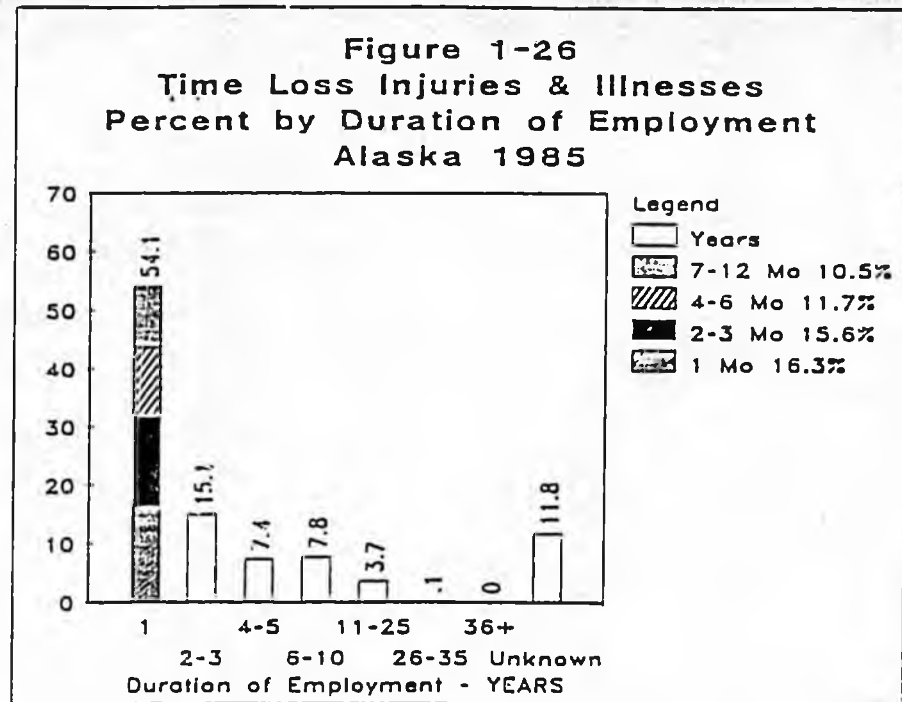
HB
436

Duration of Employment

The first few months on a job are the most hazardous for an employee. In 1985, 54% of the job related injuries occurred during the first year of service and 16% during the first month. Figure 1-26 shows the percent distribution for all time loss cases reported in 1985. For all known duration cases, 61% involved employees during their first year on the job and 18% during the first month.

In construction industries, 32% of all cases of known duration occurred in the first month of employment and over one half (57%) occurred within the first three months. Manufacturing was similar with 31% of known duration cases in the first month and 57% within the first three months on the job. Construction and manufacturing are seasonal industries where the jobs are of limited duration. Employees may not work for the same firm from one season to the next. An experienced worker for a new firm may therefore be counted as an injury case after only a short duration on that job. Table B-15 contains duration of employment data on injured workers by major industry.



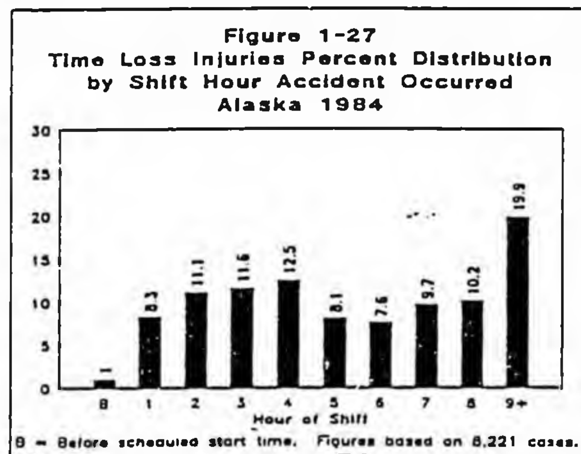


Table 1-18
Percent of Injuries after the 8th Work Hour
by Industry Division
Alaska 1980-1984

	1980	1981	1982	1983	1984
Private Sector	23.6	23.6	23.6	19.5	20.4
Mining	34.7	34.8	36.5	31.9	34.7
Oil & Gas	36.0	35.8	39.5	32.4	36.0
Construction	27.8	25.9	26.5	22.0	21.3
Manufacturing	27.0	25.1	24.0	19.8	24.9
Seafood	38.5	35.8	32.6	28.9	37.1
Lumber & Wood	17.8	16.5	15.2	11.1	16.1
Transportation	20.7	24.1	22.7	19.2	20.3
Trade	16.8	17.1	17.3	14.9	16.9
Finance	12.9	15.0	27.2	19.5	18.7
Services	19.1	20.2	20.5	16.3	16.2
State & Local Govt.	13.4	14.9	18.1	15.4	17.0

Shift Hour Accident Occurred

The shift hour in which an accidents occurs is computed from the elapsed time between the scheduled start of the work day and the recorded time of the accident. [illegible] stribution of cases from th[illegible] [illegible] ar for which these data we[illegible] able (1984) is presented in Figure 2-14. Almost identical patterns are seen in the distributions for 1980 to 1984. Less than one-half of the accidents happened during the first half of the day. Most of the accidents that occurred during the second half of the day occurred after the seventh shift hour. A small portion of the cases involved accidents which happened prior to the scheduled start of the shift, indicating that in some cases the individual began working prior to the usual time that day. Fatigue appears to play a significant role in the occurrence of time loss accidents. A historical summary of the portion of cases after the eighth hour of work is given in Table 1-18. For industries which characteristically have long working hours, the percentage of accidents occurring after eight work hours is greater than the average.

5-1337B
Cramer
2/25/88

Original sponsor: Labor and Commerce Committee

1 IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring payment to certain employees of
7 time and a half or double time wages for work in
8 excess of eight hours a day or 40 hours a week."

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

10 * Section 1. AS 23.10.060 is amended to read:

11 Sec. 23.10.060. PAYMENT FOR OVERTIME. (a) Except as provided
12 in (b) of this section, an [AN] employer who employs employees engaged
13 in commerce, or other business, or in the production of goods or
14 materials in the state [ALASKA] may not employ an employee [NOT ACTING
15 IN A SUPERVISORY CAPACITY, EITHER MALE OR FEMALE,] for a workweek
16 longer than 40 hours or for more than eight hours a day.

17 (b) If an [, EXCEPT THAT IF THE] employer employs [FINDS IT
18 NECESSARY TO EMPLOY] an employee more than [IN EXCESS OF] 40 hours but
19 not more than 60 hours a week or more than eight but not more than 12
20 hours a day, the employer shall pay compensation for this [THE] over-
21 time at the rate of one and one-half times the regular rate of pay.
22 If an employer employs an employee more than 60 hours a week or more
23 than 12 hours a day, the employer shall pay compensation for this
24 overtime at the rate of two times the regular rate.

25 (c) This section [SHALL BE PAID, AND THIS PROVISION] is con-
26 sidered included in all contracts of employment.

27 (d) This section does not apply with respect to

28 (1) an employee employed by an employer employing less than
29 four employees in the regular course of business, as "regular course

1 of business" is defined by regulations of the commissioner;
2 (2) [REPEALED
3 (3) REPEALED
4 (4)] an employee employed in handling, packing, storing,
5 pasteurizing, drying, preparing in their raw or natural state, or
6 canning agricultural or horticultural commodities for market, or in
7 making cheese or butter or other dairy products;
8 (3) [(5)] an employee of an employer engaged in small
9 mining operations where not more than 12 employees are employed, if
10 the employee is employed not in excess of 12 hours a day or 56 hours a
11 week during a period or periods of not more than 14 workweeks in the
12 aggregate in a calendar year during the mining season, as the season
13 is defined by the commissioner;
14 (4) [(6) REPEALED
15 (7)] an employee engaged in agriculture;
16 (5) [(8)] an employee employed in connection with the
17 publication of a weekly, semiweekly, or daily newspaper with a circu-
18 lation of less than 1,000;
19 (6) [(9)] a switchboard operator employed in a public
20 telephone exchange that [WHICH] has fewer than 750 stations;
21 (7) [(10)] an employee of an employer engaged in the busi-
22 ness of operating taxicabs;
23 (8) [(11)] an employee in an otherwise exempted employment
24 or proprietor in a retail or service establishment engaged in handling
25 telegraphic, telephone, or radio messages for the public under an
26 agency or contract arrangement with a telegraph or communications
27 company where the telegraph message or communications revenue of the
28 agency does not exceed $500 a month;
29 (9) [(12)] an employee employed as a seaman;

1 (10) [(13)] an employee employed in planting or tending
2 trees, cruising, or surveying, or bucking, or felling timber, or in
3 preparing or transporting logs or other forestry products to the mill,
4 processing plant, railroad, or other transportation terminal, if the
5 number of employees employed by the employer in the forestry or lum-
6 bering operations does not exceed 12;
7 (11) [(14)] an individual employed as an outside buyer of
8 poultry, eggs, cream, or milk in their raw or natural state;
9 (12) [(15)] casual employees as may be liberally defined by
10 regulations of the commissioner;
11 (13) [(16)] an employee of a hospital whose employment
12 includes the provision of medical services;
13 (14) [(17)] work performed by an employee under a flexible
14 work hour plan if the plan is included as part of a collective bar-
15 gaining agreement;
16 (15) [(18)] work performed by an employee under a voluntary
17 flexible work hour plan if
18 (A) the employee and the employer have signed a writ-
19 ten agreement and the written agreement has been filed with the
20 department; and
21 (B) the department has issued a certificate approving
22 the plan which states the work is for 40 hours a week and not
23 more than 10 hours a day; for work over 40 hours a week or 10
24 hours a day under a flexible work hour plan not included as part
25 of a collective bargaining agreement, compensation at the rate of
26 one and one-half times the regular rate of pay shall be paid for
27 the overtime;
28 (16) an employee acting in a supervisory capacity.
29

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 436
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to overtime wages."
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Agency Affected: Labor
BRU: Labor Standards & Safety
Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director
Phone: 264-2452
Division: Labor Standards and Safety
Date: 2/22/88

Approved by Commissioner: Jim Sampson
Date: 2/22/88
Agency: Labor

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ___ of ___

Duration of Employment

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Figure 1-26
Time Loss Injuries & Illnesses
Percent by Duration of Employment
Alaska 1985

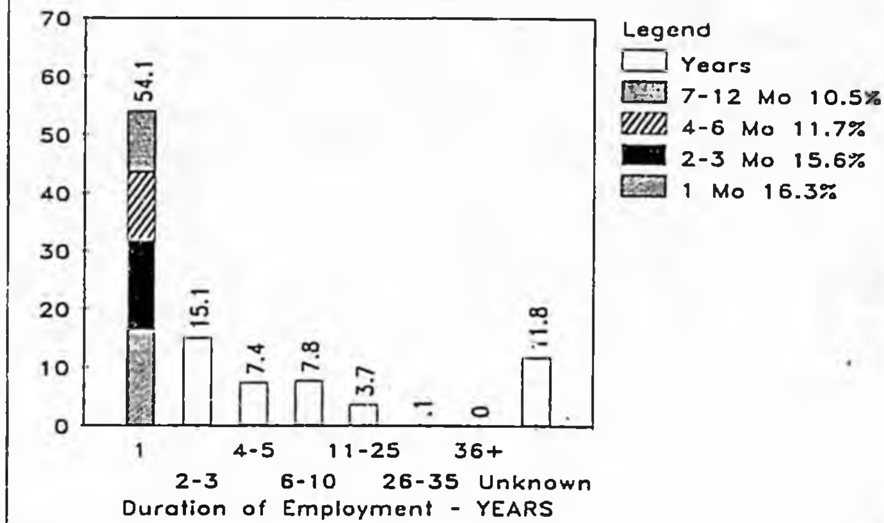
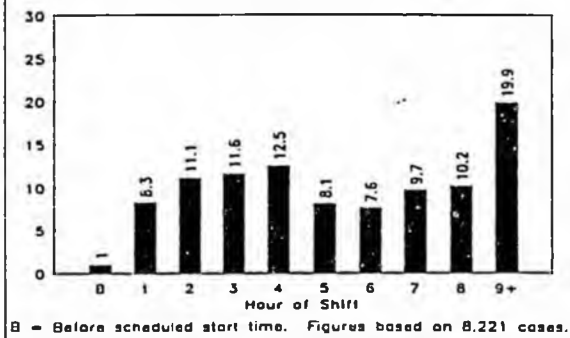


Figure 1-27
Time Loss Injuries Percent Distribution
by Shift Hour Accident Occurred
Alaska 1984



B - Before scheduled start time. Figures based on 8,221 cases.

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The shift hour in which an accidents occurs is computed from the elapsed time between the scheduled start of the work day and the recorded time of the accident. A distribution of cases from the last year for which these data were available (1984) is presented in Figure 2-14. Almost identical patterns are seen in the distributions for 1980 to 1984. Less than one-half of the accidents happened during the first half of the day. Most of the accidents that occurred during the second half of the day occurred after the seventh shift hour. A small portion of the cases involved accidents which happened prior to the scheduled start of the shift, indicating that in some cases the individual began working prior to the usual time that day. Fatigue appears to play a significant role in the occurrence of time loss accidents. A historical summary of the portion of cases after the eighth hour of work is given in Table 1-18. For industries which characteristically have long working hours, the percentage of accidents occurring after eight work hours is greater than the average.

ALASKA DEPARTMENT OF LABOR
Office of the Commissioner
P.O. Box 21149
Juneau, AK 99802-1149

BRIEFING PAPER - OVERTIME APPLICATION

The State of Alaska mandates the payment of overtime for any hours worked over eight in a day and 40 in a workweek. This law (AS 23.10.060) applies to all employees employed by employers in the state, with the following execptions:

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(3) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(4) an employee engaged in agriculture;

(5) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(6) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(7) an employee of an employer engaged in the business of operating taxicabs;

(8) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed $500 a month;

(9) an employee employed as a seaman;

(10) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(11) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(12) casual employees as may be liberally defined by regulations of the commissioner;

(13) an employee of a hospital whose employment includes the provision of medical services;

(14) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(15) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

(16) a person acting in a supervisory capacity.

The following provisions also apply to overtime exemptions, but include minimum wage as well:

(1) an individual employed in agriculture which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) $10,000 for an unmarried person; or

(B) $15,000 for a married couple.

This means that persons performing work such as laborer, clerical, waitress, bookkeeping, etc., providing the employer employs more than three (3) persons, are entitled to the payment of overtime (one and one-half times the regular rate of pay).

A general misconception on the part of the employer is when a salary is paid to an employee, overtime does not need to be compensated. Although a title may be given to an employee that aludes to exempt status, it is the actual duties performed that must be reviewed to determine if that employee is indeed exempt. The following definitions are found at 8 AAC 15.910 to assist in determining exempt status of certain job classes:

(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 23.10.060(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;

(3), (4) and (5) Not shown inasmuch as they are not applicable to determining overtime eligibility.

(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 laundress, 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 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) "outside salesman" means a person

(A) who is customarily and regularly away from the employer's place of business;

(B) who is employed for the purpose of making sales, contracts for sales, consignments, or shipment for sale, or for obtaining orders for service or for use of facilities for which consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (12) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(9) "professional employee" 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;

(10) "salesman employed on a straight commission basis" means a person

(A) who is regularly employed on the business premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or for obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (10) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(11) "supervisory capacity" means those primary duties performed 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, "supervisory capacity" does not apply to an employee required by the employer to perform those activities on an intermittent or substitute basis during the course of employment;

If an employee is employed on an hourly rate, the method of calculating the overtime rate is one and one-half times is basic hourly rate. An employee need not actually be hired at an hourly rate. The employee 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 and must be presented to the employee (AS 23.05.160) at the time of hire, in writing.

When an employee is employed on a salary basis (8 AAC 15.100 summarized):

1) The employment contract must set out the specific number of hours the employee is expected to work each day and each week. The contract must establish a regular hourly rate of pay with re pect to the salary to be paid and the hours to be worked. This written document must show the overtime rate, based on the regular hourly rate, if hours required to work exceed eight in a day or 40 in a week.

2) If a contract fails to establish a fixed number of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour work day and forty-hour workweek, and overtime will be computed on that basis.

When converting a salary to an hourly rate the following method is used:

Monthly salary X 12 months = yearly salary
Yearly salary ÷ 52 weeks = weekly salary
Weekly salary ÷ number of hours worked during normal workweek = hourly rate
Hourly rate x 1.5 = overtime rate

From July 1986 through December 1987, the Anchorage Wage & Hour office processed 274 claims that contained an overtime violation. Of these claims, 70 involved employees that were paid on a salary basis. The other 204 were paid on an hourly rate, piece rate, commission or other basis.

0183s

6

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LLOYD BENTON MILLER*
DONALD J. SIMON
DOUGLAS B. L. ENDRESON**
MARY V. BARNEY
ANNE D. NOTO
JILL A. DE LA HUNT*

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

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LOFTUS E. BECKER, JR.
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February 16, 1988

RECEIVED
FEB 19 1987

Honorable Dave Donley, Chairman
House Labor & Commerce Committee
State Capitol Building
P. O. Box V (Mail Stop 3100)
Juneau, AK 99811

Re: Proposed amendments to the Alaska Wage and Hour Act, H.B. 436
<u>(Our file 901.22)</u>

Dear Representative Donley:

We write on behalf of several regional native non-profit associations to suggest one of two amendments to the Alaska Wage and Hour Act. We request that one of these amendments be included in the House Labor and Commerce Committee substitute for H.B. 436.

We are general counsel for the Yukon-Kuskokwim Health Corporation, the Aleutian/Pribilof Islands Association, and several other similar native non-profit regional associations in Alaska. These associations are unique in that they administer a very special category of federal contract in Alaska called a "Public Law 93-638" contract (or simply a "638" contract). Public Law 93-638 is codified at 25 U.S.C. 450 <u>et seq.</u>, and is commonly known as the Indian Self-Determination and Education Assistance Act of 1975. The statute authorizes certain entities to undertake unique contracts with the U. S. Indian Health Service and the Bureau of Indian Affairs of the U. S. Department of the Interior. Under these contracts -- which are neither ordinary procurement-type contracts nor government grant programs -- the Federal Government will turn over the operation of certain federal health and social service programs benefiting Alaska Natives to a Native-controlled contracting party. For instance, the Yukon-Kuskokwim Health Corporation annually operates approximately $8 million in Indian Health Service programs under its Public Law 93-638 contract. (The idea behind the federal law is

to encourage Alaska Native organizations to themselves administer programs benefiting their own people.) Under this unique type of federal contracting, the regional Native association actually stands in the shoes of the Federal Government.

In the area of wage and hour matters, these 638 contractors are governed by the federal wage and hours laws. In addition, their contracts typically contain restrictions on the extent to which the 638 contractor may incur liability for expenses such as overtime wages. These restrictions may conflict with state overtime laws.

Given the unique nature of the relationship between these Native entities and the United States Government, and given the fact that federal wage and hour laws govern their activities, one might expect that they would be exempt from the Alaska Wage and Hour Act by virtue of the Act's exemption in A.S. 23.10.055(5). However, it appears that this exemption does not, in fact, reach 638 contractors. We believe that these unique federal contractors should not be subject to the potentially conflicting and inconsistent application of laws by two sovereigns -- the United States and the State of Alaska. Accordingly, our first suggestion is that H.B. 436 be amended to add the following language to A.S. 23.10.055(5):

> "or an organization administering a federal contract pursuant to 25 U.S.C. 450 et seq."

2. Proposed Amendment to A.S. 23.10.060

Our second suggested change to the Alaska Wage and Hour Act is in the nature of a lesser alternative to our first suggestion. The area of greatest concern regarding the application of Alaska's Wage and Hour Act to 638 contractors has been in the area of overtime wages. Section 60 of the overtime law contains a number of exemptions designed to reflect a variety of public policy decisions. Some of the exemptions are not easily applied to the rural context and apparently were not drafted with the realities of rural Alaska in mind.

Specifically, the exemption for employees of a "hospital" is not reflective of the fact that in most of rural Alaska health care services are not provided through a facility that would be considered a hospital. Understandably, the Wage and Hour Division seeks an aggressive, narrow interpretation of these exemptions to carry out its mission of protecting the employee's right to overtime wages. In a recent instance this led to a somewhat peculiar result in connection with the Yukon-Kuskokwim Health Corporation (YKHC). In Bethel, YKHC administers the U. S.

Indian Health Service Dental Program (as well as a number of other IHS programs). These programs are administered out of the IHS-operated Bethel Hospital, just as they would be were the Indian Health Service operating these programs. YKHC does not actually administer the entire hospital, only several of the programs in the hospital. (In the course of the next two years YKHC will actually take over administration of the hospital from the Indian Health Service as part of an expansion of its 638 contract.) In a recent decision, the Wage and Hour Administration concluded that an employee in the dental department was not an employee of a "hospital" (and therefore not exempt under Section 60) because YKHC does not at present administer the entire hospital. We believe this hypertechnical, narrow reading of the exemption is not consistent with the Legislature's intent in this Section.

Institutional medical care providers generally work out of hospitals in metropolitan regions of the State, and even in many of the sub-regional hubs. But in the balance of Alaska -- in bush Alaska -- institutional health care providers like YKHC employ a decentralized mechanism to reach village residents. We believe the "hospital" exemption unfairly (though unintentionally) discriminates against rural health care providers by restricting the coverage of the exemption strictly to the major metropolitan areas of the State. The consequence is that the considerably higher expense of providing medical services in bush Alaska is compounded by the apparent lack of an exemption from the overtime laws. And too, as noted earlier, this in turn leads to conflicts with the federal wage and hour laws.

We believe that our first suggested amendment will take care of this problem. However, in the event a narrower, "surgical" approach is desireable, we propose the following new subsection to A.S. 23.10.060:

> "(19) An employee of an organization which provides rural health care services or social services and whose employment includes delivery, and assistance in delivery, of health care and social services, including but not limited to medical and dental services and substance abuse control."

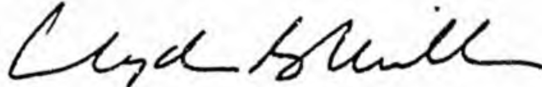
This new exemption we believe would more fairly reflect the manner in which health care services are delivered in bush Alaska, and is fully consistent with the Alaska Legislature's public policy as embodied in the current exemptions.

Neither of these amendments should be controversial. If the Federal Government is immune from the Alaska Wage and Hour Laws,

a special 638 contractor who is required to stand in the shoes of the Federal Government should not be subject to those laws, especially when the contractor is subject to the federal wage and hour laws. Nor should the exemptions from the overtime provisions of the Act reflect biases in the manner in which health care services are provided around the State. We have tried in our proposal to suggest narrow language to meet these goals. Of course, we would be most pleased to work with the Committee to refine this language further consistent with the overall framework of the Alaska Wage and Hour Act.

Please do not hesitate to call upon us if you have any questions regarding our proposals.

Sincerely,



Lloyd B. Miller

LBM/kg
cc: All Committee Members
Ginger Baine
Donley.AWHA

PUBLIC OPINION MESSAGE

6

DEAR: REPRESENTATIVE DONLEY

NAME: HENRY HARTMAN
TITLE:
ADDRESS: 125 GAIL DRIVE
CITY: WASILLA ZIP: 99687
PHONE: 376-3469
BILL NO: HB 436
SUBJECT: OVERTIME PAY
MESSAGE: I SUPPORT HB436 AND IN PARTICULAR THE ASPECT OF SEPARATING SUPE
VIOSRS FROM LABORERS.

POMID: 14172201
DATE: 02/17/88
TIME: 17:22:01
LIONAME: MAT-SU LIO

COPIES:

REPRESENTATIVES	SENATORS
MENARD	KERTTULA
LARSON	SZYMANSKI
BOUCHER	
DAVIDSON	
ELLIS	
FURNACE	
KOPONEN	

6

REPRESENTATIVE DAVE DONLEY 2/8/88
JUNEAU,ALASKA

DEAR DAVE,

I am writing in regards to HB436,introduced by you according to a newspaper article I recently read. Congratulations on what I hope will become law.

This has been kind of a thorn in my side ever since I have worked on the Pipeline, 10 1/2 years. At present we work 84 hours on our work week and get time and a half for all hours over 40. I realize these are good jobs and the pay is good but in the years I have been out here I have seen the benefits eroding and work increasing due to a reduction in personnel. Therefore, I urge you to gather all the support you can and pass this thing when it's up for consideration. I'm sure the oil interests will lobby for it's defeat.

One side note to the pay package we now enjoy, is the overtime payed,for a holiday worked. In our on week the last two days of the seven day work week are normal overtime days. Therefore, if a holiday falls on those days we get no premium pay for working that holiday other than what we would normally get. Because, our pay policy states "on a holiday worked you will get time and a half for all hours worked plus 12 hours straight time" In the case I stated the person who replaces me,on my off week, will get the same pay for that pay period that I get and they would be at home for the holiday. You can't pyramid overtime is their explanation.

Thank you for your efforts in this matter and keep up the good work. I am not a voter in your district but I have sent letters to my Legislators , Terry Martin and Pat Pourchot, urging their support.

Joe Cummings

WILFORD J."JOE" CUMMINGS
6930 DICKERSON DR
ANCHORAGE,ALASKA 99504
333-7390

RECEIVED
FEB 18 1987

G

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SUITE #13
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February 12, 1988

Representative Dave Donley
Chairman
Labor and Commerce Committee
House of Reprsentatives
P. O. Box V
Juneau, Alaska 99811

RECEIVED
FEB 19 1987

RE: House Bill Number 436

Dear Representative Donley:

I'm sure there was probably some good purpose behind the introduction of HB 436, although, I am not able to discern what it may be.

I am asking that your committee consider the impact this would have on a large portion of current and prospective jobs in Alaska.

As I am sure you know, most all of the jobs relating to employment on the North Slope, Aleyeska Pipeline and remote work sites, are rotating twelve hour shifts, seven days a week. They are two weeks on, with corresponding relief time of two weeks off. Under this system current employees are paid forty hours straight time, and forty-four hours at time and one half. Additionally they are transported to and from the job, and they are furnished free room and board.

If this bill is passed; there will be forty hours of straight time, twenty hours of one and a half times, and twenty-four hours at double time. It does not take long to calculate the impact this would have on labor costs. Presently the pay is the same as one hundred and six hours straight time per week. The new bill would equate to one hundred and eighteen hours. This causes an increase of over an eleven percent raise in direct wage costs.

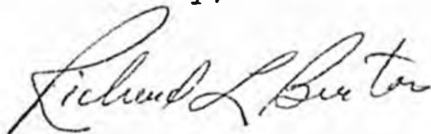
The net effect of this Bill, to me, and other employers, will be to either reduce base wages, or cut back on the number of employees.

I have been in the process for several months of negotiating under the current scheduling, for a job that starts this spring. As soon as this bill was introduced, all planning was stopped and it is now debatable if it will go forward

I see this as having a negative impact on the Alaska work force; and it will result in a further increase of unemployment. This is certainly the wrong thing at the wrong time for Alaska's economy.

Your consideration is earnestly solicited to give further thought to this bill. I would appreciate hearing from you concerning any reasons for supporting this Bill.

Sincerely,



Richard L. Burton
President

RLBdrb

cc Committee Members
House Judiciary Committee
Chamber Legislative Committee

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   February 3, 1988

SUBJECT: Laws concerning payment of overtime wages (Work Order No. 5-1626)

TO: Representative Dave Donley
Chairman
House Labor and Commerce Committee

FROM: Teresa B. Cramer
Legislative Counsel

You have requested an opinion concerning a salaried employee's right to payment of overtime wages. The right to overtime wages under both state and federal law makes no distinction on the basis of the method an employer uses to pay an employee. Salaried employees have the same rights as hourly employees.

The state law is contained in AS 23.10.050 - 23.10.150 and is based on the federal Fair Labor Standards Act, 29 U.S.C. 201-219. Where state and federal law establish different levels of protection, an employee is entitled to an application that results in the better coverage for the employee. 29 U.S.C. 218.

In state law, AS 23.10.060, payment for overtime is required

> 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.

The section goes on to list particular employment situations to which the requirement for payment of overtime does not apply. A copy of AS 23.10.060 is attached for your information. In addition to the exemptions granted by AS 23.-10.060, there is a general exemption from the Wage and Hour

Act in AS 23.10.055, a copy of which is also attached. In neither of these sections does being a salaried employee affect the right to overtime.

Since salaried employees are not directly addressed under the Wage and Hour Act, the question becomes whether they are "employees" employed by an "employer." State law does not define either "employer" or "employee." Under AS 23.10.145, the federal definitions in the Fair Labor Standards Act apply to state law. Under 29 U.S.C. 203(d), an "employer"

> includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

The definition of "employee," contained in 29 U.S.C. 203(e)(1), makes "any individual employed by an employer" an employee, with certain exceptions, in later paragraphs, for employees of public agencies and certain agricultural employees.

The state regulations address how to convert a salary into an hourly wage so that the amount of overtime can be computed. A copy of 8 A.A.C. 15.100 - 15.102 is included.

You asked whether an employee can bargain away overtime rights. Under state law, AS 23.10.060(17), work performed by an employee under a flexible work hour plan is exempt from the overtime requirements if the plan is part of a collective bargaining agreement. Under paragraph (18), which applies outside of collective bargaining, overtime is exempted if the work is performed under a voluntary flexible work hour plan and if the employer and employee have signed a written agreement which has been filed with the Department of Labor and the department has approved the plan. Plans under paragraph (18) are limited to 40 hours a week and no more than 10 hours a day. Work in excess of either of those figures must be compensated at one and one-half times the regular rate of pay. There is no other provision in state law for waiving application of the overtime requirements for employee bargaining.

The general federal law on payment of overtime is set out in 29 U.S.C. 207, with exceptions to the Fair Labor Standards

Act set out in 29 U.S.C. 213. Copies of both statutes are included. Note that the federal provisions only cover employers "engaged in commerce" or the "production of goods for commerce." 29 U.S.C. 207(a). These are defined terms that further limit federal coverage.

Under federal law, 29 U.S.C 207(b), a collective bargaining agreement supercedes the overtime statutes as long as the agreement limits employment to 1,040 hours in a period of 26 consecutive weeks (which averages out to eight hours a day, five days a week) or to 2,240 hours in a period of 52 consecutive weeks with certain guarantees. There is also an exception in that subsection for certain wholesale or bulk distributors of petroleum products.

You have also asked whether an employer can respond to the added cost of overtime by reducing the level of an employee's base wage. Legally, as long as the employer is not violating other state and federal standards concerning pay equity and does not violate existing employment contracts, an employer may set wages at any level at which the employer wishes. The decision is a business decision, balancing the reduction of wages against the need to attract and retain employees.

If I may be of further assistance, please advise.

Attachment
TBC:bb
wkb2/038

8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed. (12/9/78, Reg. 68)

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed. (12/9/78, Reg. 68)

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 – 23.10.150. Repealed. (12/9/78, Reg. 68)

ARTICLE 2.
MINIMUM WAGES AND OVERTIME

Section
100. Payment for overtime
102. Voluntary flexible work hour plans
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. An employee need not actually be hired at an hourly rate. The employee 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. The following provisions apply for an employee paid on a salary basis:

(1) The employment contract must set out the specific number of hours the employee is expected to work each day and each week. The contract must establish a regular hourly rate of pay with respect to the salary to be paid and the hours to be worked. Changes to the pay schedule of a salaried employee must conform to the provisions of AS 23 05.160.

(2) If a contract fails to establish a fixed number of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour work day and 40-hour workweek, and overtime will be computed on that basis.

(b) In order to compute a regular hourly rate for the purpose of determining the overtime rate for an employee who is paid other than hourly or by salary, the following provisions of 29 C.F.R. Part 778 apply:

(1) for a pieceworker, 29 C.F.R. sec. 778.111;

(2) for an employee who works at two or more hourly rates, 29 C.F.R. sec. 778.115;

(3) for an employee who receives wages in a form other than cash, 29 C.F.R. sec. 778.116; or

(4) for an employee who receives a commission, 29 C.F.R. secs. 778.117 – 778.122.

(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 (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778.402 – 778.414);

(2) compensatory time off in 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 workweek. (Eff. 12/9/78, Reg. 68; am 9/28/85, Reg. 95)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060 AS 23.10.095

Editor's Note: Copies of the federal regulations cited in 8 AAC 15.100(b) may be obtained from the office of the department's statewide wage and hour supervisor in Anchorage.

8 AAC 15.102. VOLUNTARY FLEXIBLE WORK HOUR PLANS. (a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(18) must be filed by the employer with a wage and hour administration office of the department. The request must be in writing, and must include

(1) a statement that the employer and employee participating in the flexible work hour plan understand that work performed in excess of 10 hours in a day or in excess of 40 hours in a week must be compensated at the rate of one and one-half times the regular rate of pay;

(2) a description of the flexible work hour plan;

(3) a statement that the flexible work hour plan has not been made a condition of employment and that participation in the plan is voluntary; and

(4) the original signature of the employer or authorized representative.

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(18). An approved plan constitutes the certificate required in AS 23.10.060(18)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for the denial.

(c) An appeal of a notice of denial must be filed with the commissioner within 20 days after receipt of the notice of denial. The appeal must be in writing, and must set out the specific reasons upon which the appeal is based. The commissioner will grant or reject the appeal within 10 workdays after receipt of the appeal. The commissioner's decision is final.

(d) As part of the records required under AS 23.10.100, an employer must maintain a signed statement of voluntary participation of each employee participating in an approved voluntary flexible work hour plan.

(e) An employee may choose to participate in an approved voluntary flexible work hour plan at initial employment or at any other time during employment. Once an employee has chosen to participate in an approved voluntary flexible work hour plan, that employee is bound to do so, and may opt out of participation in the voluntary flexible work hour plan only from November 1 through December 31 each calendar year. Termination of an employee, regardless of the cause of termination, voids that employee's participation. An employee who is rehired by the employer must again choose to participate in the voluntary flexible work hour plan in order to be included in the approved plan. Nothing in this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time. (Eff. 9/28/85, Reg. 95)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060 AS 23.10.100

8 AAC 15.105. MINIMUM WAGE. (a) 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. Sec. 206 (a)(1)) as the minimum wage generally applicable to employees subject to that Act.

(b) The department will determine compensable hours subject to the payment of the minimum wage or the contractually established wage in accordance with the provisions of 29 C.F.R. secs 785.11 – 785.25, 785.27 785.33, 785.35 – 785.45, and 785.47 - 785.48. (Eff. 12/9/78, Reg. 68; am 9/28/85, Reg. 95)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.065 AS 23.10.095

Editor's Note: Copies of the federal statute and regulations cited in 8 AAC 15.105 may be obtained from the office of the department's statewide wage and hour supervisor in Anchorage.

pay,
Generally, see § 15126.
Relationship to other laws, see § 15128A.
Reported lower court decisions, see § 15128.
Statutory protection, see § 15496.
Extension to federal employees, see § 15126A.
Federal wage and hour law, see § 1451 et seq.
Attempt to adjust differentials in pay, see § 16863.
Injunctive relief, see § 16436.
Minimum wages, see § 1451.41.
Pay differentials, see §§ 16862, 16862A.
Recovery of back pay, see § 16407.
Teachers and other local government employees, see [illegible]01.

Code of Federal Regulations

Appeals and appellate procedure, see 29 CFR 1613.231 [illegible] 1613.236.
Apprentices, employment, see 29 CFR 521.1 et seq.
Domestic service, see 29 CFR 552.1 et seq.
Employees engaged in commerce or in the production of goods for commerce, general policy statement, see 29 CFR 776.0 et seq.
Equal pay for equal work provisions, applicability, see 29 CFR 1620.19 et seq.
Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.
Full-time students, employment, see 29 CFR 519.1 et seq.
Handicapped workers, employment, see 29 CFR 524.1 et seq., 525.1 et seq.
Homeworkers, employment,
In Puerto Rico, see 29 CFR 545.1 et seq.
In Virgin Islands, see 29 CFR 695.1 et seq.
Hours worked, computation, see 29 CFR 785.1 et seq.
Learners, employment, see 29 CFR 522.1 et seq.
Messengers, employment, see 29 CFR 523.1 et seq.
Procedures established by Equal Employment Opportunity Commission for issuing opinion letters, see 29 CFR 1621.1 et seq.
Puerto Rico, Virgin Islands and American Samoa,
Particular industries, minimum wage rates, see 29 CFR 601 to 730.
Wage order procedure, see 29 CFR 511.1 et seq.
Recordkeeping requirements, see 29 CFR 516.1 et seq.
Seamen, determination of exempted status, see 29 CFR 783.0 et seq.
Student learners, employment, see 29 CFR 520.1 et seq.
Student workers, employment, see 29 CFR 527.1 et seq.
Wage payments, see 29 CFR 531.1 et seq.

Library References

Labor Relations ⟺1081.
C.J.S. Labor Relations § 1018.

Selected Court Decisions

Under the Equal Pay Act [this section], courts and administrative agencies are not permitted to substitute their judgment for the judgment of an employer who has established and employed a bona fide job-rating system, so long as it does not discriminate on the basis of sex. Washington County v. Gunther, Or.1981, 101 S.Ct. 2242, 452 U.S. 161, 68 L.Ed.2d 751.

Employees could bring action in federal district court, alleging violation of minimum wage provisions of Fair Labor Standards Act [this section], after having unsuccessfully submitted wage claim based on same underlying facts to joint grievance committee pursuant to provisions of their union's collective-bargaining agreement. Barrentine v. Arkansas-Best Freight System, Inc., Ark.1981, 101 S.Ct. 1437, 450 U.S. 728, 67 L.Ed.2d 641.

The wage and hour provisions of the Fair Labor Standards Act [this chapter] compelling the payment of a minimum standard wage with a prescribed increased wage for overtime do not deny "due process of law" in violation of the Fifth Amendment, nor are they objectionable because applied alike to both men and women. U.S. v. Darby Lumber Co., Ga.1941, 61 S.Ct. 451, 312 U.S. 100, 657, 85 L.Ed. 609.

Although neither the wage, the hour nor the overtime provisions of the Fair Labor Standards Act [this chapter] specifically provides for any other method of paying wages except by hourly rate, pay by the week, to be reduced by some method of computation to hourly rates, was also covered by the Act. Overnight Motor Transp. Co. v. Missel, Md.1942, 62 S.Ct. 1216, 316 U.S. 572, 86 L.Ed. 1682, rehearing denied 63 S.Ct. 76, 317 U.S. 706, 87 L.Ed. 563.

§ 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(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 chapter by the Fair Labor Standards Amendments of 1966[1]—

(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,[2]

(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) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section 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

(2) 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 during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c), (d) Repealed. Pub. L. 93-259, § 19(e), Apr. 8, 1974, 88 Stat. 66

(e) Definition of "regular rate" of employment

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or [illegible] the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift [illegible] savings plan, meeting the requirements of [illegible] Administrator set forth in appropriate regula-tions which he shall issue, having due regard among other relevant factors, to the extent [illegible] which the amounts paid to the employee [illegible] determined without regard to hours of [illegible]

production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section,[3] where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates 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 Administrator 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 (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section 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 creditable toward overtime compensation

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

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) of this section 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 206 of this title, 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 commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) Employment in hospital or establishment engaged in care of sick, aged or mentally ill

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) of this section 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.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) of this section 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 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) [4] in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of h[illegible] referred to in clause (B) of paragraph (1)) b[illegible] to 28 days,

compensation at a rate not less than one and [illegible] half times the regular rate at which he is emplo[illegible]

(l) Employment in domestic service in one or [illegible] households

No employer shall employ any employee in [illegible]mestic service in one or more households f[illegible] workweek longer than forty hours unless [illegible] employee receives compensation for such emp[illegible]ment in accordance with subsection (a) of this [illegible]tion.

(m) Employment in tobacco industry

For a period or periods of not more than fourt[illegible] workweeks in the aggregate in any calendar y[illegible] any employer may employ any employee fo[illegible] workweek in excess of that specified in subsec[illegible] (a) of this section without paying the compensa[illegible] for overtime employment prescribed in such [illegible] section, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripp[illegible] and grading) necessary and incidental to [illegible] sale at auction of green leaf tobacco of t[illegible] 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 [illegible] such types are defined by the Secretary [illegible] Agriculture), or in auction sale, buying, h[illegible]dling, stemming, redrying, packing, and s[illegible]ing of such tobacco,

(B) in auction sale, buying, handling, sorti[illegible] grading, packing, or storing green leaf toba[illegible] of type 32 (as such type is defined by [illegible] Secretary of Agriculture), or

(C) in auction sale, buying, handling, st[illegible]ping, sorting, grading, sizing, packing, or st[illegible]ming prior to packing, of perishable cigar l[illegible] tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, [illegible] 54, 55, 61, or 62 (as such types are defined [illegible] the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such emplo[illegible] which is in excess of ten hours in any workd[illegible] and

(B) such employment by such emplo[illegible] which is in excess of forty-eight hours in [illegible] workweek,

compensation at a rate not less than one and [illegible] half times the regular rate at which he is emplo[illegible]

An employer who receives an exemption under [illegible] subsection shall not be eligible for any other [illegible]emption under this section.

ployment by street, suburban or interurban electric railway, or local trolley or motorbus carrier

the case of an employee of an employer en- in the business of operating a street, subur- interurban electric railway, or local trolley otorbus carrier (regardless of whether or not railway or carrier is public or private or ted for profit or not for profit), in determining ours of employment of such an employee to the rate prescribed by subsection (a) of this on applies there shall be excluded the hours employee was employed in charter activities uch employer if (1) the employee's employment ich activities was pursuant to an agreement or rstanding with his employer arrived at before ging in such employment, and (2) if employ- t in such activities is not part of such employ- regular employment.

ompensatory time

Employees of a public agency which is a , a political subdivision of a State, or an inter- governmental agency may receive, in accord- with this subsection and in lieu of overtime ensation, compensatory time off at a rate not than one and one-half hours for each hour of oyment for which overtime compensation is ired by this section.

A public agency may provide compensatory under paragraph (1) only—

A) pursuant to—

(i) applicable provisions of a collective bar- gaining agreement, memorandum of under- standing, or any other agreement between the public agency and representatives of such em- ployees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

B) if the employee has not accrued compensa- y time in excess of the limit applicable to the ployee prescribed by paragraph (3).

e case of employees described in clause (A)(ii) prior to April 15, 1986, the regular practice in t on April 15, 1986, with respect to compensa- time off for such employees in lieu of the ot of overtime compensation, shall constitute greement or understanding under such clause . Except as provided in the previous sen- , the provision of compensatory time off to employees for hours worked after April 14, shall be in accordance with this subsection.

A) If the work of an employee for which ensatory time may be provided included work public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher [5]

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate

governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(June 25, 1938, c. 676, § 7, 52 Stat. 1063; Oct. 29, 1941, c. 461, 55 Stat. 756; July 20, 1949, c. 352, § 1, 63 Stat. 446; Oct. 26, 1949, c. 736, § 7, 63 Stat. 912; May 5, 1961, Pub.L. 87–30, § 6, 75 Stat. 69; Sept. 23, 1966, Pub.L. 89–601, Title II, §§ 204(c), (d), 212(b), Title IV, §§ 401–403, 80 Stat. 835, 837, 841, 842; Apr. 8, 1974, Pub.L. 93–259, §§ 6(c)(1), 7(b)(2), 9(a), 12(b), 19, 21(a), 88 Stat. 60, 62, 64, 66, 68; Nov. 11, 1985, Pub.L. 99–150, §§ 2(a), 3(a)–(c)(1), 99 Stat. 787, 789.)

[1] Pub.L. 89–601, Sept. 23, 1966, 80 Stat. 830.

[2] Pub.L. 89–601, § 602, Sept. 23, 1966, 80 Stat. 844.

[3] So in original. Probably should have closed parenthesis.

[4] Pub.L. 93–259, § 6(c)(3), Apr. 8, 1974, 88 Stat. 61.

[5] So in original. Probably should be followed by a period.

Editorial Notes

Effective Date of 1985 Amendment. Amendment by Pub.L. 99–150 effective Apr. 15, 1986, pursuant to section 6 of Pub.L. 99–150.

Effect of Amendments by Public Law 99–150 on Public Agency Liability Respecting Any Employee Covered Under Special Enforcement Policy. Amendment by Pub.L. 99–150 not to effect liability of public agency under this section for violation occurring before Apr. 15, 1986, pursuant to section 7 of Pub.L. 99–150, see note under section 216 of this title.

Compensatory Time; Collective Bargaining Agreements in Effect on April 15, 1986. Section 2(b) of Pub.L. 99–150 provided that: "A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(*o*) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [subsec. (*o*) of this section]."

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

Power of court under rule pertaining to judgments to determine liability of employer to named plaintiffs prior to resolving issues involving other employees, see Wright, Miller & Kane: Civil 2d § 2653.

West's Federal Practice Manual

Federal wage and hour law, see § 1451 et seq.
Individual employees, see § 1451.8.
Overtime compensation, see § 1451.44 et seq.

Code of Federal Regulations

Area of production, see 29 CFR 536.1 et seq.

Basic rates for computing overtime pay, see 29 CFR 548.1 et seq.

Bona fide profit-sharing plan or trust, requirements, see 29 CFR 549.0 et seq.

Bona fide thrift or savings plan, requirements, see 29 CFR 547.0 et seq.

Employees engaged in commerce or in the production of goods for commerce, general policy statement, see 29 CFR 776.0 et seq.

Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.

Hours worked, computation, see 29 CFR 785.1 et seq.

Industries of seasonal nature and industries with marked seasonal peaks of operation, coverage of employees, see 29 CFR 526.1 et seq.

(c) Oppressive child labor

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) Proof of age

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

(June 25, 1938, c. 676, § 12, 52 Stat. 1067; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, c. 736, § 10, 63 Stat. 917; May 5, 1961, Pub.L. 87-30, § 8, 75 Stat. 70; Apr. 8, 1974, Pub.L. 93-259, § 25(a), 88 Stat. 72.)

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

West's Federal Forms

Complaint to enjoin violations, see § 1680 and Comment thereunder.

West's Federal Practice Manual

Child labor, see § 1451.54.

Federal wage and hour law, see § 1451 et seq.

Code of Federal Regulations

Child labor employment orders, statement of interpretation, etc., see 29 CFR 570.1 et seq.

Retailers of goods or services, standards applicable, see 29 CFR 779.502 to 779.508.

Rules of practice for administrative proceedings, imposition of civil penalties, see 29 CFR 580.1 et seq.

Violations, civil money penalties, see 29 CFR 579 1 et seq.

Waiver, child labor in agriculture, see 29 CFR 575.1 et seq.

Written assurances, statement of policy, see 29 CFR 789.0 et seq.

Library References

Infants ⇐14.

Labor Relations ⇐1359, 1383.

C.J.S. Infants § 99.

C.J.S. Labor Relations §§ 1190, 1197.

§ 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 203(s)(5) of this title), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment

makes or processes at the retail establishment the goods that it sells: *Provided,* That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) Maximum hour requirements

The provisions of section 207 of this title shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 3102 of Title 49; or

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of subchapter I of chapter 105 of Title 49; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

(4) Repealed. Pub. L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64.

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) Repealed. Pub. L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68.

(8) Repealed. Pub. L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252.

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is

part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18), (19) Repealed. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249.

(23) Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64.

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) Repealed. Pub.L. 95-151, § 6(a), Nov. 1, 1977, 91 Stat. 1249.

(26) Repealed. Pub.L. 95-151, § 7(a), Nov. 1, 1977, 91 Stat. 1250.

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 21? of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C.A. § 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title.

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

(c) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(d) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(June 25, 1938, c. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, c. 605, 53 Stat. 1266; Oct. 26, 1949, c. 736, § 11, 63 Stat. 917; Aug. 8, 1956, c. 1035, § 3, 70 Stat. 1118; Aug. 30, 1957, Pub.L. 85-231, § 1(1), 71 Stat. 514; July 12, 1960, Pub.L. 86-624, § 21(b), 74 Stat. 417; May 5, 1961, Pub.L. 87-30, §§ 9, 10, 75 Stat. 71, 74; Sept. 23, 1966, Pub.L. 89-601, Title II, §§ 201-204(a), (b), 205-212(a), 213-215(b), (c), 80 Stat. 833-838; Oct. 15, 1966, Pub.L. 89-670, § 8(e), 80 Stat. 943; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; June 23, 1972, Pub.L. 92-318, Title IX, § 906(b)(1), 86 Stat. 375; Apr. 8, 1974, Pub.L. 93-259, §§ 6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)-(c), 14-18, 20(a)-(c), 21(b), 22, 23, 25(b), 88 Stat. 61-69, 72, Nov. 1, 1977, Pub.L. 95-151, §§ 4-8, 9(d), 11, 14, 91 Stat. 1249, 1250-1252; Sept. 27, 1979, Pub.L. 96-70, Title I, § 1225(a), 93 Stat. 468.)

Editorial Notes

Codification. In subsec. (a)(1), "subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of Pub.L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (b)(1), "section 3102 of Title 49" was substituted for "section 204 of the Motor Carrier Act, 1935 [49 U.S.C. 304]", on authority of Pub.L. 97-449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

In subsec. (b)(2), "subchapter I of chapter 105 of Title 49" was substituted for "part I of the Interstate Commerce Act [49 U.S.C. 1 et seq.]" on authority of section 3(b) of Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Error in admitting or excluding affidavit as basis for reversal of summary judgment, see Wright, Miller & Kane: Civil 2d § 2738.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

West's Federal Forms

Affirmative defenses, exemption as retail or service establishment, see § 2079.

West's Federal Practice Manual

Coverage, see § 1451.5 et seq.

Federal wage and hour law, see § 1451 et seq.

Other federal wage and hour statutes, see § 1451.71 et seq.

Code of Federal Regulations

Agricultural and agricultural processing establishments, standards applicable, see 29 CFR 780.0 et seq.

Area of production, see 29 CFR 536.1 et seq.

Child labor employment orders, statement of interpretation, etc., see 29 CFR 570.1 et seq.

Domestic service, see 29 CFR 552.1 et seq.

Employee employed in a bona fide executive, etc., capacity, determination, see 29 CFR 541.0 et seq.

Fishing operations, standards applicable, see 29 CFR 784.0 et seq.

Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.

Local delivery drivers and helpers, wage payment plans, see 29 CFR 551.1 et seq.

Miscellaneous operations and activities, see 29 CFR 786.1 et seq.

Motor carrier exemption, see 29 CFR 782.0 et seq.

Public employees engaged in fire protection or law enforcement activities, see 29 CFR 553.1 et seq.

Radio and television activities, see 29 CFR 793.0 et seq.

Recordkeeping requirements, see 29 CFR 516.1 et seq.

Retailers of goods or services, standards applicable, see 29 CFR 779.300 to 779.388, 779.400 to 779.421, 779.509 to 779.511.

Seamen, standards applicable, see 29 CFR 783.0 et seq.

Waiver, child labor in agriculture, see 29 CFR 575.1 et seq.

Wholesale or bulk petroleum distributor employees, partial overtime exemption, see 29 CFR 794.1 et seq.

Library References

Labor Relations ⇐1191, 1384.

C.J.S. Labor Relations §§ 1086, 1204.

Selected Court Decisions

Exemptions from Fair Labor Standards Act [this chapter] granted to retail or service establishments are to be narrowly construed against the employers seeking to assert them, and their application limited to those plainly and unmistakably within their terms and spirit. Arnold v. Ben Kanowsky, Inc., Tex.1960, 80 S.Ct. 453, 361 U.S. 388, 4 L.Ed.2d 393, rehearing denied 80 S.Ct. 803, 362 U.S. 945, 4 L.Ed.2d 772.

The details with which exemptions from wage and hour provisions of Fair Labor Standards Act [this chapter] have been made by Congress preclude their enlargement by implication. Addison v. Holly Hill Fruit Products, 1944, 64 S.Ct. 1215, 322 U.S. 607, 88 L.Ed. 1488, 153 A.L.R. 1007, rehearing denied 65 S.Ct. 27, 323 U.S. 809, 89 L.Ed. 645.

The purpose of excluding retailers from the Fair Labor Standards Act [this chapter] was to eliminate those retailers located near State lines and making some interstate sales and to allay the fears of those who felt that a retailer purchasing goods from without the State might otherwise be included, and the express exclusion of retailers did not by implication include all phases of a wholesale business selling intrastate solely because wholesaler makes his purchases interstate. Walling v. Jacksonville Paper Co., Fla.1943, 63 S.Ct. 332, 317 U.S. 564, 87 L.Ed. 460.

It was aim of Congress to exempt from wage and hour provisions of Fair Labor Standards Act [this chapter] those employed in agriculture and employees engaged in agricultural enterprises in the "area of production", and that meant that Administrator, who was assigned task of defining the quoted phrase, must draw line between agricultural enterprises operating under rural-agricultural conditions and those subject to urban-industrial conditions. Mitchell v. Budd, Fla.1956, 76 S.Ct. 527, 350 U.S. 473, 100 L.Ed. 565, rehearing denied 76 S.Ct. 786, 351 U.S. 934, 100 L.Ed. 1462.

To the extent that sales or services are necessary for the production of goods for interstate commerce, they generally are not "sales" or "services" to an ultimate consumer for his personal use and, accordingly, are neither retail sales nor services of a comparable character, within the meaning of Fair Labor Standards Act provision exempting employees of "retail or service establishment" [subsection (a)(2) of this section]. Roland Elec. Co. v. Walling, Md.1946, 66 S.Ct. 413, 326 U.S. 657, 90 L.Ed. 383.

§ 214. Employment under special certificates

(a) Learners, apprentices, messengers

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980), Notes to Decisions.

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of the Equal Pay for Women Act. Brown v. Wood, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 592 P.2d 1250 (1979).

Applied in Dresser Indus., Inc v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) $10,000 for an unmarried person; or

(B) $15,000 for a married couple. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982)

Cross references. — For wage rates for prisoners, see AS 33.30.227.

Effect of amendments. — The 1982 amendment added paragraph (12).

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. Webster v. Bechtel, Inc., Sup Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Prisoners excluded from operation of chapter. — See McGinnis v. Stevens, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in Alaska Int'l Indus., Inc. v. Musarra, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in Dresser Indus., Inc. v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Who is employed in "executive or administrative capacity" within exemptions from minimum wage and maximum hours provisions of Fair Labor Standards Act, 40 ALR2d 332.

Sec. 23.10.060. Payment for overtime. An employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may not 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. This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) *[Repealed, § 33 ch 127 SLA 1974.]*

(3) *[Repealed, § 1 ch 243 SLA 1970.]*

(4) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or

canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) *[Repealed, § 1 ch 45 SLA 1972.]*

(7) an employee engaged in agriculture;

(8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(10) an employee of an employer engaged in the business of operating taxicabs;

(11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed $500 a month;

(12) an employee employed as a seaman;

(13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(15) casual employees as may be liberally defined by regulations of the commissioner;

(16) an employee of a hospital whose employment includes the provision of medical services;

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983)

Effect of amendments. — The 1980 amendment added paragraphs (17) and (18).

The 1983 amendment, substituted "hospital whose employment includes the provision of medical services" for "nonprofit hospital" in paragraph (16).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act, 45 U.S.C. §§ 151-188. April 15, 1980, Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980, Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980, Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

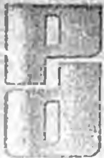
NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently, comes within the express saving clause so as not to be preempted by the federal law. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

State not bound to federal regulatory definitions. — AS 23.10.050 — 23.10.150 do not evince an intent to bind the state wage and hour division to federal regulatory definitions. Dresser Indus., Inc. v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person 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 eight hours in the supervisor's workweek, is reasonable and not arbitrary. Alaska Int'l Indus., Inc. v. Musarra, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).



Parker Drilling Company
P.O. Box 112070
Anchorage, Alaska 99511
907 / 349-1591

Gary McCarrell
Division Manager
Alaska Division

RECEIVED
MAR 2 1987

February 25, 1988

Representative Dave Donley
P. O. Box V
Juneau, AK 99811

Dear Representative:

We have received information regarding House Bill No. 436 concerning overtime wages. This bill concerns our industry tremendously and would make a negative impact on future work. We believe this bill would present a disincentive for the oil industry to escalate exploration. Also, the bill would increase the industry's present expenses to discourage further development as expenses are becoming higher than profit due to the current demand for Alaska oil and gas.

We do not support this bill and encourage you to veto the bill as proposed.

Sincerely,

Gary McCarrell
Division Manager - Alaska

RECEIVED
MAR 8 1987

March 4, 1988

Alaska State Legislature
House of Representatives
P. O. Box V
Juneau, Ak. 99811

Representative Dave Donley
Representative Adelheid Herrmann
Representative Red Boucher
Representative Cliff Davidson
Representative Johnny Ellis
Representative Walt Furnace
Representative Curt Menard
Representative Nilo Kopenon

The JOHN CABOT COMPANY is a seafood buyer/processor in the state of Alaska. We have plants in Anchorage and Seldovia. Due to the seasonal business of this fishery (mainly the summer months May through September) we have great concern with House Bill No. 436.

We urge you to vote "NO" for the following reason.

We need to operate on a 24 hour basis and due to our schedule of two 12 hour shifts this Bill would make our labor costs raise to the point that it would be prohibitive to continue operations. Since our primary product (fish) is very perishable we must work when the fish is available and cannot schedule shorter working hours.

We are a relatively small company, however we do employ over 200 people during the fish season. House Bill No. 436 would obviously devastate not only this fish company but many other processors leaving us no choice but to discontinue processing.

Again, we ask that you vote "NO" to "436" as not only would this company be out of business but so will the 200 employees that we hire during our season.

Very truly yours,

Hank Lind
Chief Executive Officer

cc: Senator Jan Faiks
Representative Pat Pourchot

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March 4, 1988

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The Honorable Dave Donley, Chairman
House Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Dave:

We appreciate your holding HB 436 pending clarification of the State Chamber's testimony February 25.

It is my understanding you have asked for names of the two companies referred to in Mr. Tangen's testimony. I have asked both to write you and I believe they will do so shortly.

We are seriously concerned about the potential impact passage of HB 436 would have on many Alaska firms and look forward to further discussion.

Cordially,

George Krusz
President