

S B

2 8 6

# health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790  
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board  
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South Peninsula Hospital  
Homer

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Governing Boards  
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Boards  
Sharon Jean  
Central Peninsula  
General Hospital  
Soldotna

Physician, Member of  
the Board  
Morris Horning, M.D.  
Anchorage

President  
Dennis DeWitt  
Juneau

April 8, 1986

The Honorable Fred Zharoff, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Juneau, Alaska 99811

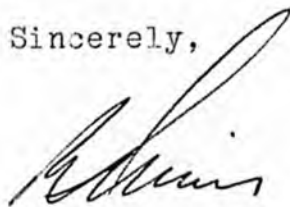
Dear Senator ~~Zharoff~~, *Fred*

re: SSSB 286

The Health Association of Alaska wishes to take this opportunity to suggest that Sponsor Substitute for Senate Bill 286 by Zharoff by request be amended to permit hospitals to use the fourteen day work week as is provided in the federal Fair Labor Standards Act. I have attached a copy of Section 7(j) of that Act which sets out the federal language.

Thank you for your assistance in this matter.

Sincerely,



Dennis L. DeWitt  
Executive Director

FORMERLY

alaska  
state  
hospital  
association

**Fair Labor Standards Act As Amended**

*Act of June 25, 1938 (P.L. 75-718) effective October 24, 1938, as amended by P.L. 81-393, effective January 25, 1950, by P.L. 84-381, by P.L. 85-231, effective November 28, 1957; by P.L. 85-750, approved August 25, 1958; by P.L. 85-791, approved August 28, 1958; by P.L. 87-30, effective September 3, 1961; by the Equal Pay Act of 1963 (P.L. 83-38), effective June 11, 1964; by P.L. 89-601, effective February 1, 1967; by P.L. 89-670, effective October 15, 1966; by P.L. 92-318, effective June 23, 1972; by P.L. 93-259, effective May 1, 1974; by P.L. 95-151, effective November 1, 1977. Annotations in brackets show changes made by amendments.*

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19. Separability of provisions.

**TITLE**

SEC. 1. That this Act may be cited as the "Fair Labor Standards Act of 1938."

**FINDINGS AND DECLARATION OF POLICY**

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes, commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in

commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

**DEFINITIONS**

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,

tract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Any employee— (1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate, shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

[1974 Amendments: Sec. 6 was amended to add subsection (f).]

#### MAXIMUM HOURS

SEC. 7. (a)(1) Except as otherwise provided in this section, no employer shall

employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such 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.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such 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.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (1) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed com-

missions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

[1974 Amendments: Sec. 7(j) was amended to add in the second line the phrase beginning "or an establishment" and ending "on the premises."]

(k) No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; [Effective January 1, 1976, 232 hours; effective January 1, 1977, 216 hours; effective January 1, 1978, "exceed 216 hours" is changed to "exceed the lesser of (A) 216 hours or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974 [See note: Section 6(c)(3) which authorized the Secretary of Labor to conduct a study of hours of work of certain law enforcement personnel of public agencies was deleted as a result of the 1977 amendments.] in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975" or

14 DAY  
WORKWEEK

# MEMORANDUM

# State of Alaska

TO: Jim Robison, Commissioner  
Department of Labor

DATE: March 15, 1985

Bob Bacolas, Director  
Labor Standards and Safety

FILE NO:

TELEPHONE NO: 465-4842

FROM: James Sanwick  
Wage and Hour Investigator

SUBJECT: Fluctuating Work Week

For the month's work listed on page two under each section would result in the employee earning \$2,000.00 total under Section (2), \$2,400.00 under Section (1) and \$2,450.00 under normal pay calculations.

## Normal Pay

140 hours straight time at \$10.00 per hour	= \$1,400.00
70 hours overtime rate at \$15.00 per hour	= <u>\$1,050.00</u>
Total	\$2,450.00

## Section (1) Pay Plan

150 hours straight time at \$10.00 per hour	= \$1,500.00
20 hours overtime at \$15.00 per hour	= \$ <u>900.00</u>
Total	\$2,400.00

## Section (2) Pay Plan

4 weeks fixed rate at \$500.00 per week	= <u>\$2,000.00</u>
Total	\$2,000.00

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the payment of overtime and providing for an effective date."

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

- \*Section 1. AS 23.10.060(17) is repealed.
- \*Section 2. AS 23.10.060(18) is repealed.
- \*Section 3. AS 23.10.060 is amended by adding two new subsections to read:

Sec. 23.10.060(b). IRREGULAR AND FLEXIBLE WORK HOUR PLANS.

The following pay plans which provide fixed pay rates for irregular or flexible work hours up to a predetermined maximum are permissible under this chapter, provided the department has reviewed the pay plan and, in writing, has approved the plan as being in compliance with the appropriate subsection herein with any subsequent changes in the pay plan, as requested by the employer also being subject to approval by the department. In addition, the department shall periodically review all plans to ensure their continued compliance with the appropriate subsection herein. Such approval by the department shall be considered an irrebuttable presumption that the plan meets the requirements of this statute.

It is further provided that for plans under subsections 2 and 3 herein, the nature of the employer's business and the duties of the employee necessitate irregular hours of work with, for plans under subsection 2 herein, neither the employer nor the employee being able to control or anticipate with absolute certainty the number of hours to be worked.

(1) Work performed by an employee under a flexible work hour plan, either through agreement as part of a collective bargaining contract, or through signed written agreement pursuant to AS 23.05.160, which provides for a 40 hour workweek and not more than a 10 hour work day; for work over 40 hours per week or 10 hours a day under a flexible work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(2) Work performed by an employee under an irregular work hour plan, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160, which provides a fixed weekly wage for irregular weekly hours not to exceed 60 hours in a workweek; for work over 60 hours per week under a irregular work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(3) Work performed by an employee under a flexible workweek plan authorized under 29 CFR 778.114, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160; hours allowed under this plan shall not exceed 60 hours in a workweek; for work over 60 hours per week under a flexible workweek plan

~~compensation at the rate of one and one-half times the effective hourly rate of pay shall be paid for overtime. The effective hourly rate of pay shall be determined based on the actual hours worked in a workweek up to 60 hours.~~

(4) The commissioner shall promulgate rules and regulations which are necessary for the administration of this subsection.

Sec. 23.10.060(c) GOOD FAITH EXCEPTION. In any action commenced prior to or on or after the date of the enactment of this act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Alaska Wage & Hour Act, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for such act or omission, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in AS 23.10.110 provided, however, that this Section shall not apply to cases where litigation has commenced on or before January 1, 1985.

\*Section 4. This act takes effect immediately in accordance with AS 01.10.070(c).

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
WORK AS IT WOULD APPEAR UNDER NORMAL RULES						1 <sup>152/213</sup>
2 <sup>153/212</sup> ST	3 <sup>154/211</sup> 8	4 <sup>155/210</sup> 8	5 <sup>156/209</sup>	6 <sup>157/208</sup> 6	7 <sup>158/207</sup>	8 <sup>159/206</sup> 4
OT	2	2				4
9 <sup>160/205</sup> ST	10 <sup>161/204</sup> 8	11 <sup>162/203</sup> 8	12 <sup>163/202</sup> 8	13 <sup>164/201</sup> 8	14 <sup>165/200</sup> Flag Day	15 <sup>166/199</sup> 6
OT	8	2	4	8		20
16 <sup>167/198</sup> Father's Day ST	17 <sup>168/197</sup> 8	18 <sup>169/196</sup> 8	19 <sup>170/195</sup> 8	20 <sup>171/194</sup> 8	21 <sup>172/193</sup>	22 <sup>173/192</sup> 6
OT	8	2	4	8		20
23 <sup>174/191</sup> ST	24 <sup>175/190</sup> 8	25 <sup>176/189</sup> 8	26 <sup>177/188</sup> 8	27 <sup>178/187</sup> 8	28 <sup>179/186</sup>	29 <sup>180/185</sup> 6
30 <sup>181/184</sup> OT	8	2	4	8		20

Total  
26

38

38

38

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
2 153/212 ST 10	3 154/211 10	4 155/210 10	5 156/209 6	6 157/208 6	7 158/207 4	8 159/206 30 Tom
9 160/205 ST 10	10 161/204 10	11 162/203 10	12 163/202 10	13 164/201 10	14 165/200 Flag Day 10	15 166/199 40
16 167/198 ST 10 Father's Day	17 168/197 10	18 169/196 10	19 170/195 10	20 171/194 10	21 172/193 6	22 173/192 40
23 174/191 ST 10	24 175/190 6	25 176/189 6	26 177/188 2	27 178/187 6	28 179/186 6	29 180/185 20
30 181/184 ST 10	6	6	2	6	6	20

Work as I would appear under section one

152/213

Sunday Monday Tuesday Wednesday Thursday Friday Saturday

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF LABOR

P.O. BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-2700

OFFICE OF THE COMMISSIONER

March 19, 1985

MAR 19 1985

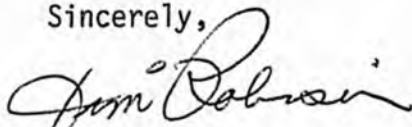
The Honorable Fred Zharoff  
Alaska State Senate  
Pouch V  
State Capitol  
Juneau, AK 99811

Dear Senator Zharoff:

The following individuals are the members of the Ad hoc committee on the fluctuating work week legislation:

Mano Frey, President, AFL, CIO  
Dixie Hudish, IBEW Local 1547  
Richard Peluso, President, Western Alaska Bldg. Trades  
Jim Pentlarge, Attorney  
Mike Klein, COMINCO  
Jack Thompson, Air Van Lines  
Pete Nelson, Alaska Miners Association  
Joe Crane, Anaconda  
Ken Calhoon, Anchorage Chamber of Commerce  
Chuck Becker, Brown & Root  
Charles Johnson, Dresser Atlas  
Milton Bird, Frontier Co.  
Jerry Sheehan, Gearhart Co.  
Paul Preston, Haliburton  
John Hallahan, U.S. Borax  
George Easley, Easley Co.

Sincerely,



Jim Robison  
Commissioner

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-2700

**FEB 25 1985**

February 22, 1985

The Honorable Fred Zharoff  
Alaska State Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

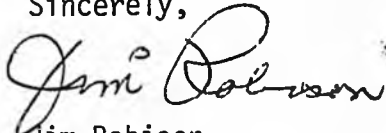
Dear Senator Zharoff:

Enclosed is a copy of the fluxuating work week legislation that I spoke about at the Department of Labor overview. I have been asked by Jack Thompson to provide you with a copy.

I have spoken to both Mano Frey, President of AFL-CIO, and Mike Klein, Chairman for the employers; and this is acceptable to both parties.

If you have questions, please feel free to call.

Sincerely,



Jim Robison  
Commissioner

Enclosure

RECEIVED

FEB 12 1985

OFFICE OF THE COMMISSIONER



M J Klein  
Vice President  
Human Resources & Administration

Mr. Mano Frey  
Business Manager  
Laborers' Union  
2501 Commercial Drive  
Anchorage, Alaska 99501

Comm.	<input checked="" type="checkbox"/>
Deputy	<input checked="" type="checkbox"/>
Sp. Asst.	<input type="checkbox"/>
Info. Off.	<input type="checkbox"/>
Adm. Asst.	<input type="checkbox"/>
Int. Aud.	<input type="checkbox"/>
Med. Dir.	<input type="checkbox"/>
To:	<input type="checkbox"/>
cc:	<input type="checkbox"/>
cc:	<input type="checkbox"/>
cc:	<input type="checkbox"/>

February 8, 1985

Dear Mano:

Enclosed is a final copy of the "Payment of Overtime" bill. I have included the changes discussed at our February 7 meeting as well as deleting the reference to 29 CFR in Subsection 3 at the bottom of page 2. This latter deletion was at the request of Commissioner Robison.

In my discussion with the Commissioner, he suggested that the bill be introduced simultaneously by the Labor and Commerce Committees. Apparently he has discussed this approach with both Committee Chairmen (Mike Navarre in the House, and Fred Zharoff in the Senate). With regard to introduction of the bill, I have asked Jack Thompson to get in touch with you to coordinate its introduction as soon as possible.

If you have any questions, don't hesitate to give me a call.

Yours truly,

MJK:pc

Enclosure

cc: Commissioner Jim Robison w/Atch  
Mr. Jack Thompson w/Atch  
Mr. Jack Sheehan w/Atch  
Mr. Paul Preston w/Atch

BILL NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - FIRST SESSION  
A BILL

For an Act entitled: "An Act relating to the payment of overtime  
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subsections to read:

Sec. 23.10.060(b). IRREGULAR AND FLEXIBLE WORK HOUR PLANS.

The following pay plans which provide fixed pay rates for irregular or flexible work hours up to a predetermined maximum are permissible under this chapter, if the department has reviewed the pay plan and, in writing, has approved the plan as being in compliance with the appropriate subsection herein. Any subsequent changes in the pay plan must be approved by the department. Failure to obtain prior approval of the plan or subsequent changes renders the plan unlawful until written approval is obtained from the department.

February 8, 1985

It is further provided that for plans under subsections 2 and 3 herein, the nature of the employer's business and the duties of the employee necessitate irregular hours of work with, for plans under subsection 2 herein, neither the employer nor the employee being able to control or anticipate with absolute certainty the number of hours to be worked.

(1) Work performed by an employee under a flexible work hour plan, either through agreement as part of a collective bargaining contract, or through signed written agreement pursuant to AS 23.05.160, which provides for a 40 hour workweek and not more than a 10 hour work day; for work over 40 hours per week or 10 hours a day under a flexible work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

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one and one-half times the effective hourly rate of pay shall be paid for overtime. The effective hourly rate of pay shall be determined based on the actual hours worked in a workweek up to 60 hours.

(4) The commissioner shall promulgate rules and regulations which are necessary for the administration of this subsection.

Sec. 23.10.060(c) GOOD FAITH EXCEPTION. In any action commenced after the date of the enactment of this act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Alaska Wage & Hour Act, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for such act or omission, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in AS 23.10.110.

\*Section 4. This act takes effect immediately in accordance with AS 01.10.070(c).

*Mike Klee*  
*Manya Frye*

Dear Senator Zharoff:

Dear Representative Navarre:

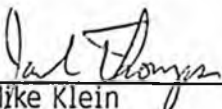
For the past several months, a team of representatives of the support industry in Alaska and a team of representatives of labor in the state have been meeting to develop acceptable language of an amendment to Alaska labor law. The genesis of these teams stems from a keen interest in the issue by Governor Bill Sheffield.

The mutually agreed to language of the proposed amendment is enclosed with this letter.

We are convinced that the benefits accruing to industry as a result of enactment of this amendment are reasonable and substantial and that the interests of the Alaskan worker are well protected.

We the undersigned, therefore, respectfully request your sponsorship of the amendment, in your capacity as Chairman of the Labor and Commerce Committee, and your active intervention in pursuing enactment of the bill. Should you have any questions on the issues, please feel free to call on any one of us.

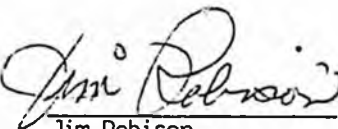
Sincerely,

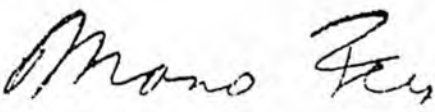
  
\_\_\_\_\_  
Mike Klein  
Chairman of  
the Industry  
Team and Vice  
President of  
Cominco America

Jack Thompson  
Vice President  
Air Van Lines

Paul Preston  
Alaska Manager  
Halliburton Svcs.

Jerry Sheehan  
Alaska Manager  
Gearhart Industries

  
\_\_\_\_\_  
Jim Robison  
Commissioner  
Alaska State  
Department of  
Labor

  
\_\_\_\_\_  
Mano Frey  
Chairman of  
the Labor Team  
and President of  
the Alaska State  
AFL/CIO

Rich Peluso  
President of the  
Southcentral Alaska  
Central Labor Council

Dixie Lee Hudish  
Representative  
International Brotherhood  
of Electrical Workers



**Cominco American**

J Klein  
President  
Human Resources & Administration

Commissioner Jim Robison  
Alaska Department of Labor  
Box 1149  
Juneau, Alaska 99802

June 6, 1985

Dear Jim:

Thank you for forwarding the copy of Senate Bill 286 pertaining to the payment of overtime and good faith exception.

In reviewing the proposed bill, I note that the phrase "that will average 40 hours per week over an extended length of employment" was added in two places in the bill (the first being on page 2, subsection (a), lines 7 and 8; and the second addition being in subsection (3), lines 23 and 24). Inasmuch as this stipulation was not included in the draft bill agreed to by Labor and Management, and is not required by Federal Wage & Hour regulations, I am somewhat curious as to why it was included in the final version.

Any information you can provide regarding the additional language will be greatly appreciated.

Yours truly,



BJK:pc

cc: Hans Frey  
Jack Thompson

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1985

SUBJECT: Proposed legislation relating to payment of  
overtime (Work Order No. 14-0940)

TO: Senator Fred Zharoff

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have asked for an analysis of the language proposed as AS 23.10.060(c) establishing a good faith exception to imposition of penalties for an employer's failure to pay minimum wages, overtime compensation or liquidated damages.

The language proposed in the draft is taken from 29 U.S.C. 260 with little change. It permits the court to refuse to impose liquidated damages or to impose a reduced amount of damages on an employer who failed to pay the full amount of wages, overtime or liquidated damages required by the Alaska Wage and Hour Act if the employer satisfies the court that the failure was in good faith and that the employer had reasonable grounds for paying the amount paid. There is a substantial body of federal case law interpreting the language of this section.

If you wish to ensure that amending current law by addition this section does not affect cases already pending or claims that arise from employment already performed, then you may wish to include in the bill a section that clearly limits the application of the bill to services performed after the effective date of the Act.

If I may be of further assistance, please advise.

TBC: csh  
c3/061

# Beehive

Section (3). A flexible work week plan that provides a fixed weekly wage for no more than 60 hours per workweek and that requires the employer to pay compensation at a rate of one and one half times the effective hourly rate of pay for hours in excess of 40 hours per week. The effective hourly rate of pay is determined by dividing the fixed weekly wage by the actual hours worked in a workweek, not to exceed 60 hours. Hours in excess of 60 hours per workweek are paid at one and one half times the effective rate of pay for a 60 hours workweek at the fixed weekly wage. The Department may not approve a plan under this section unless it finds the nature of the employers business and the duties of the employer require irregular hours of work. An example, follows your effective hourly rate will be \$15. However, you will be paid a guaranteed weekly salary of \$600 regardless of the number of hours worked in a week (up to 60 hours per week). For any hours worked in excess of 40 but less than 60, you will receive:

<u>1/2 Rate</u>	<u>Regular Rate</u>	<u>Hours Worked</u>	<u>Salary Guarantee</u>	<u>Overtime Pay</u>	<u>Total Weekly Earnings</u>
0	15.00	1-40-----	600	0	600
7.32	14.63	41-----	600	7.32	607.32
7.14	14.28	42-----	600	14.28	614.28
6.00	12.00	50-----	600	60.00	660.00
5.45	10.91	55-----	600	82.00	682.75
5.00	10.00	60-----	600	100.00	700.00

For any overtime in excess of 60 in a workweek, you will receive \$15 per hour (your effective hourly rate of \$10 times 1.5 for overtime) with this amount added to the \$700 paid for the first 60 hours.

$$600 \div 42 = 14.28 \text{ ST}$$

$$14.28 \div \frac{1}{2} = 7.14 \text{ OT}$$

$$40 \text{ hrs} \times 14.28 = 571.20$$

$$2 \text{ hrs} \times \$14.28 + 7.14 = 42.84$$

---

$$\text{TOTAL } 614.04$$

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 17, 1985

SUBJECT: Payment of overtime  
(Work Order No. 14-0993)

TO: Senator Fred Zharoff

FROM: Teresa B. Cramer *JBC*  
Legislative Counsel

You have asked for a sectional analysis of Work Order 14-0993.

Section 1 exempts pay plans approved under AS 23.10.062, enacted by section 2 of the bill, from the requirement for payment of overtime based on an eight hour workday and 40 hour work week.

Section 2, subsection (a), permits the Department of Labor to approve flexible work hour, irregular work hour, and flexible work week plans and invalidates a plan or amendment to a plan until the department approves it in writing.

Subsection (b) permits the department to approve plans if they are entered into either under a collective bargaining agreement or when the employee is hired and lists the requirements for the payment of overtime under each type of plan.

Subsection (c) requires an employer and employee to sign a written agreement at the time of hiring concerning payment under the work plans available in the section and requires advance agreement to changes in the plan.

Section 3 permits an employer to defend against a claim for unpaid minimum wages, overtime compensation, or liquidated damages under the Alaska Wage and Hour Act by showing that the employer acted in good faith and upon reasonable grounds. The court may either reduce an award or refuse to award liquidated damages.

Senator Fred Zharoff  
April 17, 1985  
Page 2

Section 4 limits application of the bill to work performed after the effective date.

Section 5 repeals the existing exemption for flexible work hour plans made under a collective bargaining and by agreement between the employer and the employee.

Section 6 is an immediate effective date clause.

If I may be of further assistance, please advise.

TBC:ojb  
J14/006



# THE ALLIANCE

P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

William Webb — President  
Arctic Hosts, Inc.

Ann Curtis — Vice President  
Crowley Maritime Corporation

Chuck Becker — Vice President  
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Executive Director

Kathie Tuttle  
Administrative Assistant

January 31, 1986

FEB 4 1986

Senator Fred F. Zharoff  
Alaska State Legislature  
Box V  
Juneau, Alaska 99811

Dear Senator Zharoff:

On behalf of all the members of the Alaska Support Industry Alliance, I want to commend you and your colleagues for a quick and professional start to this second session of the fourteenth Alaska legislature and to express our appreciation for your dedication to the public interest.

The Alliance brings together officers and employees of over two hundred companies in Alaska to focus on public policy issues which they feel will affect their general well being. These organizations, directly or indirectly, serve the needs of the state's petroleum and mining industries; consequently, the Alliance concentrates on a limited number of the many issues which come before you as a legislator.

From a survey of Alliance members, the following issues are found to be of particular concern and, as such, represent our priorities for 1986.

- \* Maintain a stable tax policy and tax structure.
- \* Assure predictable state and federal leasing programs.
- \* Support promotional strategies for local hire without statutory mandate.
- \* Enact amendment to Alaska labor law providing for overtime payment alternatives and a "good-faith" defense.
- \* Reform the permitting process.

**Alaska Support Industry Alliance**

... for responsible economic development

January 31, 1986  
Page Two

As you can see, Alliance members have kept this year's focus quite concentrated. Enclosed with this letter are position papers which expand on the issues. There are, nevertheless, other issues of critical concern currently under study, on which The Alliance is not yet prepared to define its position or on which we will lend support to those who have accepted leadership roles in pursuing such objectives. The crisis in liability insurance and the need to establish a trend in operating budget expenditures commensurate with declining revenues are two notable examples.

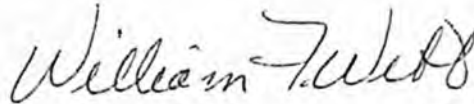
The thousands of employees and officers of firms that are members of The Alliance recognize clearly that you and your colleagues in the legislature are key to achieving our objectives. Without your help and support, these aspirations of our members cannot be realized.

The Alliance, in turn, is prepared to help you. Once again, Brown & Root has made available to us the services of Chuck Becker to serve as our lobbyist of record and whose experience with legislative bodies at all three levels of government, you are free to call on. Additionally, many other representatives of Alliance members are prepared to lend their considerable resources to your efforts, just let us know.

Again, on behalf of the members of The Alliance, I want to extend to you our best wishes for a successful session.

Sincerely,

ALASKA SUPPORT INDUSTRY ALLIANCE



William F. Webb  
President

WFW:ph

Enclosures

## Reauthorization of Alternative Methods of Overtime Compensation and Authorization of a "Good-Faith" Defense in Alaska Labor Law

In 1979, the previous State Administration with virtually no public input enacted regulations to prohibit the use of alternative wage an hour pay plans known as Fluctuating Work Week and BELO. Both of these plans are uniformly recognized and approved by other states and by the federal government. While each require strict adherence to necessary prerequisites before they can be used by an employer, both plans have proven highly beneficial to employers and employees in several industries of vital importance to the State of Alaska, such as mining, timber and oil and gas. For the employee, such plans permit greater stability of income; for the employer, such plans allow greater predictability of labor cost.

Since prohibition of these plans, both labor and management in Alaska have recognized that such action was excessively restrictive, and unnecessarily impedes economic development and job creation. Accordingly, the State Department of Labor, in cooperation with representatives of industry and organized labor, has worked to develop language acceptable to all parties concerned.

This legislation will re-establish alternative pay plans, while further protecting employees from any abuse of such plans.

The thrust, therefore, of the bill is to re-authorize alternative methods for payment of wages and, in addition, to establish a "good faith" defense to the imposition of liquidated damages against an employer in the event of an unknowing or otherwise justifiable failure to pay overtime wage rates.

This amendment, will be offered to the appropriate committees of the Legislature for consideration We trust it will earn your support and will be enacted.

THE ALLIANCE



MEMBER

## ASSURE PREDICTABLE STATE AND FEDERAL LEASING PLANS

The U.S Department of the Interior is revising its five-year schedule for oil and gas lease sales in the outer continental shelf. Concurrently, the State Department of Natural Resources has established a five-year plan for oil and gas lease sales within the state's purview.

The stability of the state's leasing plan is in marked contrast to the relative lack of predictability of the federal plan which has been repeatedly set back by Congressional moratoria and court action. Indeed, the State of Alaska has been a principal litigant in the effort to frustrate federal plans. These actions have already had detrimental impacts on our economy and portend even greater harm to both the economy and our national security.

The Alliance calls on all parties concerned to work cooperatively and to base all decisions on a studied review of available data.

The federal government must recognize that a fraction of the revenues derived from commercial production in the outer continental shelf should be targeted to the states to offset costs associated with development on shore. Likewise, the state government must assume an active role in eliminating impediments to promising economic development scenarios and cease posturing as one of those impediments.

The Alliance has taken, and will continue to take a prominent role in informing Alaskans about the issues in this important matter and of the facts attendant to those issues. The jobs of too many Alaskans are placed in jeopardy when political expediency triumphs over empirical evidence in the decision-making process.

## Reform the Permitting System

The Alliance advocates a reform of the permitting process. The Governor's changes that have resulted in many permitting decisions being made in the Office of the Governor have expedited several important oil and gas permits, which The Alliance commends.

However, The Alliance is concerned that a more comprehensive analysis and reform of the State's permitting system must be done to resolve fundamental flaws which remain.

As a first step to remedy the problem, The Alliance supports legislation which would accomplish the following:

- \* Establish the Department of Natural Resources as the state's lead agency for coordination, review and processing of permits related to natural resource development;
- \* Establish the Department of Natural Resources as the state's lead agency for coastal consistency review of natural resource development projects; and
- \* Require that all state permit agencies include a cost/benefit analysis in their review of project proposals.

## SUPPORT STRATEGIES FOR LOCAL HIRE WITHOUT STATUTORY MANDATE

The unemployed Alaskan represents a serious social and economic problem to the state which must be solved. Employment strategies targeted at the jobless must be devised and implemented cooperatively by government and industry working toward this common goal. Alaskans who are ready, willing and able to work must be given that opportunity.

Legislation which would employ mandates and sanctions designed to force Alaska businesses to hire Alaskans as a method to solve the problem of unemployment is counterproductive. Typically such an approach has been found to be an assault on the fundamental laws of our nation. Alaskans demand a more thoughtful approach towards resolution of the unemployment problem from its leaders of government; an approach which seeks resolution by creating an environment designed to generate new and expanded business opportunities.

A vibrant Alaska economy is the best local hire policy.

The entire Alaska business community must learn of the already existing incentives to hire an Alaskan worker. The spirit of independence, of self-sufficiency and of self-motivation pervades the Alaskan workforce unlike any other. An employer cannot put a better worker to work than an Alaskan.

The Alliance recommends an effort be launched by government and business, in a spirit of cooperation, to solve the problem of unemployment in Alaska and to promote the realities associated with the assertion . . .

"Hire Alaskans; its good business!"

## MAINTAIN A STABLE TAX POLICY AND TAX STRUCTURE

Increasing taxes on Alaska's petroleum industry through one or more of several creative techniques, is not only counterproductive, such action could prove fiscally detrimental to the Alaska economy.

There are those who have suggested that a return to separate accounting for purposes of calculating corporate income taxes of oil and gas companies is more fair and accurate than the current modified apportionment method. It is not. Nor would it spur marginal oilfield development. On the contrary, the proposal is a de facto tax increase of enormous proportions which would certainly chill both exploration and development.

Likewise, tampering with the tax code by modifying the economic limit factor (ELF) is an equally imprudent proposal. The ELF allows severance taxes to be reduced as individual wells become less productive and margins narrow. In place, the ELF contributes to decisions destined to develop the "high tech" requirements of advanced recovery plans which will continue the revenue flow to the state from Alaska's oilfields. If eliminated, the impact could be significant enough to cause the early shutdown of these fields.

A robust oil and gas industry is a fundamental prerequisite for economic dynamism in other sections in the Alaska business community. A tax increase imposed during a period of declining revenues caused by instabilities in the world market place, will further aggravate an already tenuous market condition and could quickly curtail industry investments in Alaska.

As state revenues decline, state spending must decline.

It is in the best interest of the people of Alaska for their government leaders to foster conditions designed to attract investment and to create jobs.

The Alliance recommends the State of Alaska maintain a stable tax policy and tax structure and to act decisively on measures to reduce the state operating budget.