTH OF LABOR UNIONS IN THIS STATE. PEOPLE SHOULD BE PAID BY THE HOUR -- THEIR PAY SHOULD NOT BE RE-ADJUSTED.

---EOM

POM #2 FBX 4/7/83 GL 6338

FR: PATRICIA L HOUSE, P O 1686, FBX 99707 PH: 452-3154(H)

RE: HB 223

MSG: I THINK THAT PEOPLE SHOULD BE PAID BY THE HOUR AND IT SHOULD NOT BE RE-ADJUSTED BY ONE FIXED SUM. SO BILL # 223 SHOULD DEFINITELY BE OPPOSED.

---EOM

MSG 83-00006338 PRTY 1 04/07/83 12:58:06 ORIG: LF01 IN= 0004 OUT= 0079
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

---

ALL OF THE FOLLOWING POMS ARE TO:

1) HSE JUDICIARY CMTE: REP'S RUSSELL, LISKA, HAYES, BARNES, MALONE CLOCKSIN, & WENDTE
2) INTERIOR DELEGATION: REP'S DAVIS, BETTISWORTH, RINGSTAD, KOPONEN, & M W MILLER, & SEN'S BENNETT, FAHRENKAMP & MOSS

POM #3 FBX 4/7/83 GL6338

FR: BERNARD MCGUIGAN, 1545 EIELSON, FBX 99701 PH: 452-3186 (H)

RE: HB 223

MSG; I THNK PEOPLE SHOULD BE PAID BY THE HOUR, GOOD UNION WAGES & NO SUBCONTRACTORS.

----------EOM

POM #4 FBX 4/7/83 GL6338

FR: EDDIE B BENSON, 2618 MERCIE, P O BOX 952, FBX 99707 PH:--

RE: HB 223

MSG: IT'S DAMAGING. I, EDDIE BENSON, OPPOSE THIS BILL 223.

----------EOM

POM #5 FBX 4/7/83 GL 6338

FR: E M MILLER, 1106 GORDON WAY, FBX 99701 PH: 456-7682

RE: HB 223

MSG: WE ARE AGAINST THE BILL BECAUSE IT DENIES US AS WORKING PEOPLE A FAIR WAGE.

----------EOM

MSG 83-00005817 PRTY 1 04/05/83 17:53:19 ORIG: LA01 IN= 0031 OUT= 0176
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

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4/5/83, SHIRLEE ANC LIO, 5817

TO: ALL MEMBERS, ALASKA LEGISLATURE
ATTN: REPRESENTATIVES [redacted] AND LINDAUER
ATTN: SENATORS STURGULEWSKI AND RODEY

FROM: TOM STANDLEY, 6841 CHERYL, ANCH 99502 H 349-2986
W 563-3990

SIRS: IN ADDITION TO MY LETTER REGARDING HOUSE BILL 223, WHEN FWW WAS LEGAL AND DRILLING ACTIVITY SLOW, A MAN COULD AT LEAST MAKE ENDS MEET. BUT NOW WITH RIG COUNTS CONTINUING TO DROP, A MAN ON 40 HOURS PER WEEK CANNOT SURVIVE. PLEASE SUPPORT HOUSE BILL 223 AND FWW (FLUCTUATING WORK WEEK).

**********

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 4-16-88 SPONSOR: Russell

SUBJECT(S): HB 223

| NAME | REPRESENTING | ADDRESS | PHONE | OBSERVER | WITNESS | FOR | AGAINST |
|---|---|---|---|---|---|---|---|
| Don Rouleau | District Council of Laborers | 369 S. Franklin, Ste 200, Juneau | 586-2707 | ✓ | | | ✓ |
| Snova Lochaby-Smith | Dept. of Labor | P.O. Box 6530, Juneau | 465-4842 | ✓ | | | |
| Tom Cooke | IBEW Local 1547 | 124 Front Juneau | 586-3050 | ✓ | | | ✓ |
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SPONSOR: House Judiciary

(leg) non-leg (pub hear) work sess inv hear

SUBJECT: HB223 Overtime Wages

MAILING ADDRESS: _____

PHONE 4990 CONTACT Katherine

DATE TAKEN/BY KRB/4/8

T/C DATE/DAY Sat Apr 16

TIME: 11:00 PACIFIC
10:00 YUKON
9:00 ALASKA
8:00 BERING
4 hours

SITES PARTICIPATING: All Alaska

North Slope
- Anaktuvuk Pass
- * Barrow
- Kaktovik
- Point Hope
- Wainwright

NANA
- Ambler
- * Kotzebue
- Noorvik
- Selawik

Norton Sound
- Gambell
- Hooper Bay
- * Nome
- Savoonga
- Shishmaref
- ** Unalakleet

Bristol Bay
Aleutians
- * Bethel
- * Dillingham
- St. Paul
- Sand Point
- ** Unalaska

Interior
- * Delta Junction
- * Fairbanks
- ** Fort Yukon
- Galena

South Central
- * Anchorage
- Homer
- * Kenai (Sol)
- * Kodiak
- * Mat-Su
- Seward
- * Valdez

Southeast
- Cordova
- Haines
- Hoonah
- * Juneau
- * Ketchikan
- * Petersburg
- * Sitka
- Wrangell
- Yakutat

ALL ALASKA
ALL LIO's
WASH., D.C.

Chairing Site/Person JNU - Rep Bussell

Special Offnet Location/Phone# _____

Katherine Daurnski 4/8/83
Signature of Sponsor/Contact Person Date

------TELECONFERENCE OFFICE USE ONLY------

2-Wire ____ 4-Wire X

Bridges: #1 (206)447-0620
#2 (206)447-1554
#3 (206)447-5627
#4 (206)447-9479

Bridge operator (800)426-3232

JNU trouble #'s 586-1062
465-3836

Publicity:
____ Local calls/list attached Committee mtg Contact.
X Media/P.S.A. attached

Can expect:
____ Lengthy back-up
____ Bill summary
____ Participants list

POST TELECONFERENCE NOTES

Site/Date: _____

Local Moderator _____

T/C Started: _____ T/C Ended _____

T/C Recorded: _____

Testified/Participated: _____

Unable to Testify: _____

Observers: _____

Total Number: _____

HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: SPONSOR:

SUBJECT(S):

| | NAME | REPRESENTING | ADDRESS | PHONE | OBSERVER | WITNESS | FOR | AGAINST |
|---|---|---|---|---|---|---|---|---|
| 11# | JERRY SHEEHAN | GEARHART IND. | PO Box 2436 ANCH 99510 | 562-2538 | | ✓ | ✓ | |
| 12 | LARRY COMPTON | TIME SAVER GROCERY | 3519 BERNARD RD ANCH 99503 | 248-2900 | | ✓ | ✓ | |
| 13# | RICHARD CRIALL | DOWELL, DIV OF DOW | 4665 Bus Park Ave Anch AK | 561-1324 | | ✓ | ✓ | |
| 14# | Paul L. Preston | Halliburton Svc. | Box 6287 Anc AK | 562-2100 | | ✓ | ✓ | |
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HOUSE JUDICIARY COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 4-7-83. SPONSOR: Bussell

SUBJECT(S): HB 223- payment of wages

| | NAME | REPRESENTING | ADDRESS | PHONE | OBSERVER | WITNESS | FOR | AGAINST |
|---|---|---|---|---|---|---|---|---|
| 1# | CHUCK BECKER | ALASKA SUPPORT INDUSTRY ALLIANCE | P.O. Box 100100 ANCH 99510 | 562-0100 | | ✓ | ✓ | |
| 2# | JOHN MARTIN | DRESSER ATLAS | 5600 B, SUITE 201 ANCH. | | | ✓ | ✓ | |
| 3# | THEODORE FLEISCHER | P.E.S.A. EG&R | 510 L, SUITE 700 ANCH. 99501 | 276-5121 | | ✓ | ✓ | |
| 4# | JIM ROBISON | Dept of Labor | Box 1149 JUNEAU AK | 465-2700 | | ✓ | | |
| 7# | MARLENE NEVE' | AFL-CIO | SR BOX 20948 FBKS | 456-2030 | | ✓ | | ✓ |
| 5# | GARY AMENDOLA | Dept. of Labor | Box 1149 JUNEAU | 465-2700 | | ✓ | | |
| | PAUL DICUS | RHDA & P | 130 Seward St. Juneau AK | 586-2890 | ✓ | | | |
| 9# | Michael Barcott | Parties to Litigation | 2550 Denali-Suite 700 | Anch 276-0166 | | ✓ | | ✓ |
| 8# | John Eshleman | AWSA/SELF | P O Box 1145 WASILLA AK | 376-2045 | | ✓ | | ✓ |
| 10# | Robert ESHLEMAN | AWSA/SELF | P.O. Box 8035 NKE. KENAI | 776-8589 | | ✓ | | ✓ |
| 15# | Tom Sofo | LAA/Legal Service | | 465-2450 | | ✓ | | |
| | Joan Metcalf | Rep Szymanski | Juneau | 465-4979 | ✓ | | | |
| 11# | Tom Casher | IBEW L.U. 1547 | 124 Front Juneau | 586-1342 | | | | ✓ |
| 6# | RON LOVENSEN | AG OFFICE | JUNEAU | | | ✓ | | |
| 17# | JAMES WAKEFIELD | LABOR'S WORK | JUNEAU | | | | | |
| | | | | | | | | |

MULA for figuring FWW pay:

ALLY BASE + BONUS ÷ TOTAL NUMBER OF HOURS = Pay per hour.

hat figure is lower than minimum, use the minimum per hour.

week is figured separately.

figure OVERTIME:

No. of hours -40 ÷ 2 + No. of hours.

Total No. of hours x hourly rate

MPLE: (If pay is $229 per week with minimum 4.58 per hour)

WEEK #1 -- 109 hours + 196.13 bonus

229.80 + 196.13 = 425.13 ÷ 109 = $3.90 per hour

109 - 40 ÷ 2 + 109 = 143.5

143.5 hours times $4.58 = $657.23

WEEK #2 -- 124 hours + 765.47 bonus

229.80 + 765.47 = 994.47 ÷ $8.02

124 - 40 ÷ 2 + 124 = 166

166 x 8.02 = $1,331.32

| | |
|---|---|
| Total Pay for 2 weeks | 657.23 |
| | 1,331.32 |
| | $1,988.55 |

Hyprin

5.76

BASE 288

BONUS 506.33

MILES 114

288 ÷ 50 = 5.76 (MIN EFFECTIVE RA

$$\frac{288 + 506.33}{114} = 6.97$$

$6.97 \times (114 + \frac{1}{2}(74)) = 151$

$6.97 \times 151 = 1052.47$

Dx11 to
6-7-82

Hypothetical #2

Pay $288

Taxes $506.33

Hours 120.

$288 \div 50 = 5.76$

$$\frac{288 + 506.33}{120} = 6.62$$

$6.62 \times 160 = 1059.20$

DX 12 hrs

6.780

Fuel $288
Labor $506.30
Hours 130.

$$\frac{288 + 506.33}{130} = 6.11$$

$$175 \times 6.11 = 1069.25$$

D x Bbl
(5-2-5)

SCHLUMBERGER-NAM

Interoffice Correspondence

Date: April 21, 1982

CONFIDENTIAL

To: All AKD Engineers and Managers

File No:

From: Alaska Division

Subject: Alaska State Legislature Senate Bill # 886

As I believe you are all aware, we have recently changed our Operator Pay Package in Alaska to comply with a recent Supreme Court ruling outlawing the previous fluctuating work week method. This ruling was retroactive to January 1, 1979. This leaves a very high potential liability for back wage payment. Because we believe our method of wage payment has always been fair and just to our employees, we are presently lobbying in the Alaska Legislature to reduce this liability. In conjunction with an organization called Petroleum Equipment Suppliers Association (PESA), we are introducing Senate Bill # 886 to the State Legislative session to remove this back wage payment liability. April 28th is the last day of this session so our time is very short to get our bill passed. To facilitate this passage, we are encouraging all of our Management personnel to support this bill by actively informing our legislature of our feelings on this issue.

A wire or telex may be sent to our legislators by calling either of the following numbers and expressing your support for S.B. #886:

278-3668

or

Zenith-9500 (Operator Assisted)

We encourage your support as Schlumberger Managers to inform any or all of the people listed below of your feelings on this issue:

| | |
|---|---|
| Robert Hulcahy | Chairman of Senate Labor Committee |
| Vic Fischer | Chairman of State Affairs Committee |
| Jalmar Kerttula | President of the Senate |
| Mike Colletta | Senator |
| Patrick Rodey | Senator |
| Robert Ziegler | |
| Mitch Abood | |
| Mike Beirne | |
| Joe Paynes | |
| Terry Martin | |

Thank you for your support on this issue.

[illegible] Manager

JRC/cb

# WHILE YOU WERE AWAY

FOR Cathy DATE 4/5 TIME 9:35 A.M. P.M.

M TIM Donovan

OF

PHONE 345-0720
AREA CODE NUMBER EXTENSION

MESSAGE Votes you on HB225

Are you going to do a teleconference?

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

TOPS FORM 4002

# WHILE YOU WERE AWAY

FOR _____ DATE _____ TIME ___ ___ A.M. P.M.

M Tony Sholly

OF

PHONE 586-2210
AREA CODE NUMBER EXTENSION

MESSAGE HB 223

SIGNED

| | |
|---|---|
| | TELEPHONED |
| | RETURNED YOUR CALL |
| | PLEASE CALL |
| | WILL CALL AGAIN |
| | CAME TO SEE YOU |
| | WANTS TO SEE YOU |

TOPS FORM 4002

Ron Lorensen
Deputy A.G.
Dept of Law
3600
copies!

April 26, 1983


The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, Alaska 99811

Dear Sir:

I would like to express my support for H.B. 223 which is now pending in your committee. When the work schedules were set up with the F.W.W. or Belo pay plan, there were no complaints and people were happy to have employment. This is another case of some opportunist lawyer trying to make a case out of something that was approved by the past employee. If the employee did not approve of the plan, then he should have resigned.

Sincerely,

Roger J. Seibert

RJS:te

Address: Roger Seibert
SRA Box 1735-I
Anchorage, AK 99507


April 26, 1983

The Honorable Charlie Bussell
House of Representatives
Chairman, House Judiciary Committee
Alaska State Legislature
Capitol, Room 124
Pouch V
Juneau, AK 99811

Dear Sir:

I would like you to know that I support HB 223. I feel it is a law that we need.

Sincerely,

David C. Sharp

David C. Sharp
SRA Box 1153
Anchorage, AK 99502

I.

FACTUAL BACKGROUND

The flexible work week (hereafter FWW)[1/] method of computing overtime payment has been recognized as an acceptable method of payment under the Federal Wage and Hour Act since 1968. 29 C.F.R. 778.114 specifically allows the use of the fluctuating work week payment method. This method of payment is particularly suited to resource development and service industries where there is frequently a considerable amount of standby service time at remote locations and a variety in the number of hours of work available from week to week. The plan generally provides employees greater certainty in planning their financial budgets and guarantees them a specific amount in their pay checks each pay period thus easing the ups and downs in income which would result from a straight overtime pay plan method. This continuity of income allows employees to reflect a more stable cash flow to loan institutions when qualifying for home loans and the like and also serves to reduce the likelihood of a potentially devastating interruption of income to the employee. Without the FWW plan an employee may find himself returning to work from a two week R&R at a time when work is unexpectedly slack and then leaving on his next two week R&R when work picks up. Thus six weeks may pass

---

1/ There are accounting differences in the various plans generally referred to as FWW plans or BELO plans which do not affect the questions raised herein. Both FWW and BELO plans will hereafter be referred to as FWW.

I.

FACTUAL BACKGROUND

The flexible work week (hereafter FWW)[1/] method of computing overtime payment has been recognized as an acceptable method of payment under the Federal Wage and Hour Act since 1968. 29 C.F.R. 778.114 specifically allows the use of the fluctuating work week payment method. This method of payment is particularly suited to resource development and service industries where there is frequently a considerable amount of standby service time at remote locations and a variety in the number of hours of work available from week to week. The plan generally provides employees greater certainty in planning their financial budgets and guarantees them a specific amount in their pay checks each pay period thus easing the ups and downs in income which would result from a straight overtime pay plan method. This continuity of income allows employees to reflect a more stable cash flow to loan institutions when qualifying for home loans and the like and also serves to reduce the likelihood of a potentially devastating interruption of income to the employee. Without the FWW plan an employee may find himself returning to work from a two week R&R at a time when work is unexpectedly slack and then leaving on his next two week R&R when work picks up. Thus six weeks may pass

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while his bills pile up before he can scramble back to catch up if his next two weeks on the job happen to coincide with an increase in work hours.

Prior to 1978 the use of the flexible work week method of payment was legal under Alaska law. See AS 23.10.060; Attorney General Opinion February 10, 1978. On December 8, 1978, the Department of Labor instituted a change by adopting a new regulation, 8 AAC 15.100, which declared that these flexible work week plans were no longer in compliance with the overtime provisions of Alaska's wage and hour laws.

This change in the administrative regulations was poorly publicized, with little if any input from Alaskan employers. The primary industries affected by the new regulation are the oil and gas support industries with additional effect on mining and other industries. It is estimated that, since this regulation was adopted in 1978, possibly as many as 100 Alaska businesses, unaware that the long standing custom and practice in their industry has been changed by administrative regulation, have continued using the same flexible work week plan they had used for years and, in doing so, may have incurred substantial liability.

In October, 1979, almost a year after the regulatory change, Dresser Industries (the first company to be sued) was named as a defendant in a suit filed by a former employee for $4,000 in back wages. The case was opposed on constitutional

grounds and appealed to the Alaska Supreme Court. In September 1981, the Alaska Supreme Court upheld the power of the Department of Labor to promulgate regulations on this subject. The U.S. Supreme Court later declined to review the case. Dresser paid the judgment and the case was closed. In November 1981, Dresser was sued by another former employee who agreed to stay action on his case awaiting a U.S. Supreme Court decision on whether to review the case. The case for this one individual has since been settled and dismissed.

In December 1981, two years after the regulatory change, Dresser was again sued, this time in a class action filed by a third employee seeking back wages on behalf of all Dresser employees in an amount exceeding $15,000,000. At least three other companies, including FMC and Schlumbeger, have since been sued. All of these cases are in the preliminary stages, no trial dates have been set at this time and none of the lawsuits have as yet resulted in a judgment against any of the defendant companies.

In addition to the financial liability created by the flexible work week prohibition, Alaska law provides for mandatory liquidated damages which doubles any back wage or overtime award regardless of the good faith efforts on the part of the employer to abide by the wage and hour statutes. AS 23.10.110; AAI, Inc. v. Mussara, 602 P.2 1240 (Alaska 1979). Even if an employer relies on the Department of Labor's opinion or otherwise makes an innocent error in computation of pay, the court has no choice but to award double the amount of damages. The accumulated liability

resulting from the 1978 administrative action coupled with Alaska's double damage statute has resulted in a potential economic disaster for many Alaskan employers.

II.

PROPOSED REMEDY

A multitude of companies and organizations proposed during the latter part of the 1982 legislative session that the FWW administrative prohibition be amended to include a good faith exception and provide that any liability arising out of the regulatory prohibition be extinguished retroactively. A bill to accomplish this, SB 886, was introduced in the Senate.

The bill, as proposed, would have the following effects. The proposed regulation will have no effect on the two individuals who have already brought suit and either received a final judgment from which appeal cannot be taken or settled their case. As to those people who have filed suit, either individually or on behalf of a class of employees, and whose suit is still pending awaiting trial or on appeal, their cases would be dismissed subject to the right of employees to recover expenses of litigation. Companies would be given a period of time to convert over from the FWW pay systems and relieved of the massive potential liability raised by the regulation. Past employees would not receive a windfall gain.

III.

QUESTIONS PRESENTED

1. Does the Alaska legislature have the power to repeal the administrative regulation?

2. Does a retroactive repeal of the regulation constitute an unconstitutional impairment of the right to contract by taking away vested contractual rights of employees?

Question 1 above has been directly addressed by the Alaska courts. Under AS 44.62.320 (Legislative Annulment of Regulations and Review), the legislature was granted the authority to annul a regulation of an agency by concurrent resolution. In 1980 the Alaska Supreme Court in State v. A.L.I.V.E., 606 P.2d 769 (Alaska 1980) held that the legislature could not annul a regulation by concurrent resolution but did set out the proper procedure by which the legislature could annul a regulation. In the A.L.I.V.E. case the Alaska Supreme Court indicated that by a vote of both houses and passage of a new Act the legislature does have the power to annul an agency regulation by following normal legislative procedures. AS 01.10.090 requires that in order for the statute annulling the regulation to have retrospective effect, it must expressly declare in the statute that it is intended to be retrospective. In addition, under AS 01.10.100 (Effect of Repeal or Amendments) the legislature has been specifically granted the power to annul a regulation, the only qualification being that if the annulment is to be retroactive and is to affect any penalty or liability incurred, it must expressly state that this is the legislative intent.

As to question #2 above, the argument that a retroactive repeal or annulment of a regulation and the consequent extinguishing of liability on the part of employers for penalties, forfeitures or back wages is an unconstitutional denial of due process because it violates the fifth amendment prohibition against impairment of contracts or Article I, § 10 of the Constitution has been raised numerous times in the past in various cases and has over the years been resoundingly rejected by literally hundreds of court decisions.

In 1947 the United States Congress faced a situation similar to the problem now facing the Alaska legislature. The United States Supreme Court in Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 interpreted the existing Fair Labor Standards Act as requiring payment for time spent in preliminary and incidental activities on the employer's premises prior to actually beginning work at the employees' work stations. This decision changed the existing custom and practice in industry and between July of 1946 and January of 1947, some 2,000 cases were filed in Federal Court alone seeking back pay in excess of five billion dollars. (House Committee on the Judiciary Report No. 71, Feb. 25, 1947.)

In response to this situation, Congress passed the Portal to Portal Act of 1947 which specifically extinguished any claim arising out of the Fair Labor Standards statutes and relieved employers from liability and punishment from existing claims

whether commenced prior to, or on or after the date of the Act. The Act provided that unless an activity was covered by an express provision of a written or nonwritten contract between the employee and his employer or was a custom or practice in effect at the time of employment, any liability for existing or future claims would be extinguished.

The report of the House Committee on the Judiciary specifically addressed the constitutionality and vested contract right question in passing the Portal to Portal Act and noted that:

> Claims for minimum wages, overtime compensation, liquidated damages and penalties are not vested property rights within the protection of the Fifth Amendment. They are purely statutory rights which may be withdrawn by the Congress at any time before they have ripened into a final judgment from which appeal cannot be taken. (citations omitted).

In the years following passage of the Portal to Portal Act the constitutionality of the retroactive grant of immunity from liability has been challenged many times in many courts. It has been upheld consistently.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1948) the court noted at page 61 that the constitutionality of the Portal to Portal Act was beyond question:

> Its constitutionality has been upheld by the circuit court of appeals of the sixth circuit . . . and by more

> than 100 decisions of federal district courts and state courts to which our attention has been called. We list below those available in the federal supplement which we had opportunity to read.

The plaintiffs in Seese argued that the statute violated the constitution because:

> . . . they deprived plaintif s of vested rights under existing contracts in violation of the due process clause of the fifth amendment.

The court's response to this contention was clear:

> We think that both contentions are entirely without merit.
>
> * * *
>
> The question raised under the fifth amendment is that the statute takes property without due process in that it strikes down vested rights under existing contracts. The answer is that even rights arising out of contract cannot fetter congress in the exercise of a power granted it by the constitution, and that the rights stricken down by the statute are not rights arising out of contract at all, but rights created by statute as an incident of the statutory regulation of commerce.

The court held that the Fair Labor Standards Act does not provide payment for employees engaged in the commerce which Congress sought to regulate but rather provides a means by which wages may be regulated. The Court stated that when it becomes apparent that the instrument of regulation is about to be used in such a way as to

injure the very commerce it is designed to help it is idle to say that the legislature is without power to amend it in such a way as to avoid the evil that is threatened.

The proposed bill before the Alaska legislature will not strike down any right which is based on a contract, a custom or a practice. What is sought to be taken away is purely a statutory right. This is clearly constitutional:

> What was taken away was the right to recover on claims of purely statutory origin, claims given by statute not as compensation for labor performed but as a means of regulating wages and hours of work in interstate commerce. (Seese, supra, at p. 64, citations omitted.)

By both logic and legal reasoning, since the legislature may repeal its own Act, it clearly has the right to take away something which has no existence save by virtue of that Act.

Looked at in another way, the legislature is merely validating contracts and agreements between employers and employees which were only made invalid by reason of the regulation in effect during a period of the employment contract. The legislature's power to validate prior contracts which were invalid by statute has been upheld repeatedly by the U.S. Supreme Court. Westside Belt R Co. v. Pittsburg Construction Co., 219 U.S. 92; McNair v. Knott, 302 U.S. 369.

The argument that the provisions of the Alaska regulation prohibiting FWW must be read into the contract of employment and that the right to recover compensation in accordance with the terms of the regulation becomes a part of the contract and accrues upon the rendering of services provides no basis for rendering a repealing statute unconstitutional.

> . . . that act validates the real contract between the parties and merely takes away a statutory remedy given by the prior act. Even if the provisions of the Fair Labor Standards Act be read into contracts of employment, so also must be read the constitutional power of congress to change that act . . . not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. (Seese, supra, at 65, citations omitted.)

The Alaska Supreme Court has directly addressed this issue and in Bidwell v. Sheele, 355 P.2d 584 (Alaska 1960) joined the array of State, Federal and Supreme Court decisions upholding the power of the legislature to retroactively extinguish statutory rights. Dealing with the repeal of section 16-1-131, Alaska Compiled Laws Annotated 1949, which abolished the requirement for a bond in title dispute cases, the Court addressed the constitutionality of the repeal in the face of challenges based on both the 14th Amendment of the U.S. Constitution and Section 7, Art. 1 of the Alaska Constitution. The Court noted that:

> In 1871 the Supreme Court of the United States ruled that a party cannot have any

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> vested right in a remedy conferred by an act of Congress to prevent Congress from modifying it or adding new conditions to its exercise, or from withdrawing the remedy altogether.

The Portal to Portal Act does not stand alone as an example of the constitutionality of legislative action extinguishing prior liabilities. The question has been argued and has been upheld by a staggering majority of Courts in other areas as well.

In American Can Co. v. Davies, 559 P.2d 898 (Or. 1977), the Supreme Court of Oregon upheld the power of the public utilities commissioner to change rates already set by a private contract with the utility. The company contended that:

> Crown contends that the power of the Commissioner to change rates or other conditions memorialized in a written contract between a public utility and one of its customers constitutes an impairment of the contract rights, and as such is in violation of Aritcle 1, § 10 of the United States Constitution.

The Court answered the argument first with legal authority:

> We disagree. In Midland Co. v. K. C. Power Co., 300 U.S. 109, 57 S.Ct. 345, 81 L.Ed. 540 (1937), the court said:
>
> > . . . [T]he State has power to annul and supersede rates previously established by contract between utilities and their customers. It has power to require service at nondiscriminatory rates, to prohibit service at rates too low to yield the cost rightly attributable to it, and to require utilities to publish their rates and to adhere to them.

In Louisville and N.R. Co. v. Mottley, 219 U.S. 467, the court dealt with an act of Congress which retroactively struck down a contract made in settlement of a personal injury case and upheld Congress' power. In Norman v. Baltimore and O.R. Co., 294 U.S. 240 the U.S. Supreme Court noted that Congress has the power to retroactively strike down gold clauses in private contracts and that such power is not unconstitutional. In National Car Loading Corp. v. Phoenix-El Paso Express, 176 S.W.2d 564, the Supreme Court of Texas dealt with the Interstate Commerce Act, 49 U.S.C.A. § 1001 et seq., which wiped out any punishment or liability imposed upon freight forwarders who may have violated existing ICC tariff regulations and upheld its constitutionality in the face of identical arguments. In McNair v. Knott, 302 U.S. 369 the United States Supreme Court upheld the constitutionality of Congress' grant of retroactive validity to invalid pledges of securities by national banking associations.

In Moss v. Hawaiian Dredging Co., 187 F.2d 442 (9th Cir. 1951) the appellate court considered Public Law 393, popularly known as the Overtime-on-Overtime Act. The Act provided in substance that retroactive amendments would validate prior invalid or illegal contracts which were only invalid or illegal by virtue of wage and hour statutes. The argument was again made that such a retroactive enactment was void as it resulted in a deprivation

and second with common sense reasoning:

> Furthermore, were such an argument upheld, then the whole public interest in utility regulation would become meaningless, since by making separate contracts with all or any of its individual customers, the utility and the customer could effectively bypass all or any relevant part of the public utility regulatory statutes and the regulations governing the public utility.

The same logical conclusion would flow from the argument that the legislature is unable to alter contracts in the wage and hour field. Employer and employee would be free to bypass any regulation by the simple expedient of making a contract about it. For that reason legislative enactments in this area are valid, notwithstanding by their terms, they apply to and affect antecedent contracts for the performance of services. 16A C.J.S. Constitutional Law § 349.

Whether plaintiffs have sought to argue that the legislature is prohibited by the due process clause of the Constitution or by Article 1, § 10 from interferring with vested rights of private employment contracts, the result has always been the same. -- No matter how the obligations or rights are denominated, imposed or insured with respect to wages and overtime compensation they are:

> . . . subject to change or abrogation, and are not subject to any of the juridical principles applicable to contractual rights or statutory rights. May v. General Motors Corp., 73 F. Supp. 878.

of property without due process of law in violation of the fifth amendment. The argument was again defeated. The plaintiffs based their right to recover on the following familiar arguments:

> 1. These, they say, were vested rights, contractual in nature.
>
> * * *
>
> 2. . . . became part and parcel of their employment contracts, and hence immune to retroactive legislation modifying those provisions.
>
> * * *
>
> 3. What is here sought, it is said, is no windfall result of a surprise decision . . .

The court resoundingly dealt with these arguments and again reaffirmed that prior decisions:

> . . , establish that if it may be said that private rights, contractual in nature, arose from the overtime provisions of the Fair Labor Standards Act, yet the character and quality of such rights are such that they must yield to the sovereign power to regulate commerce by legislation . . .

The court finally concluded that:

> There is nothing in law or in reason which forbade congress to give validity to these contracts retroactively, . . .

VI.

CONCLUSION

The constitutionality of a retroactive invalidation of a statutory right appears unassailable in light of the repeated

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court opinions over the years. So long as the legislative action does not interfere with a written contract between individuals but deals purely with a statutory granted right, the fact that that right is considered a part of an employment contract will not affect the legislature's power. The legislature has a constitutional right to give and to take away what it has given and that right is not affected even if what it has given has by law become part of a contract. As stated by Chief Justice Hughes of the U.S. Supreme Court in Norman v. Baltimore and O. Ry. Co., 294 U.S. 240:

> Parties cannot remove their transactions from the reach of dominent constitutional power by making contracts about them.

The proposed remedy is constitutional.

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

Bill/Resolution No.: House Bill 223
Title: "...Payment of overtime;..."
Sponsor: Representative Bussell
Requestor: Judiciary

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|---|---|---|---|---|---|---|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| | | | | | | |
| TOTAL OPERATING | | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | | | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |
| | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: PRC Robert J. Bacolas, Sr. Phone 465-4870
Division: Labor Standards & Safety Date: April 4, 1983

Approved by Commissioner: Jim Robison Date: 465-2700
Department: Labor
LEG:A:39

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STATE of ALASKA

# MEMORANDUM



TO: Ronald W. Lorensen,
Assistant Attorney General
Department of Law

THRU: Wilson L. Condon, Deputy Att'y. Gen.

THRU: William E. Spear, Deputy Commissioner

FROM: Dale W. Cheek
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

DATE: October 24, 1977

SUBJECT: Request for Opinion
re: AS 23.05.160 and
AS 23.10.060

The Department of Labor respectfully requests of the Department of Law, an interpretation of whether "Flex-time" would or would not be an acceptable condition of employment under AS 23.05.160 and AS 23.05.060. It has always been the Department of Labor's position that flex-time would be contrary to the intent of the Alaska Wage & Hour Act as we read it. This would appear to be supported by the stronger law provision under the FLSA.

We would very much appreciate an early determination of this issue as it bares directly to the outcome of case now pending before the Department of Labor and will have a related effect on other employers, particulary in the oil industry.

We have attached position papers, re: the instant case of Kluting, R. vs. Dowell Division of Dow Chemical Company. In our investigation of this complaint, Investigator Don Wilson of our Wage and Hour Division, Anchorage, has worked closely with Assistant Attorney General, Pat Kennedy of your staff for legal guidance.

Thank you for your attention and the continuing cooperation we enjoy with the Department of Law.

DWC/rh

Attachment

cc: E.T. Lee Leland, Supervisor

STATE of ALASKA

# MEMORANDUM

TO: Dale Cheek, Director
Wage & Hour Division
Department of Labor
P. O. Box 630
Juneau, Alaska

DATE: September 28, 1977

FILE NO:

TELEPHONE NO:

Thru:

Benny Joy, Supervisor

SUBJECT: Kluting, R. vs: Dowell Division of Dow Chemical Co. (Fluctuating Workweek )

From: Donald R. Wilson
W/H Supervisor II
Wage & Hour Division
Department of Labor
650 W. Int'l Airport Road
Suite 100 Int'l Bldg. Annex
Anchorage, Alaska 99502

The Anchorage Regional Office is currently processing a wage claim as captioned above.

This is a claim in which the department, as assignee for the claimant, disputes the validity, under Alaska Statutes, of a wage payment plan known as the "Fluctuating Workweek."

On August 19, 1977 we met with legal counsel for the defendant corporation and agreed, as a means to reconcile this matter, to submit our separate position statements to the Attorney General's Office for their interpretation of Alaska Statutes and specifically to the validity of the "Fluctuating Workweek," in Alaska.

Therefore, enclosed are the position statements for your review with our request that these positions be forwarded to the Department of Law for their review and opinion.

There is a pay plan under Federal Wage and Hour Law which provides for an irregular workweek (fluctuating hours) for fixed weekly pay. This plan is more commonly known as the "Fluctuating Workweek, (FWW)," and is addressed in Title 29, Part 778 of the "Code of Federal Regulations," Section 778.114.

While the department concedes that the "FWW," is a valid pay plan under Federal Regulations, the department contends that the plan is not now, nor has it ever been recognized as valid for employers engaged in commerce or business within the state of Alaska. We have no specific "Case," upon which to base this conclusion, but instead use the Alaska Statute, Title 23 and "Common Knowledge" to support our rationale.

Specifically, AS SEC. 23.10.060. Payment of Overtime. states:

> No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment.

Additionally, AS SEC. 23.05.160. Notice of Wage Payments. states:

> An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes and goes to his place of work.

Since Alaska Statute, for the purpose of overtime, incorporates the eight hour law along with the Federal 40 hour law, overtime payment would have to be made for weeks of less than 40 hours where days in excess of eight hours were worked. It would therefore work to the employer's detriment since if the wage rate slides downward after 40 hours it would have to slide upward for

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

weeks where less than 40 hours were worked, but days in excess of eight hours were worked.

Additionally, since Alaska Statute contains a provision that requires an employer to make notification of changes of the rate of pay, in writing, on the payday before the date of change, an employer attempting to use the "FWW," could not possibly comply with AS 23.05.160.

Accordingly, the "FWW," since it requires continuous rate changes, (everytime overtime is required, or less than 40 hours are worked) cannot be in compliance with the legal requirements to notify employees as set forth in AS SEC. 23.05.160.

Final reference is made to AS SEC. 23.10.095. Adoption of Federal Regulations. We have made diligent search through our department and can find no instance where any commissioner, including the current administration, has adopted that portion of the Code of Federal Regulations that addresses the FWW. To the contrary, and in support of our rationale of "Public Knowledge," we would invite your attention to the attached letter from the U.S. Department of Labor as Enclosure #1.

WAGE & HOUR DIVISION
ALASKA DEPARTMENT OF LABOR
INTERNATIONAL BLDG. ANNEX, SUITE 100
650 WEST INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

# U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

P.O. Box 1097
Anchorage, Alaska 99510

*Date:* September 19, 1977

*Reply to Attn of:*

*Subject:* Fluctuating work week pay plans

*To:* Mr. Doh R. Wilson
Alaska State Department of Labor
Wage and Hour Division
Suite 100, International Bldg. Annex
650 W. International Airport Road
Anchorage, Alaska 99502

Dear Mr. Wilson:

I am in receipt of your letter of September 15th regarding my instructions or comments to employers concerning the fluctuating work week pay plan.

The fluctuating work week pay plan is a valid pay plan under the Fair Labor Standards Act and employers or employees who ask about it are so advised. I have also made it a practice to advise them that even though it is a legal system under the federal law it is not a valid plan under the State of Alaska labor law and that they should contact the State Wage and Hour Division.

I trust that this letter will answer your questions regarding my comments to persons or firms regarding the applicability of the federal labor laws.

If I can be of further assistance please contact me.

Very truly yours,

Jack E. Harty

Jack E. Harty
Compliance Specialist

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SEP 21 19??
LABOR LAW COMPLIANCE DIV.
Anchorage Office

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September 30, 1977



For Submission to:
The Office of the Attorney General
State of Alaska

RE: Alaska Wage and Hour Act
Fluctuating Workweek Question

Dear Sirs:

This position paper is being submitted to the Office of the Attorney General on behalf of the Dowell Division of the Dow Chemical Company ("Company"), pursuant to an agreement between Dowell and the Wage and Hour Division of the Alaska Department of Labor. It is requested by Dowell and the Wage and Hour Division that the Attorney General render a legal opinion regarding the controversy which has arisen between the two parties and which is more fully disclosed below.

## INTRODUCTION

On May 19, 1977, the Wage and Hour Division of the Alaska Department of Labor in Anchorage issued a wage claim against the Dowell Division of the Dow Chemical Company. The claim, filed on behalf of Mr. Randy Kluting, asserted that Dowell had failed to provide the claimant with his full overtime pay entitlement while he was in the Company's employ as a service operator from March 3, 1976 until April 28, 1977.

The claim asserted by the Alaska Department of Labor is part of what appears to be a broad challenge to the method by which the Company had paid its employees for several years -- the so-called "fluctuating workweek method". This method of compensation is geared to the special problems confronted by employers and employees in businesses where work schedules vary considerably from day to day and week to week. The uncertain and drastically variable conditions of operations within the oil industry in Alaska have made such

a plan especially suited to the needs of Dowell and many other companies engaged in oil production.

The fluctuating workweek method is essentially a salary plus overtime plan. It provides a guaranteed weekly salary to an employee regardless of the number of hours which he actually works. For example, whether an individual employee works 30 hours or 50 hours in a given week, he is guaranteed to receive his previously specified salary for that week's work.

In addition to that guaranteed salary, however, the employee, under federal and state law, is also entitled to overtime compensation for those hours which he works in excess of 40 per week or 8 per day. The amount of this additional compensation is determined by multiplying the number of overtime hours by one-half of the employee's hourly rate for that week. This is done because the employee, under the fluctuating workweek method, is deemed to have been fully compensated, on a straight time basis, for any overtime hours worked.

The hourly rate of pay for an individual employee under this system is the focal point of the present dispute. Under the fluctuating workweek method the hourly rate, also known as "regular rate of pay", varies from week to week as a function of the number of hours actually worked in that week. In other words, for the purpose of calculating overtime, it is necessary to determine an employee's regular rate of pay during the week in question. This is accomplished by dividing the guaranteed weekly salary by the number of hours actually worked during that week. Once this regular rate of pay has been determined, it is merely divided in half and multiplied by the number of hours of overtime worked by the employee for that week. This result is then added to the weekly salary to arrive at the employee's total compensation for that particular week.

assumes hours worked by employee whose salary may be worth less than one who works only a few hours

The legitimacy of the fluctuating workweek method has consistently been recognized by the federal courts and in federal regulations adopted pursuant to the Fair Labor Standards Act. For this reason, and because it is so well suited to the particular circumstances of employment in the oil industry in Alaska, many companies throughout the state have implemented the fluctuating workweek method as the standard wage formula for employee compensation.

The fluctuating workweek method of compensation is attractive both to employers, and to employees who work weeks of irregular hours. It enables both parties to make reasonable forecasts with regard to the amount of weekly wages that will be paid. This is especially convenient for employees and their families who otherwise would be uncertain from week to week how much compensation they could expect to receive.

In the present matter, the Alaska Department of Labor is claiming that the fluctuating workweek method is not valid under applicable Alaska wage and hour statutes. Such a determination by the Department of Labor has potentially far reaching ramifications because of the large number of companies currently using the fluctuating workweek method. In this particular action the Department is seeking recovery of the amount of overtime pay which Mr. Kluting would have received under applicable wage and hour statutes if the fluctuating workweek method had not been utilized.

At a meeting on August 19, 1977, in Anchorage, Dowell and the Wage and Hour Division agreed that the Office of the Attorney General would provide an impartial forum for evaluation of the arguments opposing and in support of the fluctuating workweek method of compensation. Since the ultimate resolution of this matter rests upon sophisticated legal analysis and construction of various statutes and other authority, it was agreed that an Attorney General's Opinion should be procured before the Wage and Hour Division expands the application of its internal decision.

## II.

## ISSUE PRESENTED

Is the fluctuating workweek method of compensation acceptable under the Alaska Wage and Hour Act and/or have companies operating in Alaska, including Dowell, justifiably relied upon the plain language of that statute in utilizing the fluctuating workweek method?

III.

ARGUMENT

A. The Alaska Wage and Hour Act Expressly Recognizes That Its Administration and Construction Are to Be Governed by Prevailing Federal Authority Concerning the Federal Fair Labor Standards Act and the Regulations Adopted Under It

The Alaska Wage and Hour Act is codified in the State statutes in §§23.10.050 - .150. Section 23.10.060 of those statutes sets forth the State's payment for overtime provisions, in pertinent part as follows:

> "No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment." [Emphasis added.]

here we my rate is weekly not hourly

Later in the Wage and Hour Act, §23.10.145 provides:

> "Terms used in §§50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it."

Clearly the operative language in the first above-quoted section is the underlined term "regular rate of pay". Under §23.10.060, overtime compensation is absolutely dependent upon the amount of pay deemed included in an employee's "regular rate". The fluctuating workweek question with which we are here concerned is also intimately connected with that term. The fluctuating workweek approach is essentially a method of ascertaining an employee's regular rate of pay. The corresponding "regular rate" term in the

federal Fair Labor Standards Act has always been defined to include the fluctuating workweek method as acceptable under that statute.

The question to be resolved, therefore, is whether the term "regular rate of pay" in Alaska statute §23.10.060 encompasses the fluctuating workweek method. The answer is clearly provided in §23.10.145. That section unambiguously states that the terms utilized in the Wage and Hour Act are to be defined as they are defined in the federal Fair Labor Standards Act or the regulations adopted under it.

The only possible complication connected with §23.10.145 arises from the "where applicable" phrase contained therein. Nevertheless, there is no merit in a contention that the term "where applicable" gives the State Department of Labor the discretion to ignore clear and unambiguous federal pronunciations regarding specific provisions of the Act.

Section 23.10.145 contains language which is clearly mandatory and not discretionary. It states that terms used in the Wage and Hour Act "shall be defined" as they are defined under federal law. It is well recognized in the law that the word "shall" in a legislative enactment demonstrates the legislature's intention that the body charged with administration of that statute is obligated to perform the stated function. The fact that this section of the Wage and Hour Act contains such mandatory language is strong evidence that the legislature of Alaska did not intend to grant any particular discretion to the Department of Labor in regard to the definition of terms.

The inclusion of the term "where applicable" does nothing to require a different conclusion. It should be read as though the legislature were saying that if federal law has defined a particular term which appears in the Wage and Hour Act, that federal definition should be applied by the Department of Labor in administering the Alaska statute. Support for this interpretation is found in the definition of the words used in that statutory section. Webster's Dictionary defines the word "applicable" primarily as "capable of being applied." This definition of "applicable" was approved in Thomas v. City of Huntington, 80 Ind. App. 476, 141 N.E. 358, 359 (1928), and Hodges v. Canal Ins. Co., Miss. 223 So.2d 630, 633 (1969). That definition does not contain a discretionary element. In the present context it

merely indicates that if a federal definition can possibly be applied, it must be applied. Any other interpretation of the words "where applicable" would be without foundation.

It is obvious, therefore, that in accordance with §23.10.145 guidance must be sought from the federal Fair Labor Standards Act regarding the definition of "regular rate of pay".

B. The Fair Labor Standards Act and Its Regulations Explicitly Recognize and Support the Use of the Fluctuating Work Week Method of Compensation

Section 7 of the Fair Labor Standards Act provides that overtime must be paid to an employee for all hours worked in excess of 40 hours in a single workweek at a rate not less than one and one-half times the "regular rate" at which he is employed. Extensive regulations have been promulgated by the Federal Department of Labor to explain and define Section 7's "regular rate" term. Those explanations and definitions are codified in Title 29 of the Code of Federal Regulations, beginning at Section 778. As stated in Section 788.1, those regulations constitute "the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained in Section 7 of the Act."

The actual definitions of the "regular rate" term begin with Regulations Section 788.108. It is there stated:

> "The 'regular rate' of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract."

Section 778.109 states:

> "The 'regular rate' under the Act is a rate per hour. . . . The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that

workweek for which such compensation was paid. The following sections give some examples of the proper method of determining the regular rate of pay in particular instances."

Section 778.114 of the Regulations contains the example of the proper method of determining the regular rate of pay in instances where fixed salaries are paid for fluctuating hours of work. That section provides:

"(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums), for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have

already been compensated at the straight-time regular rate, under the salary arrangement.

"(b) The application of the principles above-stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $80.00 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50 and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $2.00, $1.82, $1.60, and $1.67, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $80.00; for the second week, $83.60 ($80.00 plus 4 hours at 91 cents, or 40 hours at $1.82 plus 4 hours at $2.73); for the third week $88.00 ($80.00 plus 10 hours at 80 cents, or 40 hours at $1.60 plus 10 hours at $2.40); for the fourth week approximately $86.72 ($80.00 plus 8 hours at 84 cents or 40 hours at $1.67 plus 8 hours at $2.51).

"(c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the

> workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for non-overtime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime forumla."

It is absolutely clear from the regulation quoted above that the fluctuating workweek method is included within, and is an integral part of, the definition of "regular rate of pay" under the Fair Labor Standards Act. It is equally clear that since the Alaska Wage and Hour Act looks to the federal Fair Labor Standards Act for its definition of that term, the "regular rate of pay" term in the Alaska statute also includes the fluctuating workweek method. The logic of this reasoning is inescapable.

C. The Lawfulness of the Fluctuating Workweek Method has Consistently Been Upheld Under Federal Case Law

The above conclusion has been strongly and consistently supported by the decisions of the federal courts. Almost immediately after the Fair Labor Standards Act of 1938 was enacted, the United States Supreme Court was confronted with a challenge to the fluctuating workweek method of compensation. That challenge was identical to the present case in that the controversy focused on the meaning of the term "regular rate of pay." In Overnight Transportation Company v. Missel, 316 U.S. 572 (1942), the employee worked

as a "rate clerk" for a corporation engaged in interstate motor transportation as a common carrier. An agreement had been entered into between the company and the employee whereby the employee received a fixed weekly wage for irregular hours, and a rate equal to one and one-half times his "regular rate of pay" for all hours in excess of the statutory maximum. In upholding the use of the phrase "regular rate of pay" interpreted as the total weekly compensation divided by the total number of hours worked (the FWW interpretation), the Court stated:

> "No problem is presented in assimilating the computation of overtime for employees under contract hours which are the actual hours worked, to similar computations for employees on hourly rates. Where the employment contract is for a weekly wage with variable or fluctuating hours, the same method of computation produces the regular rate for each week. As that rate is on an hourly basis, it is regular in the statutory sense inasmuch as the rate per hour does not vary for the entire week, though week by week the regular rate varies with the number of hours worked. It is true that the longer the hours the less the rate and the pay per hour. This is not an argument, however, against this method of determining the regular rate of employment for the week in question. Apart from the Act, if there is a fixed weekly wage, regardless of the length of the workweek, the longer the hours the less are the earnings per hour. This method of computation has been approved by each circuit court of appeals which has considered such problems. It is this quotient which is the 'regular rate at which an employee is employed' under contracts of the types described and applied in this paragraph for fixed weekly compensation for hours, certain or variable." 316 U.S. at 580.

Numerous federal cases have been guided by the principle established in Overnight Transportation Company. The interpretation of Section 7 of the Fair Labor Standards

Act made in that case has been repeatedly utilized to sanction fluctuating workweek programs. In the Ninth Circuit, for example, "regular rate of pay" was similarly defined in Robertson v. Alaska Juneau Gold Mining Company, 157 F.2d 876 (9th Cir. 1946). In striking down a particular pay plan which provided a "regular rate" for seven hours of the working day and so-called "overtime" for the additional one hour of the working day, the court described the plan as "artificial." In finding that the scheme was designed to circumvent the application of the Act, the court stated:

> "The Act [FLSA] does not necessarily require an increase of wages, nor does it forbid a decrease, so long as the wages paid are above the statutory minimum. But it does require that all wages or things of value forming part of the normal working income be used to determine the 'regular rate,' and that that regular rate be applied to the first 40 hours worked, and for all hours worked in addition a rate one and one-half times the regular rate must be paid."

In another much cited case, Landreth v. Ford, Bacon & Davis, 147 F.2d 446 (8th Cir. 1945), the Eight Circuit Court of Appeals also held that the fluctuating workweek method, employing the term "regular rate of pay", is immune from attack in federal courts:

> "If his [an employee's] employment is for a fixed weekly compensation for a week of variable or fluctuating hours, the employee's regular rate of pay must be determined by dividing his fixed weekly compensation by the number of hours actually worked in any workweek; and in cases of employment at a fixed weekly compensation for a workweek of fluctuating hours, the regular rate of an employee will necessarily vary from week to week according to the number of hours worked."

Accord, Mumbower v. Callicot, 526 F.2d 1183 (8th Cir. 1975); Masters v. Maryland Management Co., 493 F.2d 1329 (4th Cir. 1974); Usery v. Godwin Hardware, Inc., 426 F.Supp. 1232 (S.D. Mich. 1976). See, Conkland v. Hofgesang, 407 F.Supp. 1090 (W.D. Ky. 1975).

The same interpretation of the "regular rate" phrase as it is used in §7 of the FLSA has also been adopted in regulations promulgated under the Act, 29 C.F.R. §778.114, which are cited above.

In short, it is inescapable that the drafters of the Alaska statute, by using the key phrase "regular rate of pay" and by expressly stating that the federal interpretation of the terms of the statute should govern, envisioned fluctuating workweek plans similar to those consistently upheld under federal law. Since the meaning of the phrase "regular rate of pay" is beyond dispute under federal law, and since no Alaska statutes or regulations suggest a contrary interpretation, the federal definition should prevail and the use of the fluctuating workweek method of compensation should be acceptable under Alaska law.

D. The Fact That Alaska Requires the Payment of Overtime for Hours Worked in Excess of Eight Hours in a Single Workday, Unlike the Federal Fair Labor Standards Act, Has No Impact Whatsoever on the Use of the Fluctuating Workweek Method

As indicated above, the Fair Labor Standards Act requires overtime to be paid for hours worked in excess of 40 hours in a single workweek. Many state laws, Alaska's included, provide for overtime payments for hours worked in excess of 40 hours in a single workweek or eight hours in a single workday. This is a difference without a distinction as far as the fluctuating workweek question is concerned.

Two federal statutes specifically provide for the payment of overtime for all hours worked after 40 hours in a single week or eight hours in a single day. Those statutes are the Walsh-Healey Public Contracts Act, 41 U.S.C. §§327-333 (covering federal government suppliers) and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-333 (covering federal government construction and service contractors). Both of those statutes rely upon the Fair Labor Standards Act, in the same manner as the Alaska Wage and Hour Law does, for a definition of "regular rate of pay" or similar terms, and both of those statutes recognize the applicability of the fluctuating workweek method.

Walsh-Healey Act Regulations codified at 41 C.F.R. §50.201.103 provide:

> "(a) Employees engaged in, or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any one day or in excess of 40 hours in any one week, provided such persons shall be paid for any hours in excess of such limits [at] the overtime rate of pay which has been set therefor by the Secretary of Labor.
>
> "(b) Until otherwise set by the Secretary of Labor, the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The 'basic hourly rate' means an hourly rate equivalent to the rate upon which time and one-half overtime compensation may be computed and paid under Section 7 of the Fair Labor Standards Act of 1938, as amended." (CCH WH ¶26,200.010.)

These Walsh-Healey Act regulations, just like the Alaska Wage and Hour Act, adopt the Fair Labor Standards Act definition for "regular rate of pay". They, therefore, also adopt the fluctuating workweek method which is embodied within the FLSA definition of "regular rate of pay".

Case law and administrative rulings under the Walsh-Healey Act have also specifically approved the use of the fluctuating workweek method of determining overtime. In re Noble Street Motors, Inc., 15 W.H.Cases 517 (1962); In re Richland Lime Co., 10 W.H. Cases 365 (1951); In re B.&W. Sportswear, Inc., 6 W.H. Cases 1224 (1947); Kelly Steel Works, Inc., Ruling of the Secretary of Labor, P.C.-228, March 21, 1947; Edwin & Louis Bry, Inc., Ruling of the Secretary of Labor, P.C.-199, August 26, 1946, CCH WH ¶26,104.27.

The United States Labor Department has similarly determined that the "basic rate of pay" under the Contract Work Hours and Safety Standards Act is to be computed in the same manner as the regular rate of pay is computed under the Fair Labor Standards Act and has expressly recognized the applicability of the fluctuating workweek method under that

statute. CCH WH ¶27,056; BNA WHM §99:345; U.S. Department of Labor Compliance Manual.

The two federal Acts discussed above have the same overtime provisions as the Alaska Wage and Hour Act. Also like that Alaska statute, they rely upon the Fair Labor Standards Act for a definition of the term, "regular rate of pay". In this manner they incorporate the fluctuating workweek method which is embodied in the FLSA "regular rate of pay" definition. The mere fact that these statutes have eight-hour overtime provisions, unlike the Fair Labor Standards Act, does not in any way affect this adoption of the fluctuating workweek method.

Arguments that state eight-hour overtime provisions establish a higher standard which must take precedence over Fair Labor Standards Act procedures are similarly unconvincing. There is no question that Fair Labor Standards Act provisions do not excuse noncompliance with higher statutory overtime standards. The Fair Labor Standards Act itself so provides in 29 U.S.C. §218(a), which reads:

> "No provision of this chapter or of any order thereunder shall excuse non-compliance with any federal or state law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter."

See also, Brennan v. State of New Jersey, 364 F.Supp. 156 (D. N.J. 1973); State v. Comfort Cab, Inc., 118 N.J.Super. 162, 286 A.2d 742 (1972).

Applying the fluctuating workweek method to the Alaska statute, however, would not in any way derogate from that state's eight-hour overtime requirement. The fluctuating workweek method is totally consistent with eight-hour overtime provisions as is demonstrated by its use in connection with the Walsh-Healey and Contract Work Hours Acts. The fluctuating workweek is simply a method for determining an employee's regular rate of pay. Once that regular rate of pay is determined, it can be utilized just as readily in connection with a 40-hour, eight-hour overtime provision like the Alaska statute as it can in connection with a mere 40-hour requirement such as the Fair Labor Standards Act.

Under an Alaska-type statute, overtime would be paid for all hours worked in excess of eight hours in a single day even under the fluctuating workweek method. The only difference is that the regular rate of pay would be determined by dividing total remuneration by total hours worked that week instead of by a standard 40 hours, as the Alaska Department of Labor wishes to do. There is no obstacle whatsoever to utilizing a fluctuating workweek method under both daily and weekly overtime requirements.

E. Because the Statutory Language Involved in the State Statute Is Clear and Unambiguous on Its Face, Dowell Was Entitled to Rely Upon the Facts of the Statute Absent Any Contrary Interpretations of the Act by the State of Alaska

As indicated above, the prevailing interpretation of the term "regular rate of pay" is clear and unambiguous. No cases, statutes, or regulations exist in Alaska or elsewhere which suggest in any way that the regular rate of pay definition under the Fair Labor Standards Act is not applicable to the Alaska Wage and Hour law. That being the case, Dowell and other companies operating in Alaska are totally justified in relying upon the face value of the Alaska statute and taking the position that the fluctuating workweek method may be utilized under the State's Wage and Hour law.

The only authority which has even come close to addressing this particular issue in the State of Alaska is the case of Cameron v. Chickagof Min. Co., 82 F.Supp. 665, 12 Alaska Rpts. 103 (N.D. Alaska 1948). There, consistent with prevailing authority, the district court in Alaska held that "rate of pay" under the Fair Labor Standards Act is determined by dividing the fixed weekly compensation by the number of hours actually worked. It stated that:

> "The [U.S.] Supreme Court has repeatedly pointed out that the regular rate must be the quotient of the amount actually paid divided by the number of hours actually worked; that it must be the actual, not fictitious rate agreed upon and paid." (Citations omitted.) 12 Alaska Rpts., at 108.

Of course, while reported in Alaska, this case was determined in federal court under the federal Fair Labor Standards Act. Nevertheless, it is the only authority of any type reported in Alaska from which guidance could be sought by Dowell and other companies currently using the fluctuating workweek concept. In view of this fact, Dowell, and the other similarly situated companies, could reasonably rely upon the facet of the Wage and Hour Act as justifying their use of the fluctuating workweek method.

It would surely place an onerous burden upon Dowell and those other companies if it were held at this time that they were liable for backpay despite their good faith reliance upon the explicit provisions of the Wage and Hour Act and despite the fact that there has never been any previous indication that the Fair Labor Standards Act definition of "rate of pay" would not apply under the Alaska act. Such a holding would also contravene governing Constitutional due process requirements.

F. Since An Employee's Rate of Pay Can Always Be Determined by Utilizing the Appropriate Formula, There Is No Merit in an Argument That the Fluctuating Workweek Method is Rendered Unacceptable by the Terms of Alaska Statute §23.05.160 as a Pay Rate Change Without Prior Notification

Alaska statute §23.05.160 was relied upon by the Wage and Hour Division of the Department of Labor in its initial condemnation of the fluctuating workweek method. That section reads as follows:

> "An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work."

It was contended that this section bars the use of the fluctuating workweek method because under that system of

computation, an employee's rate of pay will be subject to change from week to week. There are three reasons why such an argument cannot be supported.

First, §23.05.160 is not a part of the Alaska Wage and Hour Act. The Wage and Hour Act is found in §§23.10.050 to 23.10.150. Because it is not included in the Act, §23.05.160 cannot serve as an independent basis upon which the Wage and Hour Division can rely in precluding the use of the fluctuating workweek method. This conclusion is clear from the terms of §23.10.075 which creates and empowers the Wage and Hour Division of the Department of Labor. There, and in §23.10.085, the scope of the Wage and Hour Division's authority is expressly limited to administering §§50 to 150 of the Wage and Hour chapter. It does not have jurisdiction to implement a section which is outside of the statutory scope of its powers.

Second, even assuming arguendo that §23.05.160 could be a sufficient ground, it is apparent that the express terms of that section do not, in any way, preclude the use of the fluctuating workweek method. All that §23.05.160 requires is that an employee be informed of the rate of pay he will receive at the time of his hiring, and that he be notified of any changes in his rate of pay which might occur subsequent to that time. Section 23.05.160 is, therefore, essentially a notice statute. Its primary focus is to guarantee that an employee is given sufficient prior notice of any change in his wage rate.

Despite Wage and Hour Division assertions to the contrary, under the fluctuating workweek method, the requirements of this section are satisfied. It should be kept in mind that the fluctuating workweek method is basically a salary approach to employee compensation. As indicated previously, employees working under that method receive a guaranteed weekly salary which remains the same even though the amount of hours they work per week may fluctuate. of course, the rate per hour under such a system may differ from week to week depending on the number of hours worked, but this is true of all salary compensation programs. While the hourly rate may fluctuate, the salary remains the same.

Of course, the calculation of overtime compensation may cause differences in the amount of an employee's weekly compensation, but this, once again, is a situation typical of all employees. Overtime compensation of necessity

fluctuates for all employees depending upon whether, and to what extent, overtime is worked.

Third, §23.05.160 cannot be a bar to the fluctuating workweek method since it has been held not to bar Belo plans. The Alaska Department of Labor has on several occasions indicated that it finds no problem in accepting the use of a Belo plan method of compensation. A Belo plan, like the fluctuating workweek method, involves a system whereby an employee's hourly wage rate changes on a weekly basis relative to the number of hours worked that week. But the guaranteed salary remains the same, just as under the fluctuating workweek method. The theory behind the two methods is identical. If the Belo plan is not precluded by §23.05.160 then logically the fluctuating workweek method should not be subject to attack on this ground.

IV

CONCLUSION

The procedural understanding between Dowell and the Wage and Hour Division calls for the simultaneous submission of position papers to the Attorney General's Office. The decision of the Attorney General's Office is to be based upon those position papers and any additional information which the parties may be called upon to submit. Dowell hereby requests that prior to the issuance of any decision adverse to its position set forth above, it be granted an opportunity to submit additional information, either by further documentation or by an oral presentation, to address points contained in the tentative decision of the Attorney General's Office.

If you have any questions regarding this matter, or if we can supply any additional information whatsoever, please do not hesitate to contact me.

Very truly yours,

Garry G. Mathiason

Garry G. Mathiason

cc: Local Counsel
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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT**

*ROYALTY OIL AND GAS ADVISORY BOARD*

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November 28, 1983

NOTICE OF MEETING

The Alaska Royalty Oil & Gas Development Advisory Board

The Alaska Royalty Oil & Gas Development Advisory Board will meet on December 9, 1983. The meeting will be held at 1:30p.m. in the conference room, 620 E. 10th Avenue, Room 203, Anchorage, Alaska.

Further information may be obtained by calling the Royalty Board office (907) 276-7979.

STATE OF ALASKA

Bill Sheffield, Governor

**DEPARTMENT OF LAW**

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April 7, 1983


The Honorable Charlie Bussell
Representative
Chairman, Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Materials relating to subject of House Bill 223

Dear Representative Bussell:

This responds to your two letters of March 30, 1983 requesting information from the Department of Law concerning certain regulations of the Department of Labor (8 AAC 15.100) regarding flexible-work-week employment.

Since I was the attorney in the Department of Law who worked with the Department of Labor in adopting those regulations back in 1978, I thought it appropriate that I respond to your inquiry directly. Pursuant to your request of this morning, I will make myself available to the Committee to address the issues raised in HB 223. I will also be asking Assistant Attorney General Gary Amendola, who now works with the Department of Labor, to attend your Committee's hearings on the bill.

In response to your questions:

1. The Department of Law has not issued any opinions regarding the constitutionality of the current regulations regarding flexible-work-week employment (8 AAC 15.100). However, the Alaska Supreme Court did address the validity of those regulations in 1981 in its decision of Dresser Industries, Inc. v. Alaska Department of Labor 633 P.2d 998. A copy of that decision is attached for your information. Also, back in early 1978 I did prepare a formal opinion to the Department of Labor advising them on their authority to adopt regulations dealing with flexible-work-week employment. A copy of that February 10, 1978 opinion is also attached. As you will note, the Alaska Supreme Court agreed with my analysis.

2. In response to your request for documentation of the process which led to the adoption of the Department of Labor's regulations on this subject, I am attaching copies of the relevant materials contained in the Lt. Governor's files. These include Affidavits of Publication from the Southeast Alaska Empire, the Fairbanks Daily News Miner, and the Anchorage Daily News, an Affidavit of Oral Hearing indicating that a hearing on these proposed regulations was held in Anchorage on September 15, 1978, an Affidavit of Notice of Adoption of Regulation indicating that the requirements of AS 44.62.190 regarding provision of notice of proposed adoption of regulations was complied with by the Department of Labor, and the memorandum by the Department of Law's regulations attorney, Arthur Peterson, approving these regulations for filing with the Lieutenant Governor. The original of all these documents is on file with the Lieutenant Governor and can be reviewed in his offices.

I hope this information will be of assistance to you and the Committee in your deliberations on HB 223.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Gary Amendola
Assistant Attorney General

Jim Robison
Commissioner
Department of Labor

regarding cancellation of the contract on two weeks' notice. The argument based on Davis's claim that he was the band's leader can be disposed of summarily: no evidence has been produced from which it can be inferred that this statement induced Johnson to enter into the contract. *See Restatement (Second) of Contracts* § 309 (Tent. Draft No. 11, 1976). The second argument, based on Davis's alleged promise that the band's engagement could be cancelled on two weeks' notice, must fail for the same reason. Even granting that failure to warn a party of his possible misapprehension of a contract term may constitute a misrepresentation,[8] we are unable to conclude that Johnson may have been passively misled in that fashion. She fails to assert any assumption on her part that the written agreement embodied the purported oral promise. No evidence was presented from which it can be inferred either that she failed to read the contract or, having read it, failed to understand its terms. Her affidavit indicates neither that she in any way misapprehended the content of the written agreement nor that she was induced to sign it by any deception, active or passive, on Davis's part. Absent any evidence that Johnson was induced to enter into the contract on the basis of a misrepresentation as to the terms it contained, the district court was correct in granting summary judgment in favor of the band on this ground.

We agree with the district court's conclusion that Johnson's evidence, even interpreted in the light most favorable to her, was insufficient to support her defenses to enforcement of the written contract. That court's entry of summary judgment in favor of the band members must therefore be AFFIRMED.


**DRESSER INDUSTRIES, INC., Appellant,**

**v.**

**ALASKA DEPARTMENT OF LABOR, Appellee.**

**No. 5625.**

Supreme Court of Alaska.

Sept. 18, 1981.

Employer appealed from entry of summary judgment by the Superior Court, Third Judicial District, Anchorage, Seaborn J. Buckalew, Jr., J., upholding validity of

8. Restatement (Second) of Contracts § 301 (Tent. Draft No. 11, 1976) defines a misrepresentation as "an assertion that is not in accord with existing facts." Section 303 provides that:

> A person's non-disclosure of a fact known to him is equivalent to an assertion that the fact does not exist only if
>
> . . . . . .
>
> (b) he knows that disclosures of the fact would correct a mistake of the other party as to a basic assumption on which that party made the contract and if non-disclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing, or
>
> (c) he knows that disclosure of the fact would correct a mistake of the other party as to the contents or effect of a writing, evidencing or embodying an agreement in whole or in part . . . .

This section is clarified in Comment e as follows:

> *Known mistake as to a writing.* One party cannot hold the other to a writing if he knew that the other was mistaken as to its contents or as to its legal effect. He is expected to correct such mistakes of the other party and his failure to do so is equivalent to a misrepresentation which may be grounds either for avoidance under § 306 or for reformation under § 308. . . . The failure of a party to use care in reading the writing so as to discover the mistake may not preclude such relief (§ 314). In the case of standardized agreements, these rules supplement that of § 237(d), which applies, regardless of actual knowledge, if there is reason to believe that the other party would not manifest assent if he knew that the writing contained a particular term. Like the rule stated in Clause (b) that stated in Clause (c) requires actual knowledge and is limited to non-disclosure by a party to the transaction.

regulation promulgated by Department of Labor which prohibited flexible work week. The Supreme Court, Rabinowitz, C. J., held that: (1) Director of Wage and Hour Division of Department of Labor was authorized to promulgate regulation, and (2) regulation did not exceed power delegated by legislature and was reasonable and not arbitrary method of furthering policies of wage and hour statutes requiring increased overtime compensation and promoting spreading of employment.

Affirmed.

1. States ⇐9

Text of Alaska Statehood Act makes it clear that federal legislative enactments were to be carried over unless overruled by State Constitution or state legislature, but Act did not automatically incorporate and maintain federal case law, or administrative law, unless and until changed by legislature. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21.

2. Labor Relations ⇐1101

Section of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is expression of general public policy and not specific prohibition of change. AS 23.10.050.

3. Labor Relations ⇐1101

Although section of Wage and Hour Act governing definitions directs courts to apply federal regulatory definitions "where applicable," such definitions are "applicable" only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations, pursuant to their discretionary authority under sections of statute governing scope of administrative regulations and adoption of federal regulations. AS 23.10.085(b), 23.10.095, 23.10.145.

4. Labor Relations ⇐1101
States ⇐9

Alaska Statehood Act did not automatically incorporate federal case law or administrative law unless and until changed by legislature, provision of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is not prohibition of change, and direction to court to apply federal regulatory definitions "where applicable" means that such definitions are applicable only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations; thus, Director was authorized to promulgate regulation which prohibited flexible work week. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21; AS 23.10.050, 23.10.085(b), 23.10.095, 23.10.145.

5. Stipulations ⇐3

Stipulations as to law are not binding upon court.

6. Labor Relations ⇐1425

Sections of Wage and Hour Act governing scope of administrative regulation and adoption of federal regulations constitute delegation of authority from legislature to agency to formulate policies, leaving to agency discretion issue of whether federal definitions of regular rate of pay and other terms can be applied consistently with Wage and Hour Act; thus, standard of review in determination of validity of regulation prohibiting flexible work week was whether regulation was reasonable and not arbitrary. AS 23.10.085, 23.10.095.

7. Labor Relations ⇐1439

While under standard hourly wage salary, as worker's overtime hours increase, average hourly wage increases, under flexible work week, as worker's overtime hours increase, average hourly wage decreases in contravention of policies requiring increased overtime compensation and promoting spreading of employment; thus, regulation of Department of Labor which defined "regular rate of pay" so as to exclude use of flexible work week was consistent with, and reasonably necessary to carry out purposes of statute governing wages and hours, did not exceed power delegated by legislature, and was reasonable and nonarbitrary method of furthering statute's policy. AS 23.10.050 et seq.

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John K. Norman and Wev W. Shea, Hartig, Rhodes, Norman & Mahoney, Anchor-

age, and A. J. Harper II and Jeffrey S. Kuhn, Fulbright & Jaworski, Houston, Tex., for appellant.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

## OPINION

RABINOWITZ, Chief Justice.

This is an appeal from a summary judgment granted by the superior court. Its sole issue is the validity of 8 AAC 15.100(d)(3),[1] a regulation promulgated by the Department of Labor which prohibits the "flexible work week" (FWW), purportedly under the authority of the Alaska Wage and Hour Act. The superior court concluded

1. This regulation reads:

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

. . . . . .

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek.

The federal regulation referred to, 29 C.F.R. 778.114, reads as follows:

§ 778.114 *Fixed salary for fluctuating hours.*

(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $6.25, $5.68, $5, and $5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $250; for the second week $261.36 ($250 plus 4 hours at $2.84, or 40 hours at $5.68 plus 4 hours at $8.52); for the third week $275 ($250 plus 10 hours at $2.50, or 40 hours at $5 plus 10 hours at $7.50); for the fourth week approximately $270.88 ($250 plus 8 hours at $2.61 or 40 hours at $5.21 plus 8 hours at $7.82).

(c) The 'fluctuating workweek' method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which the full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his over-

ed the regulation was valid, and Dresser Industries (Dresser) has appealed. We affirm.

The case was presented to the superior court on the basis of the parties' "Stipulations of facts, issues, and procedure," providing in part:

1. Dresser Industries, Inc. is doing business in the State of Alaska and is subject to the jurisdiction of this court.

2. The person on whose behalf the action has been instituted is Clyde Woody (herein claimant), who has assigned his rights to the Department of Labor pursuant to AS 23.05.220.

3. The Department of Labor is the proper party plaintiff to bring this suit under AS 23.05.230 and suit has been timely and properly instituted.

4. The court has jurisdiction of the subject matter and the parties.

5. This action arises under the provisions of the Alaska Wage and Hour law (AS 23.10.050 *et seq.*) and the regulations of the Department of Labor promulgated thereunder (8 AAC 15.100).

6. The interpretative regulation at issue was properly promulgated in accordance with the Alaska Administrative Procedure Act (AS 44.62).

7. Claimant is due the sum of $3,956.76 if the position of plaintiff is sustained and is not due any monies if the position of defendant is sustained.

8. This case is ripe for adjudication on the stipulated facts and issues and the parties agree this stipulation shall constitute cross-motions for summary judgment.

9. The predicates which served as the Administrator's basis in adopting the challenged regulation were:

(A) The 'fluctuating work week' is not applicable under the Alaska Act because,

(1) AS 23.05.160 requires an employee to be told of his 'rate of pay' at the time of hire and of any changes therein before payday; and

(2) AS 23.10.060 requires that employers have to pay overtime for hours worked over eight (8) hours per day, even if less than forty (40) hours per week are worked, and this is to the employer's detriment.

Dresser presented two arguments in support of its contention that 8 AAC 15.100(d)(3) is invalid. It asserted, first, that the definition of "regular rate of pay" in the federal regulations, which countenances use of the FWW, *see* note 1 *supra*, is binding upon the State Wage and Hour Division under two statutory provisions: section 8(d) of the Statehood Act [2] and the Alaska Wage and Hour Act itself, specifically AS 23.10.050 [3] and AS 23.10.145.[4] Second, Dresser

time hours at a rate no greater than that which he receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

2. The entire text of section 8(d) of the Statehood Act reads:

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term 'Territorial laws' includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term 'laws of the United States' includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not 'Territorial laws' as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

Alaska Statehood Act, P.L. 85-508, § 8(d).

3. AS 23.10.050 reads, in relevant part: "It is the public policy of the state to ... (2) safeguard existing minimum wage and overtime compensation standards ...."

4. AS 23.10.145 reads:

*Definitions.* Terms used in §§ 50–150 of this chapter shall be defined, where applica-

argued that even if the State Wage and Hour Division was authorized to promulgate 28 AAC 15.100(d)(3), the regulation is inconsistent with the state Wage and Hour Act and unreasonable and arbitrary, and thus cannot withstand judicial review.

A. *Carry-over of federal law.*

It is undisputed that the FWW is sanctioned under federal wage and hour law. *See Overnight Motor Transport Co., Inc. v. Missel*, 316 U.S. 572, 62 S.Ct. 1216, 86 L.Ed. 1682 (1942). Early federal regulations specifically endorsed its use, under the provisions defining "regular rate of pay." 29 C.F.R. 778.3 (1950).

Dresser asserts that this federal definition of "regular rate of pay" carried over into state law because no change in that definition was made by the state legislature. Pointing to the section of the Statehood Act which continued in full force and effect all Territorial laws except as modified or changed by the Statehood Act itself, by the state constitution, or by the legislature of the new state, Dresser argues that coverage, meaning, and interpretation of the Alaska Act should parallel that of the Fair Labor Standards Act absent a clear legislative directive to the contrary. Dresser's position seems to be that although the state can choose to diverge from federal law in this area, it should only be able to do so by virtue of legislative enactment, and that in this action the burden is on the state to show that statutory provisions passed by the state legislature mandated issuance of the regulation at issue. Otherwise, Dresser contends, the state agency could not, merely by issuing regulations, overrule the treatment of the FWW under federal/Territorial law, carried over into state law by the Statehood Act.

[1] We do not find this argument persuasive. We think that the text of section 8(d) of the Statehood Act made it clear that federal legislative enactments were to be carried over unless overruled by the state constitution or the state legislature.[5] We do not interpret it as having automatically incorporated and maintained federal case law or, as Dresser argues, administrative law, unless and until changed by the legislature. This court has not held itself bound by federal judicial rulings entered prior to the date of statehood, regardless of whether or not the state legislature has acted in a given area.[6] We think it would be equally awkward to hold state agencies bound by federal regulations extant as of statehood. Such a result would unduly restrict state agencies and inordinately burden the legislature.

[2] Nor are we convinced that the terms of the Alaska Wage and Hour Act evince an intent to bind the State Wage and Hour Division to federal regulatory definitions. It is true that AS 23.10.050 manifests an intent to safeguard "existing" minimum wage and overtime standards, but we cannot give this the strained reading of having petrified wage and hour law as of the time of its enactment. That provision is an ex-

ble, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

5. The language of section 8(d), *see* note 2 *supra*, indicates that its primary concern was with "laws enacted by Congress."

6. *See, e. g., Howarth v. Pfeifer*, 443 P.2d 39, 44 (Alaska 1968) ("What may be considered a just disposition of a dispute at one stage of history may not be the same at another stage, considering changing social, economic, and other conditions of society.... Thus, we hold under the principles we have discussed in this opinion that one may now maintain an action for negligent misrepresentation, even though that may not have been the case under the common law in years gone by."); *In re Mackay*, 416 P.2d 823, 837 (Alaska 1964) ("We do not agree with the respondent's contention that there should be read into section 8(d) of the Alaska Statehood Act an intent to limit the powers of the Supreme Court of Alaska.... Congress cannot limit this court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed by the respondent to have that effect."). *Cf. Surina v. Buckalew*, 629 P.2d 969 (Alaska 1981) (prosecutor's non-statutorily based promise of immunity in return for testimony is binding under Alaska Constitution regardless of federal rule).

expression of general policy, not a specific prohibition of change.

[3] Dresser's next argument is based upon AS 23.10.145, which indicates that "[t]erms used in [the Alaska Wage and Hour Act] shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it." On its face, this provision presents a strong indication that the federal definition of "regular rate of pay" is binding on the State Wage and Hours Division. However, two other statutory provisions undercut this position. AS 23.10.085(b) provides that the state regulations to be issued by the Wage and Hour Division "may . . . define terms used in [the Alaska Wage and Hour Act]";[7] and AS 23.10.095 provides that the state Commissioner of Labor "may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with [the Alaska Wage and Hour Act]."[8]

We must interpret the statutory scheme as a whole and in such a way that separate provisions do not conflict.[9] Here, we agree with the state's argument that AS 23.10.145 directs the courts to apply federal regulatory definitions "where applicable," and that such definitions are "applicable" only when the state director of the Wage and Hour Division and the Commissioner of Labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and 23.10.095.[10] We reject Dresser's contention that AS 23.10.145 is a mandatory directive to both courts and agencies, to be overruled only by the legislature. Such an interpretation would substantially nullify AS 23.10.085 and 23.10.095.

[4] For the above reasons, we conclude that the Director was authorized to promulgate 8 AAC 15.100(d)(3).

7. AS 23.10.085 reads:

*Scope of administrative regulations.* (a) The director may issue, amend or rescind such administrative regulations not inconsistent with the purposes and provisions of §§ 50–150 of this chapter which are necessary for the administration of §§ 50–150 of this chapter.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in §§ 50–150 of this chapter, and the restriction or prohibition of industrial homework or of the other acts or practices which the director finds appropriate to carry out the purpose of §§ 50–150 of this chapter, or to prevent the circumvention or evasion of §§ 50-150 of this chapter.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under §§ 50–150 of this chapter to his employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee.

8. As 23.10.095 reads:

*Adoption of federal regulations.* The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with §§ 50–150 of this chapter.

9. *See In re Estate of Hutchinson*, 577 P.2d 1074, 1075 (Alaska 1978); *State v. City of Anchorage*, 513 P.2d 1104, 1110 (Alaska 1973).

10. This interpretation is consistent with our ruling in *McGinnis v. Stevens*, 543 P.2d 1221, 1238–39 (Alaska 1975), where we held that a prison inmate was not entitled to the minimum wage for institutional jobs. We relied partially on AS 23.10.065:

> AS 23.10.065 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. 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. Moreover, even were we to regard the inmates here as employees, state employees are excluded, by virtue of AS 23.10.055(5), from the operation of the statute. Finally, the legislative history indicates that Congress did not intend the Fair Labor Standards Act to cover prisoners, and we find no indication that the state statute was not meant to have parallel 'non-coverage.' We simply cannot say that the distinction between prisoners in institutions and free citizens on the labor market is suspect.

*Id.* (footnotes omitted). *McGinnis* did not involve a state regulation explicitly rejecting the FLSA rule on prisoners, however, so our application of the federal definition there was in accordance with our present holding.

B. *Validity of 8 AAC 15.100(d)(3).*

The parties have attempted to stipulate to two matters affecting the scope of this court's review: (1) that 8 AAC 15.100(d)(3) is an interpretative regulation, and thus subject to review under the independent judgment standard; and (2) that the sole statutory provisions which form the basis for the regulation are AS 23.05.160 and AS 23.10.060.

[5] Although the parties' efforts toward simplifying the issues in a case are always appreciated, stipulations as to the law are not binding upon the court. "Counsel ... may agree as to the facts, but they cannot control this court by stipulation as to the sole or any question of law to be determined under them." *San Francisco Lumber Co. v. Bibb*, 139 Cal. 325, 73 P. 864, 865 (1903).[11] This rule regarding stipulations of law is particularly appropriate where, as here, the case involves a matter of public policy. *See generally* Annot., 92 A.L.R. 663, 666 (1934). We think these considerations require us to look beyond the parties' stipulation in our analysis of the applicable law.

[6] We conclude that the regulation here is "quasi-legislative". In *Kelly v. Zamarello*, 486 P.2d 906, 909–11 (Alaska 1971), (footnotes omitted), we distinguished between quasi-legislative and interpretative rule-making:

> Professor Davis characterizes the difference in judicial attitude toward certain administrative rules as a distinction between 'legislative regulations' and 'interpretative regulations.' He has defined 'legislative rule' as 'the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body.' 'Interpretative rules,' he states, 'are rules which do not rest upon a legislative grant of power (whether explicit or inexplicit) to the agency to make law.' The distinction is not always easy to draw, since as Davis points out, 'Interpretative rules sometimes rest upon statutory authority to issue them. • • •'
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> ....
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> [T]he distinction between legislative and interpretative rule-making is a helpful one when reviewing regulations adopted by state administrative agencies. We hold, therefore, that when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.
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> ....
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> Thus, where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, we will review the regulation in the following manner: First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.

We think it clear that AS 23.10.085 and 23.10.095[12] constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and

11. *See also Anchorage v. Geber*, 592 P.2d 1187, 1191-92 & 1192 n.8 (Alaska 1979), where we overruled as "ill advised" that portion of *Layland v. State*, 535 P.2d 1043 (Alaska 1975) suggesting that parties' concessions regarding interpretations of law are binding upon the courts.

12. *See* notes 7 and 8 *supra*.

other terms can be applied consistently with Alaska's Wage and Hour Act. Thus, we hold that the "reasonable and not arbitrary" test is applicable.

[7] The parties stipulated to the specific statutory provisions upon which the state relies to justify the regulation. These are AS 23.05.160,[13] which requires that an employee be informed of his rate of pay at the time of hiring and of any change in that rate on the payday prior to the change, and AS 23.10.060,[14] which requires the one and one-half overtime rate not only for hours worked over forty per week, but also for hours worked over eight per day.

Dresser argues that 8 AAC 15.100(d)(3) furthers neither of these statutory provisions; and indeed, our assessment of the parties' arguments indicates that the regulation is related only tenuously, if at all, to these provisions. However, the state's brief argues that the regulation is grounded in policy considerations beyond those contained in the two statutes. Although Dresser argues that this disregard of the stipulation is improper, we have concluded for the reasons noted above that the stipulation is not binding upon this court. In another case in which the parties had attempted to stipulate to the purpose of a legislative enactment, the New York Court of Appeals noted:

> We are not bound by stipulations in respect of the purpose of legislation. Laws are not to be declared invalid upon the consent of parties. We must determine their purpose and tendency for ourselves.

*E. Fougera & Co., Inc. v. City of New York*, 224 N.E. 269, 120 N.E. 642, 643 (1918).

The public policy underlying the Alaska statutory scheme is given as follows in AS 23.10.050:

> *Public Policy.* It is the public policy of the state to
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> (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and
>
> (2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living.

On the basis of these policy pronouncements, the state argues that the basic concern of the legislature was protection of the worker's well-being against unfair wage and hour standards, and that this concern is of particular importance in Alaska, where the cost of living is higher than in other states. The state also argues that prohibiting the FWW would be to the worker's advantage, and cites the present case as an illustration: claimant Woody would be entitled to $3,956.76 if the regulation were upheld.

More specifically, the state argues that as the number of hours worked in a particular week increases, the "regular rate of pay" decreases; as the "regular rate" decreases, the resultant "overtime rate" decreases; and thus the effect of allowing the FWW is counter-productive to the stated purposes of the Act. The state insists, further, that the FWW makes it financially advantageous

13. As 23.05.160 reads:

> *Notice of wage payments.* An employer shall notify his employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the pay day before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as he comes or goes to his place of work.

14. The applicable portion of AS 23.10.060 reads:

> *Payment for overtime.* No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment.

for an employer to hire an employee to work long overtime hours rather than to hire more workers, contrary to one purpose of the overtime provision, which was to force employers to spread employment by hiring more persons.[15]

We are persuaded that the state's position is correct. Under a standard hourly wage salary, as a worker's overtime hours increase, the average hourly wage increases. Under the FWW, as a worker's overtime hours increase, the average hourly wage decreases. This contravenes the policies of requiring increased overtime compensation and promoting the spreading of employment.

Thus, we must conclude that the regulation's definition of "regular rate of pay" so as to exclude use of the FWW is consistent with, and reasonably necessary to carry out, the purposes of the relevant statutory provisions. The regulation does not exceed the power delegated by the legislature. Further, 8 AAC 15.100(d)(3) is a reasonable and non-arbitrary method of furthering the statute's policies.[16]

Dresser raises several collateral arguments concerning the regulation's prohibition of the "Belo" pay plan, *see Walling v. A.H. Belo Corp.*, 316 U.S. 624, 62 S.Ct. 1223, 86 L.Ed. 1716 (1942); 29 U.S.C.A. § 207(f), and the permissibility of piece-work and commission pay plans. The validity of these provisions is not before us, and we perceive no inconsistency so blatant as to render the prohibition of the FWW unreasonable or arbitrary.

The judgment of the superior court is AFFIRMED.


15. The United States Supreme Court has repeatedly emphasized this point. In *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194, 92 L.Ed. 1502, 1514 (1948), the Court said, "The purpose was to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost."

16. The parties have not addressed, and we express no opinion concerning, the question whether there may be any conflict between 8 AAC 15.100(d)(3) and AS 23.10.060(17) and (18), enacted in ch. 31, § 1, SLA 1980.

David LEUCH, Appellant,

v.

STATE of Alaska, Appellee.

No. 5255.

Supreme Court of Alaska.

Sept. 25, 1981.

Defendant was convicted, pursuant to guilty pleas, before the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of two counts of grand larceny, and he appealed sentence. The Supreme Court, Rabinowitz, C. J., held that: (1) where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it, and (2) concurrent sentences of eight years with four suspended was excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length.

Sentence reversed and remanded.

Matthews, J., dissented and filed opinion in which Burke, J., joined.

1. Criminal Law ⇐986.2(1)

Absent a conviction, an indictment is absolutely no evidence of guilty conduct.

OPINION NO. 7

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL
JUNEAU 99811

February 10, 1978

Edmund N. Orbeck
Commissioner
Department of Labor
P.O. Box 1146
Juneau, Alaska 99802

Re: Use of Flex-Time Contracts under State Wage and Hour Act; A.G. File J-66-263-78

Dear Commissioner Orbeck:

You have asked our opinion as to whether certain methods for compensating employees, referred to generally as "flex-time", "flexitime", or "fluctuating workweek" plans, may be used by employers in Alaska consistent with the payment for overtime provision of the state's Wage and Hour Act, AS 23.10.060. We understand these plans are used frequently by employers to provide a steady income level to employees whose hours of work vary considerably from week to week. Your question arises because these "fluctuating workweek" pay plans are specifically recognized as valid under the Fair Labor Standards Act of 1938, as amended (FLSA), 29 U.S.C. § 201 et seq., the federal counterpart to the state's overtime provisions. However, these kinds of plans are not addressed under

relevant state laws or regulations dealing with overtime. At least one employer in the state is presently using flex-time plans to compensate certain of its employees, and the Wage and Hour Division of your department has taken the position that the employer's use of those plans is inconsistent with the state's Wage and Hour Act, AS 23.10.050 - 23.10.150.

The fact that flex-time is permissable under the FLSA does not, in and of itself, require that the State of Alaska also permit its use by employers within the state. The FLSA prescribes only minimum requirements with which all covered employers in the United States must comply, however, it does not prohibit the states from adopting wage and hour requirements more stringent than those established in the FLSA. See, sec. 18(a), FLSA; 29 U.S.C. § 218(a); also 29 C.F.R. § 778.5. The question, then, is whether the state has in fact adopted a more stringent approach to the payment of overtime than that taken under the FLSA. It is our conclusion that the state has not done so. We believe, however, that your department may prohibit the use of flex-time plans in Alaska through proper adoption of appropriate regulations.

The basic payment of overtime provisions of the state and federal law are quite similar. /1 Sec. 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1) provides, in pertinent part, as follows:

> [N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless said employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. (emphasis added)

AS 23.10.060 provides in pertinent part:

> No employer . . . may employ an employee . . . for a workweek longer than 40 hours . . . except that if the employer finds it necessary to employ an employee in excess of 40 hours a week . . . compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. (emphasis added)

---

/1 The state act does require that overtime be paid for hours worked in excess of eight in one day in addition to the requirement of both acts that overtime be paid for work in excess of 40 hours in a week, however that difference is not at issue here.

Under both statutes the employee's "regular rate of pay" must be determined before his overtime entitlement can be computed. By way of regulation, the U.S. Department of Labor has stated that "flex-time" pay plans are an acceptable method of determining the employee's "regular rate". 29 C.F.R. § 778.114. It has been suggested that your department must also recognize flex-time as a valid method of compensating for overtime as the result of AS 23.-10.145 which provides:

> Terms used in §§ 50-150 of this chapter shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

For two reasons, we do not read this provision as requiring the adoption of flex-time in Alaska, however. First, 29 C.F.R. § 778.114, the "fluctuating workweek" provision, is not a "definition" of a term. It is merely one of many "interpretations" recognized by the federal government in implementing the FLSA. The federal regulations, themselves, explicitly state that the various provisions of 29 C.F.R. § 778, of which "fluctuating workweek" is a part, are "the official interpretation of the Department of Labor with respect to the meaning and application of

the maximum hours and overtime pay requirements of section 7 of the [FLSA]." (emphasis added). The state Wage and Hour Act specifically recognizes this distinction between "definitions" and "interpretations". AS 23.10.095 authorizes, but does not require, adoption of regulations and "interpretations" made under the federal act, while AS 23.10.145 clearly requires adoption of federal definitions, "where applicable".

But even if 29 C.F.R. § 778.114 could be described as a "definition" for purposes of AS 23.10.145, it would still only be binding on the state if it is "applicable". We take the statute's use of "where applicable" to mean if it fits a given situation; if it is fit, suitable, pertinent, appropriate, or capable of being applied; if it is applicable to the habits and conditions of society. McQueeney v. Catholic Bishop of Chicago, 159 N.E.2d 43, 47 (App.Ct. Ill. 1959); Whitney v. American Fidelity Company, 215 N.E.2d 767, 768 (Mass. 1966); Fuchs v. Goe, 163 P.2d 783, 792 (Wyoming 1945). Therefore, the department could determine upon examination that a given definition contained in the FLSA or the regulations adopted under it does not adequately or appropriately address working conditions or the work situation in Alaska. Once the department has made that determination, it may properly adopt a different definition, appropriate to Alaska. In doing so, however, it must

adopt that definition as a regulation under the procedures prescribed in the State's Administrative Procedure Act (AS 44.62) if it is to have any enforceable effect.

The preceding discussion sets out some of the general parameters of the relationship between the FLSA and the state's Wage and Hour Act. The state act specifically looks to the federal provisions for substance. In adopting this legislative scheme, we think the Legislature evidenced a clear intention to follow the federal approach to wages and hours closely, except in those situations where the Department of Labor determines that the federal provisions are inadequate or inappropriate when applied to working in Alaska. Consequently, if the state determines that certain aspects of its Wage and Hours Act should be applied in a manner more stringent than required under the FLSA and the regulations adopted under it, the areas of difference between the federal and state laws should either be set out clearly in the Act or in the department's regulations adopted under the Act.

Nothing in the state's current statutes or regulations indicates that flex-time is not an acceptable method of compensating for overtime work under the Alaska act. At the same time, the federal regulations clearly permit flex-

time under the FLSA, after which the state act is closely patterned. Under those circumstances, the department may not simply make independent ad hoc determinations of acceptable methods of overtime compensation. Unless the state act is clear on its face, the department must either establish its own standards (regulations) or follow those established under the FLSA.

There are at least two independent reasons for the department adopting its own wage and hour standards. First, properly adopted and enforceable regulations implementing the state Wage and Hour Act will assure that employers have adequate notice of the requirements with which they must comply in Alaska. In the absence of state standards, Alaska employers have only the federal law and regulations for determining how to comply with applicable wage and hour laws. Second, established standards also insure that the department's wage and hour enforcement activities will be consistent throughout the state.

Since the only standards for overtime entitlement currently in existence are those adopted under the federal FLSA, we must conclude that the department may not presently

refuse to recognize flex-time plans established under 29 C.F.R. § 778.114. The state act does not, on its face, prohibit flex-time plans. As indicated above, the state and federal overtime provisions are quite similar, and the federal provision has been interpreted to permit flex-time. We have no doubt, therefore, that the state provision can also be so interpreted. We are also of the opinion that the department could, through adoption of an appropriate regulation, interpret the state act as not permitting flex-time plans. However, until the department adopts regulations which either specify exclusive standards for the determination of overtime entitlement or reject specific portions of the federal standards, employers in Alaska are entitled to rely on their compliance with the federal standards as also constituting compliance with the state's Wage and Hour Act.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Ronald W. Lorensen
Assistant Attorney General

RWL:jf

# ADVERTISING ORDER

**NOTICE TO PUBLISHER**

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

| DEPT. NO. | A.O. NO. |
|---|---|
| AO- 07 | 2595 |

PUBLISHER:
Southeast Alaska Empire
235 2nd Street
Juneau, Alaska 99801

VENDOR NO.: SAE 734

DATE OF A.O.: August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM:
Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS:
Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

# AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

Jeff A. Wilson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 1978

Norma J. Grunow

NOTARY PUBLIC FOR STATE OF
COMMISSION EXPIRES My Commission Expires September 14, 1980

NDER—
ES AND PROOF OF PUBLICATION.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.150, as follows:

11 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguements relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 18, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish: Aug. 30, 31, Sept. 1, 1978
809-82

# AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT
} ss.

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

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Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

PUBLISH: August 30, 31, September 1, 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

| | |
|---|---|
| 8/30/78 | 8/31/78 |
| 9/01/78 | |
| | |
| | |
| | |

, and that the rate charged thereon is not in excess of the rate charged private individuals with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 30 TH day of SEPTEMBER 1978

Notary Public in and for the State of Alaska.

My commission expires APRIL 10, 1981

CUSNR. 11592 LEGAL NO. 13544-0

# ADVERTISING ORDER

**NOTICE TO PUBLISHER**

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

| DEPT. NO. | A.O. NO. |
|---|---|
| AO- 07 | 2595 |

**PUBLISHER**

Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

VENDOR NO. ADN 501

DATE OF A.O. August 21, 1978

DATES ADVERTISEMENT REQUIRED:
August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

**FROM**

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

BILLING ADDRESS *Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

# AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
Third DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 1978, AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 61 inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF Sept 1978.

Patricia Lindsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

**NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR**

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.055, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
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ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.
Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER—
ATTACH INVOICES AND PROOF OF PUBLICATION.

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Sherry A Schad
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

STATE OF ALASKA )
) SS.
FIRST JUDICIAL DISTRICT )

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1) being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. Lee Leland
E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197__.

James A. O'Brien
Notary Public in and for Alaska

My Commission Expires: Oct 30, 78

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear

William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, , Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

STATE OF ALASKA

OFFICE OF LIEUTENANT GOVERNOR

# DELEGATION OF AUTHORITY

IN ACCORDANCE WITH AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF LABOR, UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT, IS HEREBY DELEGATED TO WILLIAM E. SPEAR,

(NAME)

DEPUTY COMMISSIONER

(POSITION)

SIGNED: Edward N. Carlick

COMMISSIONER

DEPARTMENT OF LABOR

SIGNED AND SWORN BEFORE ME THIS 23rd DAY OF March, 1978.

SIGNED: Mary Jean Smith

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

COMMISSION EXPIRES: 2/10/80

PLEASE RETURN TO THE OFFICE OF LIEUTENANT GOVERNOR BY MARCH 31, 1978

ALASKA

# MEMORANDUM

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

SUBJECT: Regulations re Alaska wages & hours (8 AAC 15)
Our File: J-99-095-78

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney Ceneral

LIEUTENANT GOVERNOR
JUNEAU

# CERTIFICATE

I, LOWELL THOMAS, JR., LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.050 designate Avrum M. Gross, Attorney General, as temporary custodian of the state seal and as the officer to perform the authenticating functions of the lieutenant governor during such time as I succeed to the office of governor, act as governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Attorney General Gross, I designate Bill Allen, Commissioner of Administration, to perform the functions stated above.

In the absence of Commissioner Allen, I designate Donald Barris, Commissioner of Transportation and Public Facilities, to perform the functions stated above.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this Twentieth day of June, A.D. 19 78.

NORMAN C. BANFIELD
OF COUNSEL
MICHAEL M. HOLMES
WILLIAM B. ROSELL
LAWRENCE T. FEENEY
CHARLES N. BRENNAN
ANTHONY M. SMOLTY
JAMES R. WEBB
JOHN F. CLOUGH, III
GREGORY F. COOK

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
A PROFESSIONAL CORPORATION
801 WEST TENTH STREET, SUITE 300
P. O. BOX 1150
JUNEAU, ALASKA 99802-1150
(907) 586-2210
TELEX: 090-45-335

ANCHORAGE OFFICE
DENALI TOWERS NORTH
2550 DENALI, SUITE 700
ANCHORAGE, ALASKA 99503
(907) 274-0666
TELEX: 090-25-485

RANDALL J. WEDDLE
MICHAEL A. BARCOTT
KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. MCKEEVER
RICHARD L. WAGG
ROBIN G. WILCOX

March 4, 1983

The Honorable John Cowdery
Representative
Capital, Room 409
Juneau, Alaska 99811

Re: HB 223

Dear Representative Cowdery:

We represent the Alaska Wage Security Association, a newly formed association concerned about House Bill 223. Sections 3 and 4 of HB 223 would retroactively eliminate civil and criminal liability of employers who illegally used a fluctuating workweek plan to pay their employees less in overtime than they were entitled to be paid under the Alaska wage and hour law. This legislation would violate the Constitution by denying the employees their existing contract right to payment in accordance with the law.

The Association's members include employees who, if HB 223 passes in its present form, will lose the overtime compensation they have already earned under the law. It also includes individuals who simply believe that it is unjust to take away what Alaskans have earned through their hard labors and to excuse past violations of the law by mainly large, non-Alaskan companies. Among the members are former Senate President Chancy Croft and former Commissioner of Labor Gil Johnson.

Briefly, the law which the companies violated went into effect in January, 1979. The affected companies were given notice before the law became effective, and the Wage and Hour Division of the Department of Labor wrote to three of the largest companies, Otis Engineering, Dresser Industries, and Dowell Division of Dow Chemical, informing them of the new regulation concerning overtime. Nevertheless, the companies chose to ignore the law. Dresser was sued in October, 1979, by the Department of Labor, and lost in both the Superior and Supreme Courts. Incredibly, only in November, 1981, did Dresser finally decide it should comply with the law.

Since the first lawsuit, additional lawsuits have been brought against the companies. The precedent set by the litigation brought by the Department of Labor provides a clear indication that the companies will lose again. Thus, having violated the law, having been sued because of it and having lost, and now facing additional lawsuits which they will lose, the companies seek to evade the law and the judicial process through HB 223.

The precedent that would be set if the current version of HB 223 passes bears close scrutiny. Essentially, the bill asks the Legislature to choose sides in the pending litigation, and to choose the side of large, non-Alaskan companies that have violated the law. The judiciary is the appropriate branch of government to decide the litigation, not the Legislature. If the Legislature involves itself in these lawsuits, it will set a precedent which will be looked to by other parties involved in litigation which they believe they will lose, and by others who have violated the law and seek an easy way out.

We ask only that before you vote, you consider seriously the implications HB 223 has for our systems of law and justice. If you have any questions or need further information, I encourage you to contact me. The members of the Association and others who will unfairly be affected by this legislation are also anxious to discuss this with you.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN
& HOLMES

By Anthony M. Sholty
Anthony M. Sholty

# ALASKA WAGE AND HOUR ACT
## BRIEFING PAPER - THE FLUCTUATING WORK WEEK

Several inaccurate and misleading claims are being made in support of the position that the Alaska Wage and Hour Act should be amended to eliminate employee claims which are currently pending in court. The employees' claims are for overtime wages which were never paid because of their employers' use of an unlawful payment formula known as the fluctuating work week (FWW). The questions raised by these arguments are discussed below

### 1. Did Employers Have Reason to Know of the FWW Regulations?

Prior to adoption of the regulation, the Department of Labor mailed notices of the proposed rule-making directly to affected businesses. Hearings were then held in Juneau, Fairbanks and Anchorage. Shortly after the regulation was adopted, Donald R. Wilson, the Department's Wage and Hour investigator in Anchorage, wrote letters to three oilfield service companies -- Otis Engineering, the Dowell Division of Dow Chemical, and Dresser Industries -- informing them of its adoption.

In October 1979 the Department of Labor sued Dresser Industries, one of the companies now being subjected to a class action, claiming a violation of the regulation. In October 1980 the Superior Court entered a judgment in favor of the Department. In September of 1981 the Supreme Court affirmed this judgment. Dresser did not bring its payment system into compliance with the law until November 1981.

Evidence discovered in a class action lawsuit filed against Schlumberger Limited seeking unpaid wages arising from that company's use of an FWW scheme indicates that awareness of the regulation and the litigation seeking to enforce it was wide-spread among employers. A memorandum obtained from Schlumberger and dated January 23, 1981, states that Schlumberger was assisting with Dresser's legal fees through the Petroleum Equipment Suppliers Association (PESA), an industry trade organization. Another Schlumberger memorandum, dated June 25, 1980, discusses an in-house study "to determine the impact of discontinuing FWW", though this memo does not specifically mention the Dresser lawsuit. Schlumberger did not modify its FWW system until March 1982, five months after the Supreme Court upheld the validity of the FWW regulation.

2. Are Employers Facing "Open-Ended" Liability?

Assuming that somehow employers could have reasonably remained ignorant of the FWW regulation in spite of the public rule-making proceedings and PESA's financing of Dresser's litigation, any excuse for remaining ignorant ended in September 1981, when the Supreme Court upheld the regulation. Since the Wage and Hour Act contains a two years statute of limitations, employers who brought their systems into compliance with the law in a timely fashion and who have not been sued will soon be insulated from liability entirely.

3. Will Employees Receive a Windfall if the Proposed Bill is not Passed?

If an employer tells a worker he will be paid less than the minimum wage or that he will not receive extra compensation for overtime and is then sued for his unlawful conduct, he cannot defend against the lawsuit by arguing that the employee had no basis for expecting to be paid more. Employees have a right to expect that their employers will obey the law when determining their regular and overtime compensation. It is ridiculous to argue that employees, like those who are seeking to recover overtime wages which remain unpaid because of use of the FWW regulation, are somehow obtaining a windfall. They are, of course, merely seeking to obtain what they had a right to receive in their original paychecks.

# ALASKA WAGE AND HOUR ACT
# BRIEFING PAPER - LIQUIDATED DAMAGES

It has been argued that the mandatory liquidated damages provision is unfair and that Alaska should adopt the "good faith" standard applied by the federal government since 1947. In 1959, when the Alaska legislature adopted a mandatory double damages provision, it wisely chose not to imitate the federal approach. The consequences of adopting the federal standard now will be that employees with small or moderate sized claims will face economic hurdles which will prevent them from enforcing their rights under a statute which depends, in large part, on private enforcement efforts. Adoption of a "bad faith" requirement for double damages will also eliminate an important deterrent to violations. These factors are discussed in greater detail below.

## 1. The Economic Hurdles.

Though the Department of Labor can prosecute claims for cases involving $5,000.00 or less in unpaid wages [see, 8AAC §15.175(b)], claims in excess of 5,000.00 must be pursued through private attorneys. A "good faith" standard would be extraordinarily difficult to prove to the satisfaction of the court without conducting complex and expensive pre-trial depositions and document searches. Absent "smoking pistols" obtained during pre-trial discovery, many employers will, no doubt, elect to take their chances at a trial at which the employee will bear the burden of proving bad faith. Few people nominally covered by the protection of the Wage and Hour Act would be able to afford such an expensive and lengthy process. Though at the present time, lawyers frequently take such cases on a contingent fee the Code of Professional Responsibility governing attorney conduct requires the client to be ultimately responsible for litigation and discovery expenses, regardless of the outcome. Furthermore, lawyers would soon learn that the imprecision and elasticity of a "good faith" standard make it uneconomical to handle small or moderate claims. The obvious result of these economic disincentives is that many people will simply be unable to enforce their rights.

## 2. Private Enforcement of the Wage and Hour Act.

Though the Department of Labor has authority to enforce the Wage and Hour Act, it cannot be expected to monitor all activities of all employers of the State and to prosecute all potential wage claims, at least not without an extensive and costly expansion of its current bureaucracy. The current double damages provision in the Wage and Hour Act makes it more economically realistic for private parties to obtain the legal assistance required to redress violations, and, thus, creates an efficient, privately funded enforcement mechanism.

3. Deterrence.

As noted above, it would be difficult to disprove an employer's claim that it was acting in good faith when it underpaid its employees. The current double damages provision encourages employers to educate themselves as to the law's requirements. It also encourages employers to monitor changes in the regulations and in the Wage and Hour Act and to speedily adapt their compensation systems to these changes. The need for such encouragement is demonstrated by the behavior of employers involved in the fluctuating work week litigation, for some of these employers delayed months beyond the issuance of the Supreme Court's final decision adjudicating the validity of the FWW regulation before actually changing their pay systems.

The proposed elimination of mandatory liquidated damages would create a different incentive by encouraging employers to cultivate ignorance of the Wage and Hour laws enacted for the protection of their employees.

HB 223
April 7,1983

Members present: Bussell, Liska, Hayes, Wendte
Members absent: Barnes, Clocksin, Malone

003 The roll was taken, visitors and guests welcomed. Chairman Bussell stated that the business for the day was HB 223, An Act relating to methods for the payment of overtime; and providing for an effective date. States that the intention of the Chair is to meet till 3:00 p.m., recess till 7:00p.m. and continue with the testimonies to accommodate those that have come from out of town.

065 Mr. Chuck Becker is called to testify. He is in support of HB 223. (He written testimony and explanation of the Alliance is attached.)

THE ALLIANCE
P.O. Box 100 / Anchorage, Alaska 99510 / (907) 277-0010

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM CHUCK BECKER, EXECUTIVE DIRECTOR OF THE ALASKA SUPPORT INDUSTRY ALLIANCE. THE ALLIANCE IS A BUSINESS LEAGUE INCORPORATED UNDER THE STATE'S NON-PROFIT STATUTE AS A 501(c)(6) CORPORATION, AND REPRESENTS OVER 150 FIRMS WHICH PROVIDE EQUIPMENT, SUPPLIES AND SERVICES TO ALASKA'S OIL, GAS AND MINING INDUSTRIES.

THE GOAL OF THE ALLIANCE IS TO FOSTER THOSE ACTIONS REQUIRED TO ESTABLISH ALASKA'S POSITION AMONG OTHER STATES AS A GOOD PLACE IN WHICH TO DO BUSINESS. THE ALLIANCE SUPPORTS POLICIES WHICH ARE DESIGNED TO STIMULATE ECONOMIC DEVELOPMENT IN ALASKA - DEVELOPMENT INITIATED BY THOSE FIRMS CURRENTLY OPERATING IN THE STATE AND BY NEW FIRMS WHICH MIGHT BE ATTRACTED AS A RESULT OF THOSE POLICIES.

WE HEARTILY APPLAUD THE ACCOMPLISHMENTS ACHIEVED DURING THE PAST THREE LEGISLATIVE SESSIONS WHICH WERE CLEARLY AIMED AT SPURING INVESTMENT IN ALASKA. BOLD FIRST STEPS HAVE BEEN TAKEN IN CREATING A POSITIVE BUSINESS CLIMATE IN ALASKA. OUR CONGRATULATIONS AND THANKS TO EACH OF YOU WHO HAD A ROLE IN THESE ACHIEVEMENTS.

THESE ACCOMPLISHMENTS, ALONG WITH OTHERS WHICH HAVE BEEN PROPOSED FOR THIS YEAR - INCLUDING HB 223 - ARE DESTINED

TO SUBSTANTIALLY IMPROVE ALASKA'S IMAGE AMONG CORPORATE DECISIONMAKERS, BOTH FOREIGN AND DOMESTIC, AS WORD OF THESE INITIATIVES IN STATUTORY AND REGULATORY REFORM SPREADS AMONG THE NATION'S BUSINESS COMMUNITY, ALASKA IS SURE TO BE PLACED ON THE LIST OF STATES AS LOGICAL PLACES FOR CORPORATE INVESTMENT.

AND WORD WILL SPREAD QUICKLY. I ASK THE COMMITTEE'S INDULGENCE WHILE I READ INTO THE RECORD EXERPTS FROM AN ARTICLE WHICH APPEARED IN THE MARCH 3 ISSUE OF THE WALL STREET JOURNAL. IT IS HEADLINED...WEST VIRGINIA TRIES TO CHANGE ITS IMAGE. "WEST VIRGINIA IS TRYING TO CHANGE THE IMPRESSION THAT IT IS A POOR PLACE TO DO BUSINESS. THE LEGISLATURE RECENTLY LIMITED THE SCOPE OF A CONTROVERSIAL 1978 COURT DECISION THAT ALLOWS WORKERS TO SEEK PUNITIVE DAMAGES - DAMAGES THAT GO BEYOND ACTUAL COMPENSATION FOR LOSS - FOR ON-THE-JOB INJURIES. MORE THAN 200 LAWSUITS TOTALING BILLIONS OF DOLLARS IN CLAIMS HAVE BEEN FILED AGAINST EMPLOYERS SINCE THE COURT RULING. UNDER THE NEW LAW, EMPLOYEES, OR SURVIVORS OF WORKERS KILLED ON THE JOB, MAY STILL COLLECT COMPENSATORY DAMAGES IF A COURT FINDS THAT EMPLOYERS HAVE FAILED TO MEET A NUMBER OF SAFETY REQUIREMENTS".

"THE NEW LAW TAKES EFFECT IN MAY. AN IMPROVEMENT IN THE EYES OF EMPLOYERS, WEST VIRGINIA IS STILL MORE GENEROURS TOWARD WORKER INJURY CLAIMS THAN MOST STATES, WHERE WORKER'S COMPENSATION IS THE SOLE REMEDY EXCEPT IN CASES OF CRIMINAL INTENT TO DO HARM".

"THE STATE IS ALSO TAKING A CLOSE LOOK AT ITS BUSINESS AND BANKING LAWS. PART OF A PROPOSED TAX OVERHAUL COULD INVOLVE REPLACING AN UNPOPULAR TAX ON GROSS SALES WITH A PROFITS TAX. A BANKING REFORM LAW PASSED LAST YEAR PERMITS BANKS TO BRANCH, MERGE AND FORM MULTIBANK HOLDING COMPANIES". THE ARTICLE CONCLUDES, "FINALLY, WEST VIRGINIA BOOSTERS TAKE MODEST PLEASURE IN THE STATE'S SHOWING IN AN ANNUAL SURVEY CONDUCTED BY THE ACCOUNTING FIRM OF ALEXANDER GRANT AND COMPANY OF HOW STATES RATE AS SITES FOR MANUFACTURING. WEST VIRGINIA MOVED TO 39th PLACE FROM DEAD LAST A YEAR AGO." END OF QUOTE..

WE SUBMIT THAT THESE INITIATIVES UNDERTAKEN BY THE WEST VIRGINIA STATE LEGISLATURE WERE JUDGED TO BE IN THE BEST INTEREST OF ALL CITIZENS OF THAT STATE - THAT SUCH ACTIONS ARE EXPECTED TO MAKE WEST VIRGINIA AN ATTRACTIVE PLACE FOR CORPORATE INVESTMENT, LOGICALLY LEADING TO EMPLOYMENT OPPORTUNITIES FOR ITS RESIDENTS AND TO A REINVIGORATED ECONOMY.

MOREOVER, WE SUBMIT, THAT YOU HERE TODAY, HAVE A SIMILAR OPPORTUNITY BEFORE YOU IN HB 223.

WE ARE HERE TODAY TO TESTIFY IN SUPPORT OF HB 223. WE ARE PREPARED TO OFFER A RECOMMENDATION FOR AN AMENDED VERSION OF HB 223 WHICH WOULD ELIMINATE SECTION 1 OF THE BILL. MR. FLEISCHER WILL PRESENT THAT AMENDMENT TO THE COMMITTEE DURING HIS PRESENTATION. SINCE THE PROHIBITION IN THE REGULATIONS ALREADY HAS THE EFFECT OF LAW, WE

DESIRE TO SEE THAT SECTION DROPPED FROM THE COMMITTEE'S REVISED VERSION. NEEDLESS TO SAY, IT HAS BEEN DIFFICULT TO EXPLAIN TO OUR MEMBERSHIP PRECISELY WHY WE WOULD SUPPORT THE PROHIBITION WHEN MANY ARE, IN FACT, OPPOSED TO IT.

IN 49 OTHER STATES IN THESE UNITED STATES, THE FLUCTUATING WORK WEEK PAY PLAN IS PERFECTLY LEGAL AND OPERATES TO THE BENEFIT OF BOTH EMPLOYEES AND EMPLOYERS.

ALTHOUGH THE ALLIANCE HAS ENDORSED THE BILL AS IT HAD BEEN ORIGINALLY INTRODUCED, WE DID SO IN THE BELIEF, BASED ON CONVERSATIONS HELD LAST YEAR, THAT THE STATE DEPARTMENT OF LABOR WOULD TACITLY SUPPORT THE MEASURE IN ITS ENTIRETY. FROM WHAT I HAVE RECENTLY LEARNED, IT WOULD APPEAR THAT A MISCOMMUNICATION HAS OCCURRED SOMEWHERE ALONG THE LINE.

MOREOVER, WERE THIS BODY TO TAKE ACTION TO CODIFY THE REGULATION, THE DOOR TO RECONSIDERATION OF THE MERITS OF THE PAY PLAN, MIGHT BE FIRMLY CLOSED. THIS COMMITTEE MIGHT WELL BE HEARING FROM THOSE WHO WOULD ADVOCATE LEGALIZING, ONCE AGAIN, THE FLUCTUATING WORK WEEK PAY PLAN AS A VIABLE OPTION IN ALASKA. I WOULD CALL TO THE ATTENTION OF THE COMMITTEE A BRIEF REPORT CONTAINED IN THE PUBLICATION, HIGHLITES OF NATIVE BUSINESS, WHICH COMMENTS ON A STUDY UNDERTAKEN BY THE UNIVERSITY OF ALASKA WITH THE SUPPORT OF A GRANT FROM THE FEDERAL GOVERNMENT. THE STUDY IS EXPLORING METHODS TO MAKE IT POSSIBLE FOR ALASKA NATIVES TO ENTER THE JOB MARKET WITH THE LEAST POSSIBLE CULTURAL DISTURBANCE. THEY PROPOSE TO DO THIS BY STUDYING WAYS OF ALTERING HIRING PRACTICES AND WORK RULES. FOR EXAMPLE, ONE WAY MIGHT BE TO

MAKE INDUSTRIAL PRACTICES MORE LIKE TRADITIONAL SUBSISTENCE ACTIVITIES. IT IS SUGGESTED THAT NATIVES MIGHT BE EMPLOYED FOR PERIODS OF 14 - 16 HOURS A DAY FOR TWO WEEKS, FOLLOWED BY 5 - 6 WEEKS OFF THE JOB, WHICH CORRESPONDS TO THE INTENSE EFFORTS OF THE ALASKA NATIVES DURING WHALING AND FISH RUN PERIODS.

AN INITIATIVE TO OVERTURN THE PROHIBITION AGAINST THE FLUCTUATING WORK WEEK PAY PLAN, HOWEVER, WILL NOT BE ESPOUSED BY THE ALASKA SUPPORT INDUSTRY ALLIANCE. WE HAVE SUFFICIENT CONCERN SIMPLY FOCUSING OUR ENERGIES ON EXTINGUISHING CLAIMS OF EMPLOYEES FOR UNFAIR WINDFALL COMPENSATION AND DOUBLE DAMAGES. TO PERMIT ENFORCEMENT OF THESE CLAIMS WOULD, WE BELIEVE, SET ALASKA APART AS AN UNSTABLE AND UNPREDICTABLE BUSINESS ENVIRONMENT. WE ARE CONVINCED THAT WOULD BE UNHEALTHY FOR THE STATE'S ECONOMY AND FOR EMPLOYERS AND EMPLOYEES ALIKE, NOT TO MENTION THE STATE TREASURY.

AT THE TIME THE STATE DEPARTMENT OF LABOR PROPOSED TO PROHIBIT THE FLUCTUATING WORK WEEK PAY PLAN IN ALASKA, NOTICE OF THE PROPOSED PROHIBITION WAS POORLY PUBLICIZED WITH LITTLE, IF ANY. INPUT FROM ALASKA EMPLOYERS OR EMPLOYEES IN THE SINGLE HEARING HELD ON THE SUBJECT. OUR MEMBERS, THE OIL, GAS AND MINING SUPPORT COMPANIES, WERE MOST AFFECTED BY THIS PROHIBITION. IT IS ESTIMATED THAT SINCE THIS REGULATION WENT INTO EFFECT IN 1978, POSSIBLY AS MANY AS 100 ALASKA BUSINESSES, UNAWARE THAT THE LONG-STANDING CUSTOM AND PRACTICE IN THEIR INDUSTRY HAD BEEN BANNED ADMINISTRATIVELY, HAD CONTINUED USING THE FLUCTUATING WORK WEEK PAY PLAN THEY HAD USED LEGALLY FOR YEARS AND MAY HAVE

INCURRED SUBSTANTIAL LIABILITY INADVERTENTLY. THE MAGNITUDE OF THAT LIABILITY HAS BEEN ESTIMATED TO APPROACH AND EXCEED $100 MILLION WERE PENALTIES TO BE INCLUDED

A CHANGE IN THE REGULATIONS, INDEED IN THE LAW, WHICH IS SO SIGNIFICANT AND HAS SUCH AN IMMENSE IMPACT ON ALASKA BUSINESS SHOULD NOT HAVE BEEN ACCOMPLISHED ADMINISTRATIVELY WITH A MINIMUM OF NOTICE, BUT RATHER SHOULD HAVE BEEN FULLY DEBATED IN THIS LEGISLATIVE BODY. MOREOVER, THE DEPARTMENT OF LABOR CLEARLY MUST HAVE HAD SOME UNDERSTANDING OF THE EXTENT OF USE OF THE FWW PAY PLAN AND THOSE FIRMS WHICH WERE USING THE METHOD AT THE TIME THE DEPARTMENT PROPOSED TO PROHIBIT THE METHOD. SURELY A FORM LETTER FROM THE STATE TO THOSE COMPANIES AND EMPLOYEES WHO WERE DESTINED TO BE AFFECTED BY THE CHANGE, WOULD HAVE BEEN IN ORDER.

INDEED, EVEN AFTER THE BAN WENT INTO EFFECT, THE DEPARTMENT OF LABOR FAILED TO ENFORCE THE PROHIBITION. ASSUMING THE DEPARTMENT HAD SOME INKLING OF THOSE FIRMS WHICH WERE USING THE FLEXIBLE WORK WEEK, IT COULD READILY HAVE GONE TO THOSE FIRMS TO ENFORCE THE PROHIBITION OR THE DEPARTMENT COULD HAVE FILED SUIT AGAINST THEM. THEY TOOK NO SUCH ACTION.

INSTEAD, THIS SMALL AD - DEVOID EVEN OF THE TERM FLUCTUATING OR FLEXIBLE WORK WEEK - NOTICED ONE HEARING TO BE HELD AT THE DIVISION OF AVIATION CONFERENCE ROOM ON WHAT ALMOST APPEARS TO BE THE SUBJECT OF MINIMUM WAGE. I WILL TELL YOU THAT THE ISSUE OF MINIMUM WAGE IS AS ALIEN TO OUR MEMBERS TODAY AS IT WAS DURING THE WINTER OF 1978-79. THEIR EMPLOYEES WERE EARNING NEARLY $50,000 A YEAR WORKING ONLY ONE HALF TO 2/3 OF THE YEAR.

SO THE HEARING WAS HELD - WE ASSUME - HOWEVER THE DEPARTMENT HAS TOLD US THAT NO EVIDENCE OF A RECORD CAN BE FOUND IN THEIR FILES - THE REGULATION BECAME LAW AND ABOUT A YEAR LATER ONE OF OUR MEMBERS WAS SLAPPED WITH A SUIT BY A FORMER EMPLOYEE FOR BACK WAGES. THAT, I RESPECTFULLY SUBMIT, IS ONE HECK OF A WAY TO RUN A GOVERNMENT.

DISTINGUISHED MEMBERS OF THE COMMITTEE - MEMBERS OF THE ALASKA SUPPORT INDUSTRY ALLIANCE ARE - TO USE AN ACCEPTABLE UNDERSTATEMENT- EXTREMELY DISAPPOINTED OVER THIS UNFAIR PREDICAMENT THE STATE ADMINISTRATION GOT THEM INTO AND ARE LOOKING TO YOU TO GET THEM OUT OF IT.

THANK YOU FOR YOUR TIME.

The Alliance is an association of businesses, many of which vigorously compete with each other in the marketplace, but are able to unite under the common goal of making Alaska a good place in which to do business. Should HB 223 fail to be enacted, the impact on the business climate in Alaska would be nothing less than devastating. I happen to be the Chairman of the Anchorage Chamber of Commerce Economic Development Committee. My group is working to establish a comprehensive initiative designed to attract industry - principally manufacturing firms - to Alaska. This effort will place Anchorage in a big league ballgame in which the competition is intense. We want to be ale to point with pride to legislative and administrative policies and actions which will capture the attention of corporate decisionmakers and cause them to seriously consider opening up operations in Alaska. Enactment of HB 223 will go far towards assisting us in our mission.

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Throughout the decade of the 70s, the predatory taxation initiatives targeted at Alaska's oil industry, coupled with perceptions of a government philosophy which overtly and covertly appeared to discourage development, crippled the image worked so hard on by Alaska's early pioneers - a message which said to all that Alaska was a land of opportunity and welcomed those who were capable of making our state a great state. That anti-development, anti-business philosophical trens has been reversed both by the Legislature and by the new administration. I earnestly ask that nothing be done to tarnish that perception. Failure to adopt HB 223 would do just that.

instance was any evidence turned up by any firm to demonstrate any warning that their traditional pay plans were about to be declared illegal.

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We surveyed a number of our members in an attempt to determine if they had any record whatever of the hearing which led to the prohibition against the fluctuating work week pay plan. We asked that they not only check their files in their Alaska offices but also to have their corporate headquarters review their files. In no

255 Wendte - Do you know of any presentation by the oil and gas industry that does not indicate that the business climate in Alaska is not appropriate for the oil and gas industry.

Becker - I can not answer that because this is the first time I have appeared in Juneau to testify for a piece of legislation.

Wendte - Your alliance main purpose is to improve the business situation in Alaska and make it a fair and equitable place in which to live.

Becker - Yes, of course.

280 Wendte - the deletion of section 1, as you have suggested, would be to removed the liability and any financial obligation from firms.

Becker - that is right.

Bussell - states that there is copies of the statutes as they were in 1978

297 Wendte - how much money is at stake here.

Becker - as far as we have been able to determine is 100 million.

They converse back and forward regarding the amount of money due to the employees. The point of whether the firms were notified by the Dept. of Labor correctly. Becker states that the company did not become aware of the new regulation until they were faced with a law suit over a year later.—

340 Wendte - asks if the alliance is in favor of keeping the regulation as is.

Becker - we will not attempt to overturn the regulation. States that the company has redone the pay system and it is now is accordance with the laws of the state of Alaska.

360 Bussell states that we must move on to expand the record.

371 John Martin from Dresser Atlas takes the chair to testify. (attached is written testimony.

Good afternoon Mr. Chairman, Committee members, and guests. My name is John Martin. I am the Area Manager for Dresser Atlas, a division of Dresser Industries. I have resided and have been registered as an Alaska citizen for the past six years.

I am here today, in that I strongly believe that a 1978 Alaska Department of Labor regulation prohibiting the use of the fluctuating work week pay plan has created an enormous managerial and employee compensation problem that is not conducive to a healthy business climate. This regulation has created a potentially disastrous unjust economic impact on my firm and others operating in this state.

Dresser Atlas employs the fluctuating work week plan in all of the United States where we operate. It is proven to be the best pay plan suitable to the oil and gas service business for both the employee and employer. Dresser Atlas' largest Alaskan core of operation is on the North Slope. Our employees work one week on duty and one week off. During the week on, our employees may be dispatched to a remote location where they may remain on standby waiting in a camp, sleeping, eating or relaxing for hours before they are actually called for to perform the well logging or perforating services. Often the direct true productive working time on the job is minimal compared to the unproductive waiting time. The nature of the oil and gas service business makes work hours next to impossible to predict. The

unpredictability of the Arctic weather and normal drilling problems creates actual job timing merely guess work. This inherent industry problem is fully appreciated by all that have knowledge of the business.

The fluctuating work week system lends itself perfectly to this work environment. First of all, it guarantees the employees a base steady income, even when they are off duty at their homes. Our average Senior Operator was guaranteed $530.00 per week in 1981 whether they were off duty or on duty. This enabled them to maintain standard income levels even when they were off work whether it be due to their days off or low activity periods which are inherent to our business. When they were on the job, they received a guaranteed 16 hours per day, C.O.L.A., isolated location allowance and job bonuses. In 1981, our average Operator made $60,678.00 and a Senior Operator made $67,829.00. Please keep in mind this is unskilled labor, most of which is hired in Alaska. They are also making over double what their Lower 48 counterparts make and have much more personal time off. There was also never a complaint about the fluctuating work week system and each employee was well versed on computation of his earnings.

The unpredictable nature of hours and remoteness makes it virtually impossible to hire additional personnel to spread out the total hours over more employees. As a businessman, what would you think about changing out your employees every eight

hours when the shift coming in had been sleeping in a camp for their eight hours of work? And what about the high cost of flying the personnel back and forth every eight hours and the safety implications of flying in Alaska, frankly, it is totally unacceptable; both economically and from a safety standpoint.

Through some infinite wisdom, the Alaska Department of Labor determined it should abolish the fluctuating work week system. Dresser Atlas was not asked, or any other company to my knowledge our opinion of the use of the fluctuating work week system in determining why it should be banned. It seems incredible to me, how one state agency could make a judgement on the validity of a pay plan that is acceptable in the other forty-nine states and approved by the Federal Government. Such a gross adjustment from the normal accepted and proven way of doing things in the United States would appear to me to be a responsibility of the state legislature.

To make matters worse, the Alaska Department of Labor did not notify our company or any other company, to my knowledge, of the fluctuating work week abolishment. Dresser Atlas management and corporate management has absolutely no record or knowledge of any correspondence either written or oral from the Alaska Department of Labor informing us of such a drastic change in wage administration. Attorneys on several occasions have formally requested that the Alaska Department of Labor furnish correspondence records depicting the

Department's notices before and after the regulation. The only correspondence discovered was a short hearing notice published in the Anchorage Daily News on August 30, 31 and September 1 of 1978. It is also incredible that the words fluctuating work week were not mentioned in the small print common to public hearing notices.

This entire matter did not come to Dresser's attention until the Department of Labor filed a $4,000 suit against Dresser Swaco in 1979 for an employee who was paid under the fluctuating work week plan. Dresser chose to challenge the Department of Labor's suit regarding the validity of the regulation. When losing in the State Supreme Court, Dresser immediately had no choice but to bow down and submit to the Alaska Department of Labor's regulation prohibiting the use of the fluctuating work week pay plan. We changed pay plans seven weeks after the State Supreme Court ruling. Within one month after changing pay plans, we were served a summons in the form of a class action lawsuit. Within a very few months, four other companies were served class action suits for past use of the fluctuating work week plan. These suits are all being handled by one law firm. Two of these suits alone called for judgements in excess of thirty five (35) million dollars!

An Alaska Department of Labor spokesman has estimated that there may be up to 90 companies affected with an excess of 100 million dollars in liability.

H.B. 223 would prohibit retroactive recovery by employees who were paid under the fluctuating work week system during the period the regulatory prohibition was being appealed in the courts.

I encourage you to strongly consider the possible consequences if H.B. 223 does not pass. It would create a definite windfall profit for many past and present employees. Definite windfall, because facts prove these employees were paid fair and equitable wages, which were fully agreed upon and expected by our employees. Who else may profit? One law firm! What is 33.3% of 100 million dollars?

I cannot say I enjoy being here today. I have a business to run as you do a state government. Please keep in mind that my firm and many others have a lot to lose on this issue and the opposition has only to gain. To conclude, I must add that it is totally ironic that in the State of Alaska under the fluctuating work week plan, Dresser had the lowest turnover rate of operators in all of the United States. But yet it is the only state where this fair and just pay plan has been banned and consequently our business stands in financial jeopardy.

I feel your fair and moral judgement will lead you to support H.B. 223.

Thank you for this opportunity to testify.

480 Hayes asks the name of the law firm.

Martin - The Banfield, Logan, Bates. they are in Juneau.

490 Wendte - Comments on when the regulations took effect, Dec. 9, 1978. the bill is asking that we forfeit liability from the date of effect.

Martin - my statement was to distinguish the liability from the test case. Many companies sat back and watched what happened with us. When they saw that the case was lost they then changed their pay systems.

Wendte - you did not changed your pay system at that time, why?

Martin - we thought that we had a good case and a fair chance of winning. We did not want to take away the employees security of knowing what their salary was going to be. The pay system was changed on Nov. 6, 1981. States that the company became aware of the regulations at the time of the Woody case being filed. About six months after the regulations came into effect.

525 Wendte - speaks of the time of the firm knowing of the regulations and the time the firm switched the pay plan. It was actually only from Dec. 1978 to the summer of 1979, which was the time the Woody case was filed.

Martin - states that they did pay their employees fair and square. The majority of them earned over $60,000 a year. Their firm had the least amount of turn overs in the states. States that changing a complete pay plan is a very complicated operation. It took weeks. There had to be time for the employees to make adjustments in their personal lives. They did not have a guaranteed salary.

575 Hayes asks if the salary for an operator under the new pay plan will exceed the pervious $60,000 plan, if not is the 100 million dollar liability a result of the overtime interruption.

Martin states it was difficult to change since there was many ways of paying. When the changed was made they did not intend to pay them any more than before. Some are making a little more, some a little less so it is averaging out.

They converse.

620 Hayes asks if the new way is more cost effective.

Martin replies that in some insistences it is in other not. Because now the employee does not get any compensation when they are off work.

633 Bussell asks is there any work done by the firm concerning cost plus work for the oil industry.

Martin replies no.

644 Hayes follows up on comments of Rep. Wendte on concerning the pay. Would the employees make the same amount of money on either plan.

Martin answers that the cost would be about the same and the company would not have had to pay out any more money.

(turn of tape)

027 Liska how many hours do your employees average.

Martin that is easy to answer now. Before it was any where up to 16 hours a day, they were guaranteed that much. But they are now averaging about 12 to 13 hours a day.

060 Wendte asks if the pay is about the same they must have more employees at this time and asks about the relation of it to the oil and gas companies.

Martin comments on the reason for the stable amount of pay due to the fact of the overtime that was paid. Talks of the way it is now easier and more beneficial for the people to live out of state. Does not believe that it has much to do with the oil company.

Hayes comments.

144 Theodore [illegible]. Fleischer gives testimony. (a basic outline is attached, it was briefly revised before the reading of it, some of which are not included)

TENTATIVE DRAFT - REVISED BEFORE TESTIMONY

TESTIMONY OF THEODORE E. FLEISCHER

My name is Theodore E. Fleischer. I am a partner in the law firm of Ely, Guess & Rudd. I have been retained by Petroleum Equipment Suppliers Association, which I will refer to as PESA, to provide a legal opinion on the constitutionality of legislation under consideration by the Committee. I will get to that in a moment, but first I will briefly describe PESA.

PESA is a trade association with approximately 340 members in the petroleum equipment, service and supply industry. Depending on industry demand, which can be seasonal in nature, several dozen or more of PESA's members are typically active in Alaska. PESA does not of course represent its members in litigation, and therefore is not a party to the lawsuits filed by employees against various of its members which seek overtime compensation and liquidated damages.

You have heard testimony from witnesses describing events since December 8, 1978, to the present on which date the Department of Labor adopted the regulation prohibiting FWW plans. A lawsuit was filed in 1979 by an employee seeking damages, based on the Department of Labor regulation. In September of 1981, after the Supreme Court upheld the Department's authority to

promulgate the regulation, various companies in the petroleum support industry, which had become defendants in ~~similar~~ these lawsuits, decided to seek a legislative remedy. A bill was introduced near the end of the 1982 session of the Legislature, but was not enacted.

During this period PESA became increasingly aware of the potential economic impact of class action lawsuits on its members with Alaska operations. Since then the association has coordinated the efforts of its Alaska members in seeking a legislative solution to what is now seen as an industry-wide problem in the state.

I have been retained as special counsel to PESA to review the proposed legislation, which was drafted last year, and to provide a legal opinion on whether such legislation would be constitutional. PESA desired an opinion from an independent firm not otherwise involved in the litigation; my firm does not represent any party which is a defendant in the lawsuits filed by employees. I have now completed my research and submitted my opinion to PESA. At its request I have provided copies of that opinion to the Committee. After briefly summarizing the opinion I will make several recommendations for revisions in the present version of HB 223.

My analysis focuses on the section of the bill which extinguishes the claims of employees who worked under FWW plans since December 8, 1978. Other witnesses have addressed the question of whether it is wise, fair or necessary to do so. I will address only the issue of whether the legislation, if enacted by the Legislature, would be constitutionally valid.

In connection with preparing my opinion, I have reviewed a letter from Thomas A. Sofo of the Legislative Counsel to ~~Chairman Bu~~ Rep. Walt Furnace ~~sell~~ dated March 2, 1983. Mr. Sofo briefly notes several possible challenges to the constitutionality of the bill, and concludes, without citing any case law or authority, that he is "not convinced that the Alaska Supreme Court would be persuaded" to uphold the legislation. I have also been provided a copy of a letter from counsel for the Alaska Wage Security Association, whose members apparently include employees who have sued to collect overtime compensation. The letter asserts that the legislation violates the constitution, but it provides no argument or authority in support of that statement. In any event, I have examined the legislation to determine whether it could be upheld, if challenged on any of the grounds typically asserted by a plaintiff in challenging legislation which has retroactive effect.

I should first report that I have found no case decided by any court which presents exactly the same scenario as present here. I would have been surprised if I had found such a case. On the other hand, there is a considerable body of case law in which courts have ruled on the constitutionality of legislation which retroactively changes the rights and obligations of private individuals who have entered into contracts. And there are cases involving legislative action to extinguish past claims of employees for overtime compensation and damages in which the fact situations are quite similar to those presented here.

In many of these cases, though certainly not all, courts have upheld the legislature's constitutional power, under certain circumstances, to reach backwards in time and to change and even abrogate the rights of private individuals. For example, courts have upheld the legislature's power to impose taxes retroactively, to modify the rights of mortgage holders, and to limit the right of depositors to make withdrawals from building and loan associations. Obviously, then, the legislature is not precluded as a matter of constitutional law from enacting a law which retroactively affects the rights of individuals.

The question, therefore, is not whether the legislature can enact retroactively effective laws. Clearly the legislature can do so. The pertinent question is whether the proposed legislation, which abrogates the claims of employees to overtime compensation and liquidated damages, would withstand a challenge on the grounds of constitutionality.

A legal challenge to a retroactive law is ordinarily brought under the Contract Impairment Clause of the United States Constitution or the equivalent provision in a state constitution. The Federal Constitution provides that "no state shall . . . pass any law impairing the obligation of contracts." Often a plaintiff will also assert a Fifth Amendment Due Process claim, arguing that the state has, by retroactively affecting his rights, taken his property without due process of law. For practical purposes, the analysis under the Contract Clause and the Due Process Clause are substantially the same and the court deals with them in the same fashion and I will not attempt to distinguish them in my discussion.

On its face, the Contract Clause appears to be an absolute prohibition against any impairment of a contract. However, the Contracts Clause has not been interpreted by the Supreme Court of the US to prevent use of legislative power to carry out legislative purposes which, on balance, are believed to be reasonable. The

Supreme Court has often upheld statutes which impair the obligation of contracts, where the legislature has reasonably exercised its legislative power in order to achieve a legitimate policy goal.

In reviewing the cases it becomes quickly apparent that courts have not developed a formula or test to which the facts in our case can be applied, which will mechanically produce a result. Courts look at many factors when considering challenges to retroactive laws, but arrange them in various combinations depending on the circumstances. For the sake of convenience, in my opinion I have grouped my review of the factors considered by courts into two categories: one is "public interest" and the other is "fairness to the affected individuals". I want to discuss each of these areas briefly.

When considering a challenge to a retroactive law, a court looks to see what state policy was served by enactment of the law. To the extent that there is any legislative history available reflecting legislative intent, the court will review this. In effect, courts look for answers to these questions: does the law affect the state, its economy, and one or more industries operating in the state, or merely one company or individual or a small group? Did the legislature act reasonably in tailoring the law to remedy the problem? Did the

legislature know who would be affected by the law when it adopted it? The answers to these questions will help a court to determine whether the legislature acted reasonably to implement a significant state policy, rather than acting in ignorance of the individuals who would be impacted by the law. Following are examples of some state policies which courts have held could be implemented by retroactively effective legislation: promotion of the integrity of land titles, protection of the financial health of savings institutions, and relieving commercial enterprises of potential adverse impact of lawsuits by employees.

In addition to probing the public policy behind retroactive legislation, courts will look closely at what the contracting parties actually expected when they entered into a contract, which is later modified by legislative action. There have been situations where the parties to a contract have entered into the contract in violation of, or in ignorance of, a legal requirement, and as a result the contract is illegal and unenforceable according to the terms agreed to by the parties. In such cases legislatures have on occasion changed the law, and made the change retroactive, in order to validate the contract as agreed to by the parties. Courts have routinely upheld this type of exercise of legislative power. The result is that the party's reliance on their agreement, and

their reasonable expectations, are confirmed. For example, courts have upheld legislation which validated retroactively a usurious loan, a defective power of attorney, and an invalid pledge of security by a bank.

It is also important to determine the nature of the right which is extinguished by retroactive legislation. Certain types of rights, such as property rights, are ranked as more deserving of protection, although even these are subject to modification and even destruction by a legislative enactment. One particular species of rights is peculiarly subject to revision by the legislature. These are rights created, in statutes, by the legislature itself. Rights given by the legislature can later be taken away by the legislature. Alaska's Supreme Court ruled that a defense to a lawsuit, set out in a statute, could be repealed by the legislature. Other examples include a retroactive change in usury laws, which make a loan contract legal, which was illegal when originally entered into. The point is that the legislature is free to deprive individuals of rights which the legislature itself originally granted, if it acts reasonably in doing this.

A series of cases decided by courts in the late 1940's are particularly relevant, and bring together the factors considered above (the public interest and the reliance of the

parties). After the Second World War the United States Supreme Court decided a case in which it interpreted the Fair Labor Standards Act to require payment, including time and one-half for overtime, for certain activities which previously had not been considered compensable work. For example, changing into work clothing on the employer's premises. This interpretation of the law created a potential liability to employers numbering in the billions of dollars. Congress responded with the Portal-to-Portal Act of 1947 which provided that no employer would be subject to liability for failure to pay wages for such incidental activities, unless there was an express contract provision providing for such payment or it was the custom at the establishment where the employee worked to pay wages for these activities.

Workers attacked the constitutionality of the act as violating the Due Process Clause. In ~~literally~~ over hundreds of cases, courts universally held that the Act was constitutional. They held that where the right to recover on claims is of purely statutory origin, as in the case of claims for overtime compensation, the legislature may later change the law to take away the claim originally granted by law, if it concludes this would produce a fair and equitable result. After looking at the legislative history of the Portal-to-Portal Act, the courts determined that Congress was

justified in preventing a serious adverse economic impact on industry by extinguishing the rights of employees to receive "windfall" payments for activities that they did not expect to be compensated for when they were performing them.

In a somewhat similar situation several years later Congress enacted what became known as the Overtime-on-Overtime LAW Act. This law retroactively extinguished employer liability for overtime claims and liquidated damages which would otherwise clearly have been due to employees. That case has a fact situation even closer to the facts presented to the Legislature than Portal to Portal here. There employees had asserted claims, and filed lawsuits against employers, pursuant to an interpretation of the statute in their favor issued by a wage and hour administrator. Unlike the Portal-to-Portal cases, only several millions of dollars were involved, and only a small segment of industry exposed to liability. Nevertheless, the Ninth Circuit Court of Appeals followed the holdings in the Portal-to-Portal cases. The court held that the statute was constitutional for substantially the same reasons as expressed by numerous courts in the Portal-to-Portal cases. It should be noted that the court followed the ruling in the Portal-to-Portal cases despite the fact that millions of dollars, rather than billions, were at stake, and the impact was on only one industry in California, rather than nationwide in scope.

State Supreme courts also apply the above principles. For example, the California Supreme Court in 1982 upheld a statute which retroactively invalidated claims against lenders for damages for charging unlawful interest rates. In 1978 the high court in Massachusetts held constitutional a statute by which the Massachusetts Legislature retroactively re-wrote clauses in insurance contracts, since the Legislature concluded that it would be unfair to enforce the clauses which had been agreed to by customers with insurance companies. Thus the principles of law discussed above are not merely of ancient origin and application, but have continued vitality in courts today.

It is against the above legal backdrop that the legislature must act on the proposed legislation. In my opinion, the legislature can retroactively extinguish employees claims for compensation and liquidated damages, if it makes certain findings based on testimony and facts available to it. I suggest that the findings should be along the following lines:

First, the Legislature could determine that payment by employers of pending and potential claims of employees for overtime and damages would pose adverse economic consequences on an industry important to the state's economy, and perhaps to the state itself;

Second, it could find that from December 8, 1978 to the present employees and employers voluntarily entered into employment contracts by which employees would be compensated under FWW plans; both unaware of the Department of Labor regulation because there was no widespread publicity directed at informing employers or employees of the drastic change in that law; and Finally employees expected to be paid pursuant to the terms of their agreement and not on some other basis.

In my opinion, if the Legislature makes findings such as these, then the Legislature is free to balance the claims of employees for strict enforcement of the Department of Labor regulation against the adverse economic impact on, and unfairness to, the industry, and possibly the state itself. If in the Legislature's opinion the balance weighs in favor of the industry's position, as opposed to permitting a limited class of employes to collect "windfall" compensation and penalties, then the Legislature can constitutionally extinguish those claims.

The attached opinion is more detailed than the testimony I have presented here. ~~In summary, I have concluded that the legislature can, if it makes certain findings, retroactively extinguish employee claims for overtime compensation and liquidated damages.~~ It comes to the same conclusion that I have stated here. If the ~~legislature~~ legislature

decides to do so, I recommend that it, through its committee reports, clearly state its intent and the policy reasons for adopting the legislation. In the event of a legal challenge, I believe this will materially assist the court to determine that the Legislature acted reasonably to implement a legitimate public purpose in adopting the legislation.

I have recommended several revisions to HB 223 to PESA and have prepared a committee substitute incorporating these:

1. Section 1, which prohibits FWW, has been deleted. This deletion has been explained in earlier testimony. ~~As noted~~, it has no practical effect because of the ~~the~~ Department of Labor regulation presently accomplishes the same purpose in any event.

2. Section 2, which was inadvertently made retroactively effective, is to be effective for the future only.

3. The title has been amended to give notice of the bill's purpose of extinguishing the existing claims of employees for overtime compensation and liquidated damages.

4. The immediate effective date clause has been removed.

5. There are other minor language clarifications, which do not change the substance of the original bill.

Thank you for the opportunity to appear today.

450 Wendte comments that since there was some conflicting statements made by Fleischer in relation to Mr. Sofo comments perhaps it would be a good idea to hear from Mr. Sofo at this time. Mr. Sofo is the legal counsel that drafted the bill.

Bussell states that there is only ten minutes are left and we will be able to talk Mr. Sofo at a later time. The committee will again be meeting at 7:00p.m. this evening.

Bussell comments on the responsibility of the Dept. of Labor to notify the individuals which are involved. Asks what he feels is the obligation of the Dept. of Labor.

505 Fleischer states that during the court cases the thought of whether the regulation was properly litigated was never brought up.

They discuss this point.

530 Wendte asks about the advertising of bids by large companies for work and relates it to this in the area of the person complaining to the firm.

Fleischer I believe that a person that feels he was dealt with unfairly would go to the company. And on the other had the obligation of the government to notify is totally different than a private firm's obligation.

548 Wendte asks concerning if there is any state statutes that cover the area of notification.

Fleischer there is a law that states that the affected individuals have to be contacted.

Bussell comments on the people trusting the Dept. to notify them of such things.

They discuss the notifying of the Dept. of Labor.

590 The Committee discusses the recess of the Committee and reconvening.

612 The meeting is recessed till 7:00. The time is 2:56.

The meeting is called back to order by Chairman Bussell at 7:00p.m. Members present: Bussell, Liska, Wendte, Malone. Speaker Hayes entered shortly after the meeting begun.

Tape #52

004 Roll, welcome, etc.

033 Jim Robison, Dept. of Labor. States he will be brief to allow to have to two attorneys to testify one for each point of view. Refers to the package of materials that the Dept. delivered to the Committee. Believes that all the proceedings started with a law suit with Dowell back in 1976 having to do with the FWW. That action was put in limbo to decide on the action to take in relations to the regulations. States that there was letters sent to Dowell, Dresser in relation to this matter as soon as the issue was set into place.

100 Bussell asks if he has copies of the those letters. He states he does not but there are people to testify to the fact under oath that they were sent thus the companies were notified.

110 Wendte asks on the time frame of the letters. He states that it was after regulations were enacted, late 1979 early 1980.

117 Robison states that they have no problem with the deletion of section 1, as already mentioned they do have those regulations. There are some problems with the other sections. They had Gary Amendola research. He will testify. Asks where everyone is coming up with the 100 million dollar figure. The dept. has not been able to come with any figures at this time.

150 Wendte comments on the legal aspect of the Department's notice of the regulation. Relates it to the case of Dresser in the stipulation of the regulation.

Bussell comments on this and states that it is not the issue before us.

182 Gary Amendola, Dept. of Law representing the Dept. of Labor. Will restrict the comments to sections 3 & 4. There are 3 serious conflicts with the constitutional provisions. (1) Is the impairment of contract Article 1 Section 15. There has been some cases upheld in this area. Some states do uphold FWW ours do not. Refers to AS 23.10.060 which refers to the overtime provisions. This states that it is part of all contracts within the state. (2) Article 2 Section 19 is probably the most important with deal with Special Legislation. Does the legislation deals with general public interests and public purpose? This is a question to put to the test to see if they apply. The Committee has determine if this is a state wide concern and not just an specific area. He feels there are equal protection problem. Because those that used the FWW during the period in question would be exempt from liability those that did not used it would be liable for the overtime payment. Also the employees will have a reason to file due to the fact whether he worked for an employer that had FWW or not. Those with the FWW could recover funds. (3) there is conflict with AS 23.10.050 which is the public policy statement by the legislature. Also 23.10.130 is that statute of limitations.

370 Bussell refers to 23.10.055 states that it covers a broad range of people and firms. Comment on the impairment of contract cause. The employees had contracts with their employers and so when the regulation was issued it then violated those contracts, so wouldn't those be impaired. Should this work both ways.

395 Amendola refers to the point of the legislature passing regulations and they override the contracts.

420 Ron Laursen, Deputy Attorney General with the Dept. of Law. Worked for the Dept. of Labor at the time the regulations were adopted. Believes the wage claim was in 1976 in part of Dowell Corp. The firm and Dept. of Labor had disagreement as to the FWW. Dowell thought FWW was right. Dowell and Dept. of Labor came to agreement to submit a brief of their standpoint on the FWW. They reviewed the arguments. He issued an opinion in February of 1978 that Dowell was right because the Dept. of Labor at the time did not have regulation about FWW. The Dept. of Labor could state that FWW was not in the best interest of the state but would have to do it threw regulations. The first publication of the regulation was in August, 1978. Talks of the notice to be given to interested parties were complied with as in AS 44.62.190. States that that is when the suit against Dresser was brought up.

530 Talks of Section 3 dealing with the retroactive provisions. HB 223 deals with four issues really One should or should not continue FWW. Second whether or not modify liquefy damages or penalties in reference to pay Section 2 provides lead way for the employer that did not mean to take advantage of the employee but did due to lack of knowledge of the regulation. Section 3 says that any one that did not comply with the regulation from Dec. 9, 1978 is off the hook. section 4 goes about getting people off the hook for the FWW and violation of the wage and hour act. If this is past the constitutionality will be brought before the court until the Supreme decides on it. Comments on the thought of the constitutionality of this. States the courts will be faced with this question. States that there is far greater likelihood that where you are taking away or changing a penalty that previously existed that that will be held constitutional. It is less than a contract right that has been established as employee right against their employer. States that the people will not stand for being told that they can not collect funds for their past overtime.

615 Wendte directs question to all. Did the legislature have the power to repeal the regulation in 1978.

Lauren state that the legislature has the power to repeal any regulations.

630 Wendte asks if there is a date as to when the Dresser case was filed.
No I do not.

635 Lauren comments on the people who abide by the law and those who did not abide by the law

650 Turn of tape #52

003 Bussell comments on his personal experience in business.. States that he knows more about the regulations now than he has during his twenty years of doing business. Reminds the meeting that the cost factor of the pay did not change. The employer treated them the same. The only thing different was the way of contracting. States it did not affect him. He does a lot of cost plus contracts. The change over would have had ruined him in that issue. He is displeased with the effort by the Dept. of Labor and the Dept. of Law to notify people and firm before and after the fact.

082 Malone comments that the dates of publication was given.

They talk of the notification.

150 The committee talks of the equal amount of pay under both plans.

210 Bussell states that the reference to the oil companies is out of place due to the fact that there is not one oil company present here today and probably will not be.

230 Marlene Neve' represents AFL-CIO. Against the Bill. States HB 223 purposes two alternations to the present wage and hour act. First section 2 allows employers to avoid liability because lack of knowledge of the wage and hour laws. Secondly the bill retroactively distinguish thousands of claims of employees now filed. This is the second try to do this. FWW would help the employees that have different hours per week, a little higher or a little lower than 40 hours. But usually the FWW is used to lower the pay of the employees. It is used in areas where the employees work well over 40 hours per week. Request teleconference for the employees that can not afford to fly to Juneau. Hopes the Committee is as concerned about the employees as the employers.

296 Wendte asks about the part that the Superior Court, state and US. They basically had four chances to change over during the process.

310 Liska asks about the number of employees that are involved.

She states that there are a great number that can not afford to file the claims.

340 They talk of a teleconfernce. Bussell states that the POM's are basically from Anchorage. States that he called several of them and they all said that they did not know what they said and that their foreman told them to do so. Neve' states that the foreman's job is to protect the employees.

410 Michael Barcott, lawyer for the employees for the claims on the FWW. States that this bill if actual for FWW, but is just asking to be forgiven for past sins. Claims Dresser knew the impact of this regulation at the beginning. They had the best lawyers went all the way to the US Supreme Court. States that they could have changed their system as easily in 1979 as they did in 1981. Refers to the Woody case. The company just sat back to see what would happen. If Dresser Industries and others had changed their pay system in 1979, all claims would have been void due to the statute of limitations. States they knowingly violated the laws of the state. The only windfall with be for the firms. Dresser is one of the seven largest firms in the world.

Does not believe that this bill is constitutional. If this bill passes the ground will be shakey. States this committee has great responsibilities in this state. If this passes, many people will see if they can violate the laws of the state and try to see if the legislature will bail them out. This is exactly what the companies are doing now. A stable state in which to do business is that the business know what are and abide by the laws of the state. He wishes the claim of 100 million dollars was true. It only has potential amount of this from the time of the regulation coming into effect. Half of the claims have been dismissed due to the fact of the statute of limitations. States that the claims from Dresser employees are 75-80, from Slumberjack, 75-80 and a few from other firms, maybe totaling two hundred in all. The amount of the claims actually are only about 10-20 million dollars. States that if the Committee wants to give the future businesses an impression of lawlessnes, then pass this bill because that is what it does.

550 Wendte comments on the number of employees and amount of claims. They discuss.

560 They talk of cases filed and the dates thereof.

580 Barcott comment on the difference of the hours and the wage then and now. If the employees worked the same amount of hours they would be making more money. The companies cut back the time that the employees put in now. That is why they claim that it is the same.

The Committee discusses the cost now and then.

646 Bussell comments on the notification by the Dept. of Labor.

658 Change of tape.

Tape #53.

003 Barcott states he had nothing to do with the notification. But firmly believes that it was done properly.

The Committee talks of the knowledge of the firms of the regulation.

155 Wendte ask if these are union. Barcott state they are not, that they are individual contracts. Most are just verbal contracts. Wendte asks if the employees filing claims are still working for the companies. It is noted that some are and some are not.

186 Liska asks if he was familiar with the first bill dealing with this.

Barcott was familiar. It is noted that none of the 3 attempts were passed from the first committee of referral.

210 John Eshleman, opposes the bill. Member of the Alaska Wage and Security. Former employee of Dresser. He describes his former position, feels that he was a skilled laborer. States that when he went to work he did not know the exact amount of his pay. He was told it was very complicated. It would average about $50,000 a year. He did file a claim against the firm. He feels he was discriminated against and they tried to get him to terminate. Relates the story of why he filed. At the time of the pay change, John Martin told them that the firm did not feel that they owed the employees no additional money and if they thought otherwise they should go see a lawyer. He proceed to go to Mr. Barcott. Passes out a example of how they were paid.

300 He describes the pay system. Gives examples that the people on the new plan do indeed make more money, he did. Urges them not to pass HB 223.

367 Wendte asks if he had a written contract.

J. Eshleman no I didn't. It was just estimated at $50,000 year.

375 Wendte comments then all that needed to be done is to state that there was going to be a pay change. Eshleman agrees. States that most like the new system

394 Hayes confirms that he worked under the new and old system for Dresser. Comments on the wage he received. They talk of the hours that are worked. His wage was $12.94 when he left. There is bonus paid and then additional on the bonus.

440 Bussell was this the first time you worked in this system. Yes, states that he changed because of the better time scheduled. At the previous job he knew exactly how much he was paid. Bussell talks of why he took the job that he did not know how much he was being paid. States that all the electricians know exactly how much he will be paid and can figure it out.

477 Robert Eshleman former Dresser employee. Representing himself. Is a plaintiff with Dresser. Opposes HB 223. He was not paid on FWW he was paid as a salary exempt employee. It was a verbal contract. At the beginning had no question to pay. States the overtime was figured on the Huston base. He was asked to represent all the salary exempt employees from the North Slope. They wanted to go to a week to week schedule, they wanted their overtime changed and they wanted an eye care package. The firm felt 2 and 1 was fair. They stated the employees did have a valid claim as to the overtime. It was stated that it would checked into. States Dresser was not union. They did change the pay plan. Their pay almost doubled. The discrimination followed. He was terminated due to poor job performance. States he made the same in less that 10 months working less time than in a year of working almost twice as much. He believes that he dealt fairly with Dresser in his claim because he did not file at the first possible moment. He tried to negotiate with them. He feels that Dresser knowingly disobeyed the law. His statute of limitations is almost up. He urges the Committee not to pass the legislation.

580 Liska comments on the fact that many of the people are lower 48 individuals. Asks what percentage of Alaskans are affected by this.

Eshleman feels that most of the are Alaskans affected and those that are from out state decided to stay.

The point that the employees are mostly Alaskans is clarified by Mr. Barcott. And that the companies are primarily outside companies.

600 Bussell asks if he feels he is a professional. He feels that he is a semi-professional.

607 Bussell asks what is a salary exempted employee.

Eshleman there are several. Some are on hours some get salary and are allowed overtimed. Bussell reads the statute concerning this.

The Committee and Eshleman discuss the term professional employees. And they talk of the terms fair and equitable. Eshleman does not feel that he was dealt with in that manner.

654 turn of tape.

015 Malone asks to be excused to check on his constituent teleconference.

050 Jerry Sheelon, Alaska Division Manager of Gearhart, Industries. He feels that all that he has wanted to say has been said. States he was never informed of the changed of the regulation till the claims. He supports the bill. He talks of his system of pay. That their employees always knew their pay. Relates some examples. States that Arco and Sohio now will not allow the employees to stay on the job more than 12 hours a day. He does not feel that the legislature should be held responsible for this. Hopes that the Dept of Labor will keep people informed from now on. His company's pay expenses have stayed the same.

170 End of testimony. There is short comments on the 12 hours of legislature.

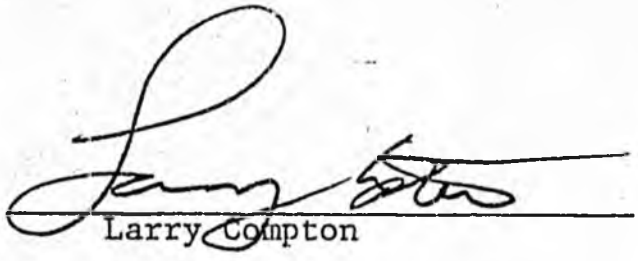
181 Bussell asks how many employees in Alaska. 50. How long in business. Since 1969. Were you ever notified of the change. Never.

They discuss the pay system and notification.

240 Mr. Becker reads a statement written by Larry Compton. Mr. Compton had to fly back to Seattle. (Attached.)

# TESTIMONY ON HB 223

Mr. Chairman, Members of the Committee, my name is Larry Compton, President and Owner of Time Saver Grocery INC., I have lived in Alaska since 1954 and may I add have no connections with the Gas and Oil Industry. I regret that I was unable to stay and testify in person. I have nothing to gain by this passage of HB 223. However, I do feel I have some thing to lose if it fails. I will lose faith in a system that has beenfair and equitable in my eyes for 30 years. A system that is supposed to deal fairly with Employee and Employer alike. I only ask that you continue to apply that same fairness in the future by passing HB 223.



Larry Compton

259 Richard Crull is Regional Operations Manager for Alaska. Has been in position for seven months. Can not add much more than what has been said. He does support the bill.

262 Wendte asks if he is a member of the Alliance. Yes. When was it formed. 1979. Are you a member of PESA. Yes.

307 Wendte is Dowell part of the lawsuit. Not that I am aware of.

310 Bussell asks if the Committee asked for information from their company in relation to this matter. Mr. Crull would assume yes.

They discuss the possible information that may be obtained in relation to Dept of Labor notification and the FWW.

387 Paul Preston, Halliburton Services, Supports HB 223. Everything has been said we add our support.

394 Hayes if Halliburton Services part of the lawsuit. No Sir.

400 Thomas Sofo (transcribed testimony attached.)

Testimony of Thomas Sofo
April 7, 1983

My name if Tom Sofo, I am employeed by the Legislative Affair Agency, as a legislative counsel in the Legal Services Division across the street. We drafted the subject bill. There really is no need at this point I think, in my opinion, to go into any complicated legal analysis. The office would basically agree with everything Mr. Laursen has said. I think that there has been some misimpressions created as to certain ways that we might be able to address this and improve on the bill.

First of all, it is of course not in the policy of us to comment on the position of the bill. We do not comment on whether there should be a FWW or not we have no opinion on the issue, neither do we have an opinion whether the people on the slope are being overpaid or underpaid under either of the two plans. Neither do we have any legal analysis that we have done regarding section two of the bill which involves the penal provisions although we would add that. In our view that provision is less likely than a toss up to withstand a court challenge. I believe Mr. Laursen said that that would be 50/50 on a constitution matter. We would probably give it an one chance out of three if those things can be quantified.

As you know I am the attorney for each of you at this table. And the function we have is to protect the work of the Legislature. I would just reiterated what Mr. Laursen has said, this is a loser. You are at least buying a law suit by passing it and you are probably, most every attorney that would review this bill across the street, would predict, which all we can do is predict, maybe the thing to do is pass it and give it its day in court. but if we were advising clients this is the kind of case that we would consider almost a certain loser.

Now there have been a couple of impressions created by testimony that I think that did not directly state these facts but these are the impressions that I came away with. One was that if we could include the proper amount of findings or purpose as an addendum to this bill on the front end of it, that we could some how cure the unconstitutionality if it is indeed unconstitutional. And I will try to remember to say "if" because we do not have any statement to that effect.

Now by the judicial form that we are bound by and I do agree with Mr. Fleischer statement earlier when he submitted a summary of his brief that there are no cases directly on point. So in one sense this is a issue that the court could look at anew. But if they follow the authority that seems to be in the field they will probably strike it down as unconstitutional. And we who deal in these areas as to legislative findings and intent and purpose are aware of a long line of cases which shows on various subjects that it is seldom if ever the case that you can cure the unconstitutionality of a bill by merely stating that the legislature finds X and X to be the case. Not when the flaw in it is of a constitutional magnitude.

There is another impression that I am not sure as to where I came by this information. It was in the course of drafting and listening to testimony today I have heard the Cee's case referred to several times as one of the primary cases that is most likely to be used in an argument to support the bill and I agree that it would be used in support. It is one of the strongest cases in support of this kind of legislation. Although I do not have a full copy of the case as a matter of fact I do not believe that I even have a summary of the case with me. I have read the case and although no one has misstated statements in the case, they have neglected to tell you that the Portal to Portal which was sustained in that case did not allow for the withdrawal of the remedy if there was a written contract governing that right under question. No one has stated that it did, but everyone has failed to state that that was one of the exception. That if there was a written contract which protected that right even the Portal to Portal Act did not preport to revoke that right.

And the other thing that I think I would like to focus the Committee's attention on is that the constitutionality of this bill does not depend at all on the amount of money that is involved. Does not matter what any one is getting paid and it doesn't matter whether the damages are $10 or 10 million dollars. The court in question to which this may end up going would decide if there are indeed damages. It may be unconstitutional even if there is no recovery. And I think a lot of the discussion has involved what the amount is and although that is of some interest, for instance on a public policy purposes it might be relevant. Really for the kinds of defects in the bill that we see, the impairment of contracts, probably an equal protection argument and special legislative, which I believe have been discussed fully before. Almost all of those arguments will not be effected if the recovery is $1 or 1 million dollars.

The office has not really responsed to any requests to research this choroughly. We have nothing like a thirty page memorandum. I did not know that we were going to be asked to testify here till 4:30 yesterday. So we are prepared to answer questions or do the appropriate research if any one cares to pose a question that we can not answer at this time. That is the only statement that we were prepared to make at this time.

467 Wendte states that there has been interest shown that this is special interest legislature.

Sofo states it may be considered as such. He did not know the names of the defendants involved until testimony was given. He does not know whose special interest it would served.

490 Bussell asks him who had requested him to come and testify.

Mr. Clocksin.

496 Liska asks if he had drafted the bill.

The version that you are using now, yes.

506 Liska asks how much research actually went into this.

Sofo states that is usually brief unless that someone asks for a special brief and the red flags that they point out.

527 Tom Cashen, lobbyist for the electricians. The union does not think that this is good legislation and hopes that it dies in Committee.

538 Bussell asks if he ever took a job that he did not know what he was being paid. Never.

546 James Wakefield, Lobbyist for Local 942. Most has been said. They are against the bill. Feel it is bad legislation and would set a poor example.

563 Bussell states that there will be a teleconference set up.

569 Adjourns the meeting. The time is 9:50.

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM February 3, 1983

SUBJECT: Retroactivity of overtime pay provisions (Work Order No. 13-0714)

TO: Representative Charlie Bussell

FROM: Thomas A. Sofo
Legislative Counsel

The subject work order includes a request for a retroactive clause to the attached draft bill concerning methods of overtime payment. A retroactive clause may make the bill subject to legal challenge.

I do not know enough about the facts surrounding the proposal contained in the draft bill to advise you in precise terms, but would caution you that the retroactive portion of the bill may be challenged on constitutional grounds. One basis for challenge would be the prohibition against impairment of contracts, found in both the United States and the Alaska Constitutions (U.S. Constitution, Article I, section 10; Alaska Constitution, Article I, section 15). Another basis would be the due process guarantees in the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 7 of the Alaska Constitution.

If challenged on these grounds, the court would likely examine the rights and expectations affected by the bill, whether those rights and expectations were substantial and whether those rights or expectations were unfairly defeated by the bill. Some vested rights are immune from legislative interference, but, as indicated above, we are not able to ascertain whether such rights are involved here since we do not have sufficient factual information.

If you wish to discuss this facet of the bill further, please give me a call at your convenience.

TAS:ljb

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2720

April 5, 1983


Honorable Charlie Bussell
Chairman, Committee on Judiciary
House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

In response to your letter dated March 30, 1983, enclosed are copies of the following documents pertaining to the December 9, 1978 amendments to the Department's wage and hour regulations in 8 AAC 15.

Enclosure #1: Regulations as proposed on 8/21/78 including the notice of proposed changes.

Enclosure #2: Affidavit of notice of adoption of proposed regulation.

Enclosure #3: Affidavits of Publication from the Anchorage Daily News, Southeast Alaska Empire, and Fairbanks Daily News Miner.

Enclosure #4: Affidavit of oral hearing, and the hearing attendance roster indicating that no one appeared to testify.

Enclosure #5: Proposed regulations as submitted to the Department of Law on 10/9/78 for final review and filing by the Lt. Governor's office.

Enclosure #6: Regulations as filed by the Lt. Governor and the signed order of adoption.

Enclosure #7: Regulations in effect prior to the December 9, 1978 amendments.

07-G9LH

These enclosures include copies of the correspondence between the Departmentof Labor and Department of Law on these regulations.

If you have further questions concerning the promulgation of these regulations, please let me know.

Sincerely,

Jim Robison
Commissioner

Enclosures

ENCLOSURE # 1

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P. O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/2/78

Wm. Spear.

William E. Spear
Deputy Commissioner
Department of Labor

To be published August 30, 31 and September 1, 1978.

# TITLE 8. LABOR

## PART 1. INDUSTRIAL WELFARE

## CHAPTER 15. ALASKA WAGES AND HOURS

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed / / .

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum wages and overtime
2. Exemptions
3. Deductions from wages
4. Procedures relating to violations, investigations or hearings
5. General provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employees hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then these hours need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime under the provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414;

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register )

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register )

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will in the exercise of his discretion, approve a wage rate lower than established under AS 23.10.065 based on that information. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register )

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and Chapter 5 of this Title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register )

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register )

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register )

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register )

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section
160. Deductions from an employees wages

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board or lodging. However, a written agreement for deductions is not valid if it would have the effect of reducing an employee's wage below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reasons;

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Written agreements for deductions from wages are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(c) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10). other authorized deductions. (Eff. / / , Register )

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If after investigation the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register )

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090

## ARTICLE 5.

## GENERAL PROVISIONS

Section
195. Place of employment for purposes of recordkeeping
200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPINC. For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section.

(2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(3) "commissioner" means the commissioner of labor.

(4) "department" means the Alaska Department of Labor.

(5) "director" means the director of the wage and hour division of the department or his designee.

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a garderner, a footman, a groom or a chauffeur of automobiles for family use.

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes is given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis.

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers and the status of the enterprise has been determined by the U.S. Internal Revenue Service as nonprofit.

(9) "on call" means time that an employee is required to remain on call on the employer's premises or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises but is merely required to leave word at his home or with the employer where he may be reached.

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek.

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse;

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

(ii) to perform work that is original and creative in character in a recognized field or artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgement in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standarized on a time basis; and

(iii) is compensated on a salary or fee basis.

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) do not exceed 20 percent of the hours worked in the workweek.

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment or because of shutdown or repair and during which he cannot use the time effectively for his own purposes.

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek. For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment.

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week. An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period. The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register )

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

ENCLOSURE # 2

STATE OF ALASKA )
) SS.
FIRST JUDICIAL DISTRICT )

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

(1) being published in a newspaper or trade publication

(2) being mailed to interested persons,

(3) being mailed or delivered to appropriate state officials,

(4) being furnished to the Department of Law,

(5) being furnished to incumbent state legislators.

Date: 10-3-78
Juneau, Alaska

E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 197___.

Notary Public in and for Alaska
My Commission Expires: Oct 30, 78

ADVERTISING ORDER

ENCLOSURE # 3

AO- 07

TO: Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

PURCHASE NO: ADN 501

DATE OF A.O: August 21, 1978

DATES ADVERTISEMENT REQUIRED: August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

FROM: Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

*Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

# AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska
Third DIVISION. } ss

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Nathalia M. Chevalier WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS PUBLISHED AT Anchorage IN SAID DIVISION Third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF August 19 78 AND THEREAFTER FOR 3 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1 DAY OF Sept. 19 78 AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

3x 61 inches $81.90

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF Sept 19 78.

Patricia Lindsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.025, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 — AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.
Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.
Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.
Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited.

ARTICLE 4.
Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.
Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub: Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER —
ATTACH INVOICES AND PROOF OF PUBLICATION.

# ADVERTISING ORDER

| DEPT NO | AO NO |
|---|---|
| AO- 07 | 2595 |

PUBLISHER

Southeast Alaska Empire
235 2nd Street
Juneau, Alaska 99801

VENDOR NO: SAE 734

DATE OF A.O: August 21, 1978

DATES ADVERTISEMENT REQUIRED: August 30, 31 and September 1, 1978

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

FROM

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

*Alaska Department of Labor
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

# AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1973, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF September 1973

NOTARY PUBLIC FOR STATE OF
MY COMMISSION EXPIRES

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.055, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.120, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, minimum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3

Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.

ARTICLE 4

Article 4 establishes the procedures for assignment of claims and for the conduct of investigative hearings and conferences.

ARTICLE 5

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, next to Lake Hood, Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 20, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them. Date 8-21-78.

William E. Spear
Deputy Commissioner
Department of Labor

Publish Aug. 30 31, Sept. 1, 1978
8AO-82

REMINDER —
ATTACH INVOICES AND PROOF OF PUBLICATION

# AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT
} ss.

Legal 13,544

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050-AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with their new sections as follows:

ARTICLE 1

Article 1 stipulates minimum wages, maximum hours and computation of of overtime applicable to employment in Alaska

ARTICLE 2

Article 2 provides certain emptions from the payment of minimum wages or overtime.

ARTICLE 3

Article 3 stipulates those deductions from an employee's wages that are permissable and those deductions that are prohibited

ARTICLE 4

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences

ARTICLE 5

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 430, Juneau, Alaska 99811

The Department of Labor upon its own motion or at the instance of any interested person may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them

Date 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Publish August 30 31 September 1 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCES PFEIFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

| | |
|---|---|
| 8/30/78 | 8/31/78 |
| 9/1/78 | |
| | |
| | |
| | |

, and that the rate charged thereon is not in excess of the rate charged private individuals with the usual discounts.

Frances Pfeiffer

Subscribed and sworn to before me this 5th day of September, 1978

Notary Public in and for the State of Alaska.

My commission expires [illegible]

ENCLOSURE # 4

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Karen O. Michael
NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

PLEASE PRINT

TITLE 23

HEARING - PROPOSED REGULATIONS

FRIDAY, SEPTEMBER 15, 1978

| | NAME | ADDRESS | ORGANIZATION REPRESENTED | WILL YOU BE OFFERING TESTIMONY ORAL | WRITTEN | BOTH |
|---|---|---|---|---|---|---|
| 1. | | 1:30 pm opened | | | | |
| 2. | | 2:15 pm Closed | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | | No attendance | | | | |
| 7. | | | | | | |
| 8. | | | | | | |
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| 2. | | | | | | |

ENCLOSURE # 5

October 9, 1978

Arthur H. Peterson
Assistant Attorney General
and Regulation Attorney
Department of Law

THRU: William E. Spear
Deputy Commissioner

Dale W. Cheek
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

8 AAC 15. as adopted by
the Department of Labor

Please find enclosed, original and 3 copies of 12 pages of regulations adopted by the Department of Labor concerning Wages and Hours under TITLE 23. Alaska Wage and Hour Act with related affidavits and documents as required under the provisions of AS 44.62.

We respectfully request your final review and transmittal of the regulations and documents to the office of the Lieutenant Governor for filing.

Thank you.

DWC/rh

Enclosure

ORDER REPEALING AND ADOPTING, REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15. Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear
William E. Spear
Deputy Commissioner

I, _____, Lieutenant Governor for the State of Alaska, certify that on _____, 197___, at_____.m., I filed the attached regulat'ons according to the provisions of AS 44.62.040 - 44.62.120.

_____
Lieutenant Governor

Effective_____.)
Register_____.)

# TITLE 8. LABOR

## PART 1. INDUSTRIAL WELFARE

## CHAPTER 15. ALASKA WAGES AND HOURS

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime
2. Exemptions
3. Deductions from Wages
4. Procedures Relating to Violations, Investigations or Hearings
5. General Provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register )

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register )

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 who are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register )

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register )

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register )

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register )

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register )

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section
160. Deductions from an employee's wages

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reasons;

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other thrid party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10) other authorized deductions. (Eff. / / , Register , )

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If after investigation the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register )

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

## ARTICLE 5.

## GENERAL PROVISIONS

Section
195. Place of employment for purposes of recordkeeping
200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3) "commissioner" means the commissioner of labor;

(4) "department" means the Alaska Department of Labor;

(5) "director" means the director of the wage and hour division of the department or his designee;

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom or a chauffeur of automobiles for family use;

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek;

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse;

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) do not exceed 20 percent of the hours worked in the workweek;

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does nct perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek. For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week. An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period. The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register )

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.08 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978

Wm Spear

William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, , Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor's Designee

Effective December 9, 1978.)
Register 68, January 1979.)

STATE
of ALASKA

# MEMORANDUM

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

TELEPHONE NO:

cc: Vi Weth

FROM: Avrum M. Gross
Attorney General

By:
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

SUBJECT: Regulations re Alaska wages & hours (8 AAC 15)
Our File: J-99-095-78

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney General

RECEIVED
NOV 09 1978
OFFICE OF THE COMMISSIONER

# TITLE 8. LABOR

## PART 1. INDUSTRIAL WELFARE.

## CHAPTER 15. ALASKA WAGES AND HOURS.

Publisher. Please be sure that the chapter listing for Title 8 sho the chang in the Ch.. heading, r in 1974. Thx

Section
10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime (8 AAC 15.100 — 8 AAC 15.105)
2. Exemptions (8 AAC 15. 120 — 8 AAC 15.145)
3. Deductions from Wages (8 AAC 15. 160)
4. Procedures Relating to Violations, Investigations or Hearings (8 AAC 15. 175 — 8 AAC 15. 180)
5. General Provisions (8 AAC 15.900 — 8 AAC 15.910)

ARTICLE 1.

MINIMUM WAGES AND OVERTIME.

Section
100. Payment for overtime
105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in ~~lieu~~ place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register )

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act.
(Eff. / / , Register )

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS.

Section
120. Minimum wage exemption for handicapped persons
125. Minimum wage exemption for student learners
130. Exemption for searching for placer or hard rock minerals
135. Exemption for individuals under 18 w are part time employees
140. Determining the number of employees for purposes of AS 23.10.060(1)
145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age, or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines, from the information provided in the application, that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register )

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS. (a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-23.10.370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register )

Authority: AS 23.10.070(3)
AS 23.10.085

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has ~~been~~ begun. (Eff. / / , Register )

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register )

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked. (Eff. / / , Register )

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried or during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register )

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES.

Section
160. Deductions from an employee's wages.

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid it it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reason ;

(2) non-payment for goods or services as a result of customers walking out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions ~~shall~~ must contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

(4) federal insurance contribution act deductions;

(5) Alaska income tax deduction;

(6) Alaska school tax deduction;

(7) Alaska employment security act contributions;

(8) board and lodging costs;

(9) advances; and

(10) other authorized deductions. (Eff. / / , Register )

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section
175. Assignment of claims
180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of $5,000, excluding liquidated damages. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

(b) If, after investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 - 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register )

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

## ARTICLE 5.

## GENERAL PROVISIONS

Section
~~900~~ 195. Place of employment for purposes of recordkeeping
~~910~~ 200. Definitions

8 AAC 15.~~195~~ 900. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register )

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.910. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative employee" means an employee;

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs his work under only general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;

(2) "casual employee," as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;

(3) "commissioner" means the commissioner of labor;

(4) "department" means the Alaska Department of Labor;

(5) "director" means the director of the wage and hour division of the department, or his designee;

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit" as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors, or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments, or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek; → of this section

(11) "professional" means an employee, except for the classifications of registered nurse and licensed practical nurse,

(A) whose primary duty is:

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) of this section do not exceed 20 percent of the hours worked in the workweek;

(13) "standby or waiting time" means time that an employee is required to be at or near his post or place of employment and is required to wait for work or an assignment, whether nor not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees, and is responsible for results of the work performed, and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; For the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform ~~such~~ activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week; An individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period; The workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime, however the workweek may be changed for any other purpose in the manner provided in AS 23.05.160. (Eff. / / . Register )

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

ENCLOSURE # 7
8 AAC 10.310
8 AAC 15.030

employees with the skills or qualifications possessed by the individual;

(14) "temporary employment" means employment for less than 90 calendar days. (Eff. 6/23/74, Reg. 50; am 4/29/77, Reg. 62)

Authority: AS 23.15.380 AS 23.15.500
AS 23.15.450 AS 23.15.520

## CHAPTER 15.
## ALASKA WAGES AND HOURS

Section
10. (Repealed)
15. Exemption for searching for placer or hard rock minerals
20. Exemption for individuals under 18 who are part-time employees
30. Determining the number of employees for purposes of AS 23.10.060(1)
40. Small mining operations
50. Deductions from an employee's wages
60. Place of employment for purposes of record keeping
70. Definitions of miscellaneous terms used in AS 23.10.050–23.10.150

8 AAC 15.010. SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed. (Eff. 11/4/74, Reg. 52)

8 AAC 15.015. EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050 – 23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.020. EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART-TIME EMPLOYEES. The exemption from AS 23.10.050 – 23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.030. DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part-time employees will be counted regardless of the number of days or hours worked. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.040. SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirement of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.060(5)
AS 23.10.085

8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of other monetary obligations of an employee; however, no deduction is permitted except those expressed in the written agreement.

(b) An employer subject to AS 23.10.050 – 23.10.150 shall furnish each person employed by him, who is not exempted from the coverage of those sections by AS 23.10.055, a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) daily and weekly hours worked;

(3) federal withholding tax;

(4) federal insurance contribution act;

(5) Alaska withholding tax;

(6) employment security deduction;

(7) school tax;

(8) board and lodging;

(9) advances;

(10) other.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the State; however, the employer may keep duplicate records at the sites or premises where the work is performed.
(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 – 23.10.150. (a) "Administrative," as used in AS 23.10.055(9), means an employee whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer and who customarily and regularly exercises discretion and independent judgment and who performs his work under only general supervision and who does not devote more than 39 percent of his workweek to general or routine tasks performed by other employees of his employer.

(b) "Casual employee," as used in AS 23.10.060(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(c) "Domestic service in or about a private home," as used in AS 23.10.055(4), means a person employed in or about a private home of the person by whom he is employed and who

performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use.

(d) "Executive," as used in AS 23.10.055(9), means an employee

(1) whose primary duty consists of management of the enterprise in which he is employed and whose hours worked in a workweek do not exceed 20 percent in activities not essential to the management of the business operations of his employer; or

(2) who customarily and regularly exercises discretionary power and regularly directs the work of other employees of the enterprise or a recognized department or division of the enterprise and who has the authority to hire or fire, or accomplish any other change of status, including advancement or promotion of other employees or whose recommendations regarding change of status are given particular weight.

(e) "Nonprofit," as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors or officers.

(f) "Outside salesman," as used in AS 23.10.055(9), means a person who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in making sales, contracts for sale, consignments or shipments for sale or in obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours worked in a workweek do not exceed 20 percent in activities performed by nonexempt employees.

(g) "Professional," as used in AS 23.10.055(9), means an employee, except for the classifications of registered nurse and licensed practical nurse, whose primary duty consists of

(1) work requiring knowledge acquired through prolonged study of an advanced or specialized nature and neither routine in process or gained through general academic education or apprenticeship training; or

(2) work which is inventive or creative and dependent upon the talent of the employee and which does not require more than 20 percent of the hours in a workweek of the employee to be devoted to activities which are not an essential part of, or a necessary incident to the employee's specialized work.

(h) "Supervisory," as used in AS 23.10.060, means a person, except for the classifications of registered nurse and licensed practical nurse, who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than 8 hours in the supervisor's workweek. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085