

SB

506

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 17, 1990

FURTHER REFERRALS:

Date of Committee Action: 5-4-90

The LABOR & COMMERCE Committee considered:

SB 506

SENATE BILL NO. 506

OVERTIME WAGE REQUIREMENTS/TRUCK DRIVERS

"An Act exempting certain employment of line haul truck drivers from overtime wage requirements."

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] have attached amendment(s) [ ] a new title  
[  ] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[  ] zero fiscal note(s) Senate 2/5/9  
[ ] zero fn/analysis \_\_\_\_\_  
D. of Labor

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass No Rec Amend

SIGNING DO PASS:		SIGNING:		
		(Check approp. column)		
		Do Not Pass	No Rec	Amend
<u>Maxine Baugh</u>	<u>Boyer</u>	<u>Collins</u>	X	
<u>Robert A. Lemmon</u>	<u>Lemmon</u>	<u>Donley</u>	X	
<u>W. A. Boucher</u>	<u>Boucher</u>			

David Donley  
Chairman's Signature

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION : SB 506  
PUBLISH DATE : 3/15/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: " An Act exempting certain  
employment of line haul truck drivers..." BRU: Labor Standards & Safety  
 Sponsor: Senate Labor & Commerce Components: Wage & Hour  
 Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact on FY 90.

Prepared by: Tom Stuart, Director Phone: 264-2452  
 Division: Labor Standards & Safety Date: 3/5/90  
 Approved by Commissioner: Jim Sampson Date: 3/5/90  
 Agency: Department of Labor

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

# HOUSE COMMITTEE REPORT

4/17

(5)

Date Referred: March 22, 1990

FURTHER REFERRALS:

LABOR & COMMERCE

Date of Committee Action: \_\_\_\_\_

The TRANSPORTATION Committee considered:

SB 506

SENATE BILL NO. 506 OVERTIME WAGE REQUIREMENTS/TRUCK DRIVERS

"An Act exempting certain employment of line haul truck drivers from overtime wage requirements."

RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title  a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) Senate
- zero fiscal note(s) Labor 3/15/90
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Bill Hudson HUDSON

Steven A. Leman LEMAN

Richard J. Foster FOSTER

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING:		Do Not Pass	No Rec	Amend
<u>Ben Grussendorf</u>	GRUSSENDORF		X	
_____	_____			
_____	_____			
_____	_____			
_____	_____			
_____	_____			
_____	_____			

FOSTER Richard J. Foster  
Chairman's Signature

# Alaska State Legislature

SB 506 ~~SB 506~~  
~~State to Alaska~~

REPRESENTATIVE  
**BERT SHARP**

DISTRICT 20

COMMITTEE  
RESOURCE

FINANCE SUBCOMMITTEE.  
DEPARTMENT OF NATURAL RESOURCES



FAIRBANKS

119 N CUSHMAN  
FAIRBANKS, ALASKA 99701  
(907) 452-7885 / 7886

WHILE IN JUNEAU

PO BOX V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3004 / 3018

## House of Representatives

### M E M O R A N D U M

TO: Representative Dave Donley, Chairman  
House Labor and Commerce Committee

FROM: Representative Bert M. Sharp *BMS*

SUBJECT: SB 506

DATE: April 18, 1990

In regards to our earlier conversation, attached you will find the information that was provided to me concerning SB 506.

I request that you or your committee staff review these concerns and if appropriate, any clarification language change would be appreciated.

Thank you.



REPRESENTING  
GOLDEN HEART  
OF ALASKA

FAX TRANSMITTAL MEMO

TO: Best Sharp  
DEPT: \_\_\_\_\_ FAX #: 465-2294  
FROM: Whitey PHONE: 452-1187  
CO: SDX FAX #: \_\_\_\_\_  
Post-it® and fax transmits memo 2671

NO OF PAGES  
3

KELLICUT AND JONES

A PARTNERSHIP

ATTORNEYS AT LAW

341 W TUDOR, SUITE 102 · ANCHORAGE, ALASKA 99501

(907) 581-2655

JANET C PLATT

April 5, 1990

Whitey Gregory  
Sourdough Express  
P.O. Box 73398  
Fairbanks, AK 99707

Re: Overtime compensation  
SB 506

Dear Whitey:

You asked me about SB 506. As I suggested, I picked up a copy from Legislative Affairs. I've read the bill and I've compared the bill's provisions to existing (old) statutes.

I do not know what the carrier's perception is, with regard to the effect of this new bill, nor do I know how, or if carriers intend to respond to this bill; if they intend to respond.

The context in which this problem arose was one where the carriers were paying drivers on a mileage basis, regardless of the number of hours they worked during a day or during a week. In the PTI case, and as with most other carriers to my knowledge, the drivers contended that for each hour worked over 8 or over 40, they should have been paid "overtime". The "hourly rate", even under a mileage system is easily determined by dividing the number of hours worked into the total pay received. This hourly rate then forms the basis for overtime, at one and one-half (1-1/2) the computed hourly rate.

This new bill, SB 506, is confusing both as its title and with respect to its provisions. First, this bill does not exempt line haul truck drivers from overtime wage requirements even though the title says it does.

If this bill intended to do that, they would supply "line item" paragraph 16, like they did other local categories. For instance, in item 10, the act simply exempted taxicab drivers; period. See also, lines 11-14. But look at item 15. This subparagraph exempts employees of a voluntary flexible work plan, but only if paragraphs (A) and (B) are satisfied. Therefore, for such employees, the exemption is conditional upon compliance with this paragraph.

Whitey Gregory  
April 5, 1990  
Page 2

The paragraph 16 dealing with line haul drivers is likewise conditional, and it appears to me that the drafter did not want to exempt drivers, or, this language was made condition to get through the legislature.

This paragraph provides that a line haul driver may be exempted from overtime wages if:

1. The trip exceeds 100 miles one way; and
2. The company/employer implements a compensation system wherein the driver is paid overtime for all hours over 8 and 40; and
3. The employer's pay system requires a rate of pay comparable to the rate required by this section.

It is clear that this new bill does not exempt line haul drivers from overtime wages. It is also clear, however, that the employer may pay any rate of pay he wants, or can negotiate, so long as that rate is equal to and above the minimum wage, and, based upon that wage, the employer pays overtime. These attributes did not alter existing law.

What this says, is that this bill appears to attempt to alter existing law by making certain drivers exempt from overtime wages.

I've spent all afternoon reviewing the existing statutes, regulations, and reading and re-reading this bill.

There is a possible interpretation, however attained, that one can read into this section of the bill. That is, that the company can employ a driver on a set haul, or fee for haul basis, without necessarily considering overtime/straight time wages and rates, but only under a system where straight and overtime is computed into that set haul rate. I can find no other manner interpreting this provision.

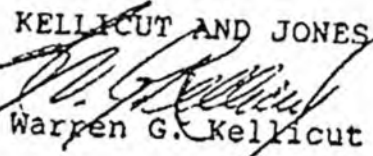
The provision is very poorly drafted, unclear and is subject to at least two (?) different interpretations. The irony of this is that the system the provision now apparently authorizes was always the law, so this changes nothing, and is the system I've suggested before, and help set up before to comply with the existing law.

One conclusion you should be clear in understanding is that the bill does not exempt drivers from overtime compensation, it appears to permit a company to compensate on a per trip or per haul basis so long as straight time and overtime are built into the system of compensation.

Whitey Gregory  
April 5, 1990  
Page 3

If you wish anything further of me, please advise.

Regards,

KELLCUT AND JONES  
  
Warren G. Kellicut

WGK/dk  
Encl.

KELLCUT AND JONES

A PARTNERSHIP

ATTORNEYS AT LAW

341 W TUDOR, SUITE 102 · ANCHORAGE, ALASKA 99503

(907) 561-2655

WARREN G. KELLCUT  
CALVIN R. JONES  
JANET D. PLATT

April 11, 1990

Mr. Whitey Gregory  
Sourdough Express  
P.O. Box 73398  
Fairbanks, AK 99707

Re: Driver Overtime

Dear Whitey:

I have received a copy of the Washington State regulations after which our recent SB 506 is patterned. The language is different, but ours was taken as a condensed version of the Washington regulations. This Washington regulation is, by virtue of its scope, much more clear and expressive of the intent of the statute.

The Washington regulation provides as follows:

1. It only deals with ICC Commerce; our bill is not so restricted. Our bill deals with all commerce, intra or interstate;
2. The systems must include overtime pay provisions;
3. The Employer may pay other than hourly; i.e., can pay by the trip, or mileage or unit;
4. The pay system must include an overtime factor and rate; this must be distributed over the pay period and be within the pay systems. Overtime as a factor must be considered in the pay system, and must be paid for at one and one-half (1-1/2) time base pay rate;
5. The base pay/overtime system must be supportable from actual wage and time histories. This may present a problem if the company does not have the same route and time movements.

In addition to the above, the Alaska bill refers only to line-haul drivers.

Given this information, some substantial thought must go into developing a pay system that complies with this bill.

Regards,

KELLICUT AND JONES

*Warren G. Kellicut/dk*

Warren G. Kellicut

WGK/dk  
Dictated but not read  
Encl.

Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

NEW SECTION

WAC 296-128-012 OVERTIME FOR TRUCK AND BUS DRIVERS. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working within the state of Washington in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked within the state of Washington in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2. Average number of work units = Average number of work units accomplished per week  
     .....  
     per hour                      Average number of hours projected to be worked per week
3. Weekly Base Rate = Number of units per hour x 40 hours x base rate of pay
4. Weekly Overtime rate = Number of units per hour x number of hours over 40 x overtime rate of pay
5. Total weekly pay = Weekly base rate plus weekly overtime rate
6. Uniform rate of pay = Total weekly pay  
     .....  
     Total work units

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: SB 506  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: " An Act exempting certain  
employment of line haul truck drivers..." BRU: Labor Standards & Safety  
 Sponsor: Senate Labor & Commerce Components: Wage & Hour  
 Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact on FY 90.

Prepared by: Tom Stuart, Director *Stuart* Phone: 264-2452  
 Division: Labor Standards & Safety Date: 3/5/90  
 Approved by Commissioner: Jim Sampson *Sampson* Date: 3/5/90  
 Agency: Department of Labor

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

ALASKA STATE SENATE

SENATOR DICK ELIASON  
SITKA  
CHAIRMAN

SENATOR PAT RODEY  
ANCHORAGE  
VICE-CHAIRMAN



LABOR AND COMMERCE COMMITTEE

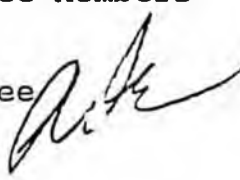
MEMBERS  
SENATOR JAN FAIKS  
ANCHORAGE

SENATOR JACK COGHILL  
NENANA

SENATOR JALMAR KEFTTULA  
PALMER

MEMORANDUM

TO: Senate Labor and Commerce Committee Members

FROM: Senator Dick Eliason, Chair  
Senate Labor and Commerce Committee 

DATE: February 21, 1990

RE: Proposed legislation

Attached is a proposed legislation addressing a problem recently brought to my attention. Please let me know if you have any concerns about this legislation being introduced as a Senate Labor and Commerce Committee bill.

In October, 1988, the Washington State Supreme Court ruled that the State of Washington Minimum Wage Act was not inconsistent with the Federal Motor Carriers Act for the purpose of compliance with the state's overtime pay requirements. Prior to the ruling, motor carriers typically paid a flat rate per mile to the owner/operators of trucks which carry freight over long distances. After the ruling, there was considerable concern by both motor freight companies and owner/operators about problems created by the decision, including possible retroactive payments and the way in which the Department of Labor would draft new regulations.

The Alaska motor carriers followed the events in Washington with interest, as Alaska's overtime wage statutes are very similar to Washington State statutes, and a similar court decision would likely occur here if a suit was filed.

The State of Washington has recently passed legislation to allow the historic practice of flat rate/mile compensation so long as it reasonably approximates payment under the overtime

statute. The legislation was supported by both management and labor in Washington.

This proposed legislation contains the same language as adopted in Washington. This approach will eliminate uncertainty within the motor freight industry in Alaska, and is supported by management, labor, and the Department of Labor. The legislation assures that the intent of the overtime statute will be followed while allowing motor carriers the flexibility of doing so under a method which all carriers are familiar.

# Executive Vice President's Report

On October 20, 1988 the Washington State Supreme Court handed down its decision in the case of Common Carriers, Inc. versus the State of Washington. The decision stated in effect that there was no conflict between the Federal Motor Carrier Act and the Washington State Minimum Wage Act, and that these two could be enforced simultaneously and without conflict.

This meant the requirement for payment of time and one-half for overtime work in excess of 40 hours per week, which had been established by the Washington State Minimum Wage Act, was now imposed upon those motor carriers engaged in interstate commerce. These carriers had previously been exempted from these state requirements by the Federal Motor Carrier Act. However, since most carriers had already been paying time and one-half or its equivalent, this court decision did not affect them significantly, or at least that was their impression.

At the present time the Department of Labor and Industries is auditing somewhere in excess of 50 individual companies in the state with a eye to enforcing the payment of overtime retroactively up to two years. Their interpretation presently is that unless a labor contract states specifically that the salary involved reflects at least time and one-half for hours worked beyond 40 hours a week, they will be required to compensate an employee for time worked up to two years previously.

Let me stress that the Department has been most cooperative in affording us opportunities to discuss the nature of our business with them and to offer arguments

as to why certain procedures within the industry do presently reflect the payment of overtime. They, however, are charged with the administration of this law and, of course, have no alternative but to proceed with the application of the findings of the court.

Many of our members expressed concern about their practice of paying a flat mileage rate, a flat rate for the haul involved, or a percent of gross for services performed and whether this would be accepted as constituting payment of time and a half for overtime. We therefore introduced a bill which stated that drivers paid on some basis other than straight time with time and a half for overtime would be exempted from the requirements of this law, provided the compensation was "reasonably equivalent" to time and a half as required under the state's Minimum Wage Act.

After several discussions, both the Department of Labor and Industries and the Teamsters supported the legislation, which was enacted and signed into law in April of this year.

We have had several discussions with the Department on the appropriate rules for implementation of this law, and appeared in force at a hearing conducted by Mark McDermott, Assistant Director of Employees, ESAC of the Department of Labor and Industries, who is in charge of drafting the appropriate regulations along with Paul Parker, Rules Officer. A hearing on the proposed rules took place in Olympia on Thursday, August 31, 1989, and the following individuals appeared on behalf of their companies:



Marty Sangster, Executive Vice President

Don Frey, Vice President

Metro Hauling, Inc.

Wayne Klenda, General Manager  
Feddery Marion Freight Lines

Don Lemmons, President  
Interstate Wood Products

Edon Renfro, President  
Renfro Trucking

Mac Williams, Director, Industrial  
Relations, Puget Sound Freight Lines

Dan Lavaty, Line Haul Payroll Manager,  
Consolidated Freightways

Steve Hillstead, Puget Sound Group  
Manager, Consolidated Freightways

Marty Sangster, Executive Vice President,  
WTA

We retained legal counsel, Phil Talmadge, who did an excellent job of analysis of the regulations from a legal standpoint.

We had hoped to select a company whose set of circumstances would afford an objective review in court of the issue of retroactive overtime pay, and were awaiting the development of the final rules in order to select the most representative for a court test of retroactivity. This approach to the issue was rendered moot on August 10, 1989 when the Department of Labor and Industries, through the Attorney General's office, served a Summons and Complaint against "PUGET SOUND TRUCK LINES, INC., individually and as representative of the Washington Trucking Association, and as a representative of all employer motor carriers similarly situated subject to RCW 49".

A question of whether a class action can be brought by the State against the defendants is questionable, but nevertheless it brings the matter to a head. President John Bredeson called a meeting of the Legislative Committee on September 7, 1989, at which a lengthy discussion and evaluation of the situation was held. Puget

(Continued on page 12)



Executive Committee Meeting on overtime issue

Re: Washington Concern

49.46.090

## Title 49 RCW: Labor Regulations

of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

**49.46.100 Prohibited acts of employer—Penalty.**  
 (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

**49.46.110 Collective bargaining not impaired.** Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

**49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.** This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more

favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

**49.46.130 Minimum rate of compensation for employment in excess of forty hours week—Exceptions.** (1) No employer shall employ any of his employees for a work week 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, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) 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: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) In the case of such an employee to whom a work period of at least seven but less than twenty-eight 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 two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed: *Provided*, That this section shall not apply to any individual employed (1) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must record a notice of claim within 60 days after the employer's payment is due with the recorder of the recording district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the recording of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

**Revisor's notes.** — Minor word changes related to the recording of documents were made in subsections (b), (d), and (e) of this section in 1988 under sec. 42, ch. 161, SLA 1988.

### Article 3. Alaska Wage and Hour Act.

#### NOTES TO DECISIONS

Punitive damages may not be awarded for a willful violation of the Alaska Wage and Hour Act. *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985).

### Sec. 23.1

Purpose of to compensat of the statu hours for the and to spreac

### Sec. 23

Purpose to compens of the stat hours for th and to spre. ing employ the pressu

### Sec. 2

Cited i Labor. 73

### Sec.

Cited i Inc., 772

### Sec.

Quot 703 P.2 State. Alaska

### Sec

Quo 703 P.

**Sec. 23.10.050. Public policy.**

**NOTES TO DECISIONS**

**Purpose of the overtime statutes** are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through induc- ing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). Cited in *O'Dell v. Alyeska Pipeline Serv. Co.*, 856 F.2d 1452 (9th Cir. 1988).

**Sec. 23.10.060. Payment for overtime.**

**NOTES TO DECISIONS**

**Purpose of the overtime statutes** are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). **State not bound to federal regulatory definitions.** — See *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

**Sec. 23.10.065. Minimum wages.**

**NOTES TO DECISIONS**

Cited in *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987).

**Sec. 23.10.090. Administrative procedures.**

**NOTES TO DECISIONS**

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.110. Remedies of employee.**

**NOTES TO DECISIONS**

**Quoted in *Gore v. Schlumberger Ltd.***, 703 P.2d 1165 (Alaska 1985). *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987). **Cited in *Dayhoff v. Temsco Helicopters, Inc.***, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.115. Enforcement by injunction.**

**NOTES TO DECISIONS**

**Quoted in *Gore v. Schlumberger Ltd.***, 703 P.2d 1165 (Alaska 1985). **Cited in *Dayhoff v. Temsco Helicopters, Inc.***, 772 P.2d 1085 (Alaska 1989).

**Sec. 23.05.330. Actions in courts of other states.** The commissioner may, to the extent permitted by a reciprocal agreement with an agency of another state, maintain actions in the courts of that state for the collection of claims or judgments for wages, and may assign claims or judgments to the labor department or agency of that state for collection. (§ 1 ch 114 SLA 1966)

**Sec. 23.05.340. Actions in this state for demands arising in other states.** The commissioner may, upon the written request of the labor department or corresponding agency of another state or of a person, board, officer, or commission authorized to act on behalf of that department or agency, maintain actions in the courts of this state upon assigned claims or judgments for wages arising in another state in the same manner and to the same extent that such actions by the commissioner are authorized for claims arising in this state; provided that these actions may be maintained only in the event that the department or agency in the other state provides, by agreement, reciprocal services to the commissioner. (§ 1 ch 114 SLA 1966)

## Chapter 10. Employment Practices and Working Conditions.

### Article

1. Coercion and Fraud (§§ 23.10.015 — 23.10.037)
2. Payment of Wages (§§ 23.10.040 — 23.10.047)
3. Alaska Wage and Hour Act (§§ 23.10.050 — 23.10.150)
4. Employment of Children (§§ 23.10.325 — 23.10.370)
5. Transportation of Employees (§§ 23.10.375 — 23.10.400)
6. Employment in Underground Mines (§§ 23.10.405 — 23.10.415)

### Article 1. Coercion and Fraud.

Section	Section
15. False representations to procure employees prohibited	30. Worker's right of action
20. Penalty for violation of AS 23.10.015	35. Limit of application
	37. Lie-detector tests

*Secs. 23.10.005 — 23.10.010. Coercion to use hotel or store prohibited; penalty. [Repealed, § 21 ch 166 SLA 1978. For current law on the crime of coercion see AS 11.41.530.]*

**Sec. 23.10.015. False representations to procure employees prohibited.** A person doing business in this state may not personally or through an agent induce an individual to change from one place to another in this state, or bring an individual into this state to work as an employee in this state, by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or the amount and character of the compensation to be paid for the work, or the sanitary or other conditions of employment. (§ 43-2-43 ACLA 1949; am § 1 ch 59 SLA 1971)

Collateral references. — 18 Am. Jur.  
2d, Labor and Labor Relations, §§ 6-9.  
51 C.J.S., Labor Relations, §§ 6-15.

**Sec. 23.10.020. Penalty for violation of AS 23.10.015.** A person who, personally or as agent or servant for another, violates AS 23.10.015 is punishable by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both. (§ 43-2-44 ALCA 1949)

*Sec. 23.10.025. Use of armed guards. (Repealed. § 3 ch 59 SLA 1976.)*

**Sec. 23.10.030. Worker's right of action.** A worker induced to accept employment with a person mentioned in AS 23.10.015 by conduct violating that section has a right of action for damages caused by the false or deceptive representations used to induce the worker to change the worker's place of employment, against the person directly or indirectly causing the damages. In addition to the actual damages the worker has sustained, the worker may recover the reasonable attorney fees which the court shall fix, to be taxed as costs. (§ 43-2-46 ACLA 1949)

**Sec. 23.10.035. Limit of application.** AS 23.10.015 — 23.10.030 may not be construed to interfere with the right of a person to guard or protect the person's private property, or private interest as provided by law. AS 23.10.015 — 23.10.030 may be construed only to apply when a worker is brought into the state or induced to go from one place to another in the state by a false pretense, false advertising, or deceptive representation, or is brought into the state under arms, or is moved from one place to another in the state under arms. (§ 43-2-45 ACLA 1949)

**Sec. 23.10.037. Lie-detector tests.** (a) A person either personally or through an agent or representative may not request or suggest to an employee of the person or to an applicant for employment by the person or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with policemen in its employ or with persons applying to be employed as policemen.

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 36 SLA 1964)

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40. Paymer  
43. Deposit

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Article 2. Payment of Wages.

Section	Section
40. Payment of wages in state	45. Payments into benefit fund
43. Deposit of wages	47. Employee's lien

**Sec. 23.10.040. Payment of wages in state.** (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) *[Repealed, § 2 ch 28 SLA 1971.]*

(c) *[Repealed, § 2 ch 28 SLA 1971.]*

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

**Cross references.** — For sentences for 51B C.J.S., Labor Relations, § 1179. 56  
misdemeanors, see AS 12.55.135. C.J.S., Master and Servant, §§ 120, 121.

**Collateral references.** — 48A Am Jur.  
2d, Labor and Labor Relations, § 2584. 53  
Am. Jur. 2d, Master and Servant, § 82.

**Sec. 23.10.043. Deposit of wages.** An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

**Revisor's notes.** — Enacted as AS  
23.10.040(e). Renumbered in 1976.

**Sec. 23.10.045. Payments into benefit fund.** (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

**Sec. 23.10.047. Employee's lien.** (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of

the employees, or has entered into a collective bargaining agreement providing for the payments, but fails to make the payments when due, a lien is created in favor of each affected employee on the earnings of the employer and on all property of the employer used in the operation of the employer's business to the extent of the money, plus penalties due to be paid on the employee's behalf to qualify the employee for participation in the fund and for expenses incurred by the employee for which the employee would have been entitled to reimbursement under the fund if the required payment had been made.

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must file a notice of claim within 60 days after the employer's payment is due with the recorder of the judicial district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the filing of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the filing and recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not filed or recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

**Article 3. Alaska Wage and Hour Act.**

Section	Section
50. Public policy	71. Wages for work therapy
55. Exemptions	75. Labor standards and safety division
60. Payment for overtime	80. Powers and duties of division
65. Minimum wages	85. Scope of administrative regulations
70. Exemptions from minimum wage	90. Administrative procedures

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95. Adoption of federal regulations  
 100. Employer to keep records  
 105. Posting summary required  
 110. Remedies of employee  
 115. Enforcement by injunction  
 120. Enforcement of subpoena

**Section**

125. Collective bargaining  
 130. Statute of limitations  
 135. Violations  
 140. Penalty  
 145. Definitions  
 150. Short title

**NOTES TO DECISIONS**

**Based on Fair Labor Standards Act.** — AS 23.10.050 — 23.10.150, enacted in 1959, have similar purposes to the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and are based upon it. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980); *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

The federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and AS 23.10.050 — 23.10.150 were both enacted for the same purposes: to establish minimum wage, maximum workweek, and overtime com-

penensation standards which are adequate to maintain the health, efficiency and general well-being of workers. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Origins of AS 23.10.050 — 23.10.150.** — See *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

AS 23.10.050 — 23.10.150 are not preempted by the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Collateral references.** — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2551 — 2580, 2625 — 2652. 53 Am. Jur. 2d, Master and Servant, §§ 71 — 96.

51B C.J.S., Labor Relations, §§ 1141 — 1145, 1166, 1172 — 1174. 56 C.J.S., Master and Servant, §§ 15 — 17, 151 — 153.

What employees are within "hours of labor" statutes. 16 ALR 537.

Constitutionality of statute limiting hours of labor in private industry. 90 ALR 814.

Waiver or loss of statutory right as to maximum hours of labor. 102 ALR 842; 129 ALR 1145.

"Right to work" laws. 92 ALR2d 598.

**Sec. 23.10.050. Public policy.** It is the public policy of the state to

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living. (§ 1 ch 171 SLA 1959)

NOTES TO DECISIONS

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

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(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 Dept. 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 mini-

mum 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

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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 Dept 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).

**Sec. 23.10.065. Minimum wages.** An employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

**Cross references.** — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

#### NOTES TO DECISIONS

This section is based on the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

**Prisoners as employees of the state.** — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

**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).

**Concurrent coverage of minimum wage claims is not preempted by the Federal Fair Labor Standards Act.** It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

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.** — Validity of minimum wage statutes relating to private employment 39 ALR2d 740

**Sec. 23.10.070. Exemptions from minimum wage.** To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 — 23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner; and

(2) an apprentice at the wages which are approved by the commissioner; or

(3) a learner at the wages and subject to the restrictions and for the periods of time which are fixed by the commissioner. (§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962)

**Sec. 23.10.071. Wages for work therapy.** (a) For work therapy, as defined in AS 47.37.270, a participant in a residential drug abuse or alcoholism treatment program designed to extend more than 120 days may be paid less than the minimum wage prescribed in AS 23.10.050 — 23.10.150 if the rate has been approved by the commissioner under this section and is in compliance with federal law.

(b) The commissioner shall adopt regulations regarding the payment of wages for work therapy. In adopting the regulations, the commissioner shall consider whether the work performed by the patient

(1) is solely for the benefit of the patient and is that which is ordinarily carried on by patients in a residential treatment program;

(2) would ordinarily be performed by full-time employees of the program;

(3) is work that may produce income to the patient, other than wages;

(4) produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program; and

(5) creates an unfair competition with private enterprise because of lower wage standards. (§ 1 ch 58 SLA 1983)

**Sec. 23.10.075. Labor standards and safety division.** There is established in the department the division of labor standards and safety. The director of the division is responsible to the commissioner. The director shall administer AS 18.60.010 — 18.60.105 and AS 23.10.050 — 23.10.150. (§ 6(1) ch 171 SLA 1959; am E.O. No. 52, § 4 (1982))

**Effect of amendments.** — The 1982 amendment rewrote this section.

**Sec. 23.10.080. Powers and duties of division.** The director, or an authorized representative of the director, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records which relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

**Sec. 23.10.085. Scope of administrative regulations.** (a) The director may adopt, amend or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

#### NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050

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

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

**Sec. 23.10.090. Administrative procedures.** Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with the Administrative Procedure Act (AS 44.62). (§ 6(4) ch 171 SLA 1959)

**Sec. 23.10.095. Adoption of federal regulations.** The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with Alaska's Wage and Hour Act. *Dresser Indus., Inc. v. Alaska Dept of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

**Sec. 23.10.100. Employer to keep records.** (a) An employer shall keep for a period of at least three years at the place where an employee is employed a record of the name, address, and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each workweek by each employee, and other payroll information which the commissioner may require.

(b) The commissioner or an authorized representative of the commissioner may copy the employer's records at any reasonable time. An employer shall furnish to the commissioner or the representative on demand a sworn statement of the employer's records, and the commissioner may require that the sworn statement be made upon forms the commissioner has prescribed or approved. (§ 7 ch 171 SLA 1959)

NOTES TO DECISIONS

**Public policy interest and burden of proof.** — If an employee produces sufficient evidence to show the amount and extent of the work for which the employee was improperly compensated, the burden shifts to the employer to come forward with evidence sufficient to negate the reasonableness of the inference drawn from the employee's evidence. Although this burden of proof in an action under the Alaska Wage and Hour Act is not binding on a bankruptcy court in a proceeding to determine the validity of a claim, it is

indicative of the public policy interest that proper records be kept by an employer and that an employee be properly compensated for any overtime worked. In re *Equipment Servs., Ltd.*, 36 Bankr. 241 (Bankr. D. Alaska 1983).

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

Stated in *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

**Sec. 23.10.105. Posting summary required.** An employer subject to AS 23.10.050 — 23.10.150 shall keep a summary or abstract of these sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. (§ 8 ch 171 SLA 1959)

**Sec. 23.10.110. Remedies of employee.** (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

(b) An action to recover from the employer the wages and damages for which the employer is liable may be maintained in a competent court by an employee personally and for other employees similarly situated, or an employee may individually designate in writing an agent or representative to maintain an action for the employee. The consent shall be filed in the court in which the action is brought. At the request of a person paid less than the amount to which the person is entitled under AS 23.10.050 — 23.10.150, the commissioner may take an assignment in trust for the employee of the full amount to which the employee is entitled under this section and may bring any legal action necessary to collect the claim.

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action. (§ 9(3) ch 171 SLA 1959)

#### NOTES TO DECISIONS

**Liquidated damages** under this article must be granted as a matter of law. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

**No conflict with 29 U.S.C. §§ 216(b) and 260.** — This section, which grants mandatory liquidated damages, does not conflict with 29 U.S.C. §§ 216(b) and 260, which make such awards discretionary if the employer shows he acted in good faith. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Concurrent coverage of minimum wage claims is not preempted** by the federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress

intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Revival of agent or representative action.** — The legislature plainly determined to revive the agent or representative action, where the employee individually designates in writing an agent or representative to maintain an action for him. *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

**Class action procedures.** — See *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Offsetting of award.** — If suits are filed under both the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Alaska Wage and Hour Act, AS 23.10.050 — 23.10.150, the Alaska award must be offset by any recovery under the

**Sec. 23.10.115.** commissioner violates or a regulation an action i enforce con lation. Upo or restrain (1959)

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federal act. Webster v. Bechtel, Inc., Sup.  
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621 P.2d 890 (1980).

**Sec. 23.10.115. Enforcement by injunction.** If it appears to the commissioner that an employer is engaged in an act or practice which violates or will violate a provision of AS 23.10.050 — 23.10.150 or of a regulation adopted under these sections, the commissioner may bring an action in a competent court to enjoin the act or practice, and to enforce compliance with AS 23.10.050 — 23.10.150 or with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. (§ 9(4) ch 171 SLA 1959)

**Sec. 23.10.120. Enforcement of subpoenas.** If a person fails to comply with a subpoena issued under AS 23.10.080, or if a witness refuses to produce evidence or to testify to a matter regarding which the witness may be lawfully interrogated, a competent court shall, upon application of the commissioner or an authorized representative, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify before it. (§ 9(5) ch 171 SLA 1959)

**Sec. 23.10.125. Collective bargaining.** AS 23.10.050 — 23.10.150 do not limit the right of employees to bargain collectively through representatives of their own choosing to establish wages or conditions of work in excess of the applicable minimum under AS 23.10.050 — 23.10.150 or to establish hours of work shorter than the applicable maximum under AS 23.10.050 — 23.10.150. (§ 10 ch 171 SLA 1959)

**Sec. 23.10.130. Statute of limitations.** An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050 — 23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

**Effect of amendments.** — The 1982 amendment rewrote this section.

**Sec. 23.10.135. Violations.** An employer violates AS 23.10.050 — 23.10.150 if the employer (1) hinders or delays the commissioner or an authorized representative of the commissioner in the performance of their duties in the enforcement of AS 23.10.050 — 23.10.150; (2) refuses to admit the commissioner or an authorized representative to any place of employment; (3) fails to keep or falsifies a record required under the provisions of AS 23.10.050 — 23.10.150; (4) refuses to make a record

accessible, or to furnish a sworn statement of the record, or to give information required for the enforcement of AS 23.10.050 — 23.10.150, upon demand, to the commissioner or an authorized representative; (5) fails to post an abstract of AS 23.10.050 — 23.10.150 as required by AS 23.10.105; (6) discharges or in any other manner discriminates against an employee because the employee has filed a complaint, or has instituted or caused to be instituted any proceeding under or related to AS 23.10.050 — 23.10.150, or has testified or is about to testify in such a proceeding. (§ 9(1) ch 171 SLA 1959)

**Sec. 23.10.140. Penalty.** An employer who violates a provision of AS 23.10.050 — 23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 1 ch 113 SLA 1972)

**Sec. 23.10.145. Definitions.** If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050 — 23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

**Cross references.** — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201 — 219.

**Effect of amendments.** — The 1983 amendment added "If not defined in AS 23

or in regulations adopted under AS 23" to the beginning of the section and deleted "where applicable" following "shall be defined."

**NOTES TO DECISIONS**

**Applicability of federal regulatory definitions.** — This section directs the courts to apply federal regulatory definitions "where applicable," and such definitions are "applicable" only when the state director of the wage and hour division and the commissioner of labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and

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

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

**Sec. 23.10.150. Short title.** AS 23.10.050 — 23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

*Secs. 23.10.155 — 23.10.320. Equal pay for women, discrimination in employment, and age discrimination. [Repealed, § 8 ch 117 SLA 1965, § 5 ch 125 SLA 1980. For present provisions, see AS 18.80.220.]*

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