

**HB**

**504**

SFIN

FILE

**SENATE FINANCE COMMITTEE REPORT**

REPORTED OUT
APR 30 2002
SENATE FINANCE COMMITTEE

DATE: 4/26/02

FURTHER:

DATE TURNED  
IN TO OFFICE: 30 April 2002

Finance Committee considered **CS FOR HOUSE BILL NO. 504(FIN) am**  
**HB 504 WAGES FOR WORKERS IN FISHERIES**

"An Act relating to the wages of people working in the fisheries business."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Labor	7/16/02		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>				
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>		✓		
COCHAIR: <i>[Signature]</i>			✓	

APR 30 2002

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 504(FIN)  
(H) Publish Date: 4/16/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Labor & Workforce Dev.  
Title: Minimum Wage for Workers in Fisheries BRU: Labor Standards & Safety  
Sponsor: House Rules Component: Wage & Hour  
Requester: \_\_\_\_\_ Component Number: 345

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder Phone 465-2647/465-3424  
Co-Chair, House Finance Committee  
Representative Bill Williams Date April 16, 2002  
Co-Chair, House Finance Committee

SENATE FINANCE COMMITTEE  
4 Bd 2002 COMMITTEE ACTION

Bill Number	HB 504		
Amendment			
Motion	Move from Committee		
<u>Motion by</u>	Donley		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	Vote	N
Senator Olson	✓		
Senator Ward		—	
Senator Wilken		—	
Senator Austerman	✓		
Senator Green		—	
Senator Hoffman	✓		
Senator Leman	✓		
Co-Chair Donley			✓
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	5		
Nay	1		
Absent	3		
<u>MOTION</u>	PASSED		

**Table 3**  
**Private Sector Occupations with the Largest Number of Nonresidents**  
**Alaska 2000**

Occupation	Resident			Nonresident		
	Number of Workers	Number of Workers	Percent	Earnings	Earnings	Percent
Seafood Processing Workers	3,597	10,600	74.7	\$36,950,433	\$72,190,494	66.1
Retail Salespersons	12,255	2,211	15.3	171,046,430	12,793,379	7.0
Waiters and Waitresses	4,177	1,484	26.2	39,667,451	6,728,018	14.5
Fast Food Workers	5,494	1,352	19.7	30,787,318	4,682,921	13.2
Office Clerks, General	10,001	1,285	11.4	158,960,378	11,355,227	6.7
Laborers and Freight, Movers	6,769	1,278	15.9	102,231,196	9,872,211	8.8
Construction Laborers	5,951	1,142	16.1	116,992,015	13,292,829	10.2
Agricultural Workers, All Other	678	975	59.0	9,652,665	7,918,070	45.1
Maids and Housekeeping Cleaners	3,368	932	21.7	35,127,358	5,253,047	13.0
Tour Guides and Escorts	731	887	54.8	6,918,842	6,506,073	48.5
Cashiers	5,204	855	14.1	52,937,565	3,647,657	6.4
Cooks, Restaurant	1,945	818	29.6	27,664,987	5,681,642	17.0
Janitors and Cleaners	5,860	780	11.7	84,187,115	4,060,446	4.6
Production Workers, All Other	1,892	780	29.2	17,537,956	5,327,626	23.3
Carpenters	4,129	746	15.3	96,603,834	9,319,506	8.8
Registered Nurses	3,495	605	14.8	142,908,580	12,040,671	7.8
Fishers and Related Workers	365	537	59.5	3,813,057	9,763,130	71.9
Sailors and Marine Oilers	732	536	42.3	17,043,417	8,917,431	34.3
Construction Equipment Operators	2,863	474	14.2	126,978,640	17,075,764	11.9
Welders, Cutters, Solderers	675	473	41.2	28,314,686	9,738,956	25.6
Food Preparation Workers	2,139	465	17.9	29,304,709	2,995,004	9.3
Food Serving Related Workers	1,636	459	21.9	14,796,055	1,916,032	11.5
Maintenance and Repair Workers	3,246	449	12.2	90,070,118	6,478,427	6.7
Airline Pilots	918	434	32.1	54,806,953	33,781,642	38.1
Dishwashers	1,074	427	28.4	6,908,758	2,081,873	23.2
Packaging Machine Operators	226	410	64.5	2,400,506	2,119,509	46.9
Receptionists and Clerks	3,167	407	11.4	49,099,882	2,690,232	5.2
Bartenders	1,796	378	17.4	21,723,893	2,140,680	9.0
Child Care Workers	2,080	371	15.1	18,212,520	1,437,393	7.3
Electricians	1,724	364	17.4	71,373,466	10,430,559	12.8
Captains Water Vessels	497	363	42.2	18,141,953	12,484,896	40.8
Office and Administrative Support	4,313	355	7.6	105,464,316	6,641,086	5.9
Counter Attendants	1,923	351	15.4	23,155,745	1,653,788	6.7

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section.

#### Nonresident Occupations by Industry

Although the total number of nonresident workers in an occupation or industry provides a good understanding of where employment and training opportunities exist, training providers and industry groups often want to know where training dollars should be directed within an industry. Table 4 shows the top nonresident occupations for several major Alaska industry sectors with a large number of nonresident workers.

Dist by Rep Koth



## General Teamsters Local 959 State of Alaska

ANCHORAGE, AK 99503, 520 E. 34TH AVE (907) 565-6265 FAX (907) 565-6265 GERALD L. HOOD, Secretary-Treasurer  
www.generalteamsters.com

FAIRBANKS, ALASKA 99707, P.O. BOX 70808  
JUNEAU, ALASKA 99801, 308 WILLOUGHBY  
KENAI, ALASKA 99811, P.O. BOX 8150

(907) 452-2852  
(907) 536-3225  
(907) 283-4498

FAX (907) 452-5051  
FAX (907) 536-1227  
FAX (907) 283-8080

April 29, 2002

### Via Telefax 465-5241

Senator Pete Kelly, Co-Chair  
Senate Finance Committee  
AK State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801

Re: House Bill 504 - Minimum Wage Fisheries Bill

Dear Senator Kelly:

I represent approximately 7,000 Teamster members around this state, and on their behalf, I go on record opposed to HB 504. Our mission within our local is to organize the unorganized and represent all workers to assure fairness and dignity in the work environment. As Secretary-Treasurer, I have said many times over the years, "What is negotiated today can be legislated away tomorrow with a stroke of a pen."

There are times when legislation is introduced that impacts workers and their rights. Many times those workers are unorganized and are never heard. I believe this to be one of those times. I believe this bill to be one of the most blatant instruments of oppression to come before this legislature in a while.

As many of you are aware, the fishing industry is a multi-billion dollar industry. Many of the workers are from out of state, or even out of country. Simply because they do not live here should not be a reason to treat them with any less dignity and respect than say our slope workers who live in Company accommodations.

It has been said that this bill corrects an inequity in current legislation. Under current regulation, if an employee is working in an area in the state, for example Ketchikan, which would have available housing, an employer could charge for their room and board. In this situation, the employee could choose to go elsewhere. If there are no alternative living quarters, then the employer cannot charge the employee. The employee has a choice if an alternative is available, if not, the employer provides. Is this inequitable?

According to one fish processor's website information, most of the work is "sliming" or cleaning fish. The environment is wet, cold and drafty. Sliming and other processing jobs require standing in one spot doing the same task for 16 or more hours a day, seven days a week in peak season. There are also periods of time when no work is available and the



April 29, 2002  
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employee must occupy their own time. Seafood processing is a very physically demanding job.

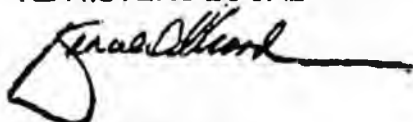
The living quarters for example on a processing plant hold 4 to 12 people per room. Recreation is limited and there is usually no shore time.

We ask that during your deliberation of this bill you ponder the public message you want to send. To reject this bill is to send a message to all workers in this state, including those in the processing plants on and off shore, that all workers deserve to be treated with dignity and respect and compensated fairly, no matter how menial the work they perform. To quote President G.W. Bush, "As we think what is possible, we must also think what is right." To force workers who are making minimum wage under the above conditions to now pay for room and board is unconscionable.

On behalf of all working men and women in this State, I ask you vote "no" on HB 504.

Respectfully,

TEAMSTERS LOCAL 959



Gerald L. Hood  
Secretary-Treasurer

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**House Bill 504 - Room and Board Deductions  
Preservation of Rights of Employers Other Than  
Fisheries Businesses**

April 22, 2002

House Bill 504 aids our fishing industry. If an employer engaged in a fisheries business provides room and board to employees, that employer may deduct a minimal sum from employee wages to offset the cost of providing room and board. The deduction must be reasonable. The employer may not make any profit from the deduction. But, if those conditions are met, the employer may take the deduction even if the remaining wage is below the statutory minimum wage. The employer may take the deduction even though the fishery business is conducted in a remote location where the employer's housing is the only housing available.

This concept is not new. Previously, in AS 23.10.085(c), we permitted the Department of Labor to authorize such deductions. However, it is unclear whether the Department's regulation, 8 AAC 15.160, authorizes room and board deductions in remote locations, or deductions that impact minimum wage. In House Bill 504 we intend to be precise: employers in a fisheries business may take these deductions.

Nothing in House Bill 504 alters the status quo with respect to room and board deductions that do not impact minimum wage. Such deductions are implicitly allowed by the Alaska Wage and Hour Act, AS 23.10.085(c). This has always been our intent. It does not matter whether a business is conducted in town or in a remote location. It does not matter whether the business is fisheries, logging, mining or some other enterprise. So long as the charge is reasonable, without profit to the employer, and customary in the industry, the charge for room and board is allowed.

# ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair  
Representative Brian Porter  
Representative Vic Kohring  
Representative Carl Morgan  
Representative Lesil McGuire  
Representative Ethan Barkowitz  
Representative Reggie Joule



Alaska State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-3777  
Fax: (907) 465-2819

## House of Representatives Rules Committee

### Sponsor Statement for HB 504

Since statehood, when the Alaska Wage & Hour Act was adopted, it had long been established that some Alaskan businesses, such as fisheries, operate under unique circumstances. In response, for authorized occupations that customarily furnished board and lodging, The Act, provided a mechanism for some flexibility in terms of paying wages.

AS 23.10.085 (c) provides that "the regulations may permit deductions by an employer from the minimum wage to employees for the reasonable cost as determined on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee."

Because of a conventionally modest minimum wage, the fishery business has rarely asserted the statutory option laid out in AS 23.10.085. As a matter of course, fisheries businesses pay their workers at, or slightly above the minimum wage for their regular 8-hour day, plus overtime paid at time and a half. In addition to their earnings, in many locations of the state, fishery workers are customarily furnished room and board for the term of their employment.

For the past 40 years, that arrangement worked quite well for both the fishery employer and employee. However, with the minimum wage poised to increase by 26.5% and annual adjustments for the cost of living, Alaska's beleaguered fisheries industry faces unprecedented financial disaster on all fronts. This industry can no longer absorb the cost of board and lodging at no cost to the employee.

The Wage and Hour Act authorizes deductions by an employer from the minimum wage payable to employees for the reasonable cost for furnishing board or lodging that is customarily provided. The enabling regulations allow for deductions below the minimum wage, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. However, the regulations, as written, do not treat seafood processing sites equally. Plants located in remote locations in the state are specifically excluded by the Department of Labor's regulations. In other words, a facility located in Petersburg can deduct room and board but a facility located in Akutan may not.

In order to insure that the fisheries business can rely on the clear language of the Wage and Hour Act, the regulations need to be cleaned up and compiled into a new section of the statute.

HB 504 utilizes language from 8 AAC 15.160 (d) to provide:

- the fishery employer and employee to contract the hourly wage that may be lower than the a minimum wage in consideration for accommodations that are customarily provided to their employees.
- The deduction will be presumed to be up to \$15 each day for combined room and board.
- The department shall allow a deduction higher than \$15 each day if the employer demonstrates to the department that the combined room and board is reasonable and without profit to the employer.

## HB 504

### An Act relating to the wages of people working in the fisheries business.

HB 504 has been introduced by request of Alaska's seafood processing industry that seeks intervention by the Alaska Legislature in overcoming regulatory impediments that preclude its benefiting from provision of Alaska statutes that originate in federal and common law. Alaska statutes permit an employer to take a credit the value of board or lodging as credit against payment of wages. In some situations, it authorizes deducting the reasonable cost of room and board from the minimum wage regardless of their urban or rural setting. Meanwhile, the Alaska Department of Labor permits this deduction only in areas where alternative public housing exists. Effectively, this precludes Alaska's remote seafood processors from using this just provision.

With the minimum wage set to increase to \$7.15, the remote processors have determined that they cannot afford to pay their employee's transportation costs, room and board expenses on top of their basic wage and overtime. For the first time, the fisheries business seeks the assistance of the Alaska Legislature to correct the Department of Labor's overreaching regulations. Unlike critics have claimed, supporting HB 504 does not set a disturbing precedence, it merely reiterates and clarifies what has been in Statute since Statehood. This is not a new exception, it is not a perk give to a special interest group. It is the law of the United States of America and it is the law of the State of Alaska as well. Unfortunately, the Department of Labor claims that their regulation is preeminent over state law. This is not right, it is not grounded in Alaska statute, in Federal law or regulation, nor is it supported by case law.

In 1948, there were 168 processors operating in Alaska. In 1988, there were 60. In the past dozen years, sites have been closed down due to fire, financing, soft markets, aggressive competition from international markets, consolidations, salmon disasters, fishing regulations. Today, Alaska's processing business faces disaster on every front and this year, with at least six sites shut down this season. Fishermen are receiving notices that there is no buyer for their fish.

We all know that this particular industry has been an integral piece of the Alaskan fabric for better or worse - since the late 1800's. Almost by definition, industries and vocations in Alaska, are situated at remote locations. The answer is simple: Alaska's industry has always been dominated by resource extraction. While some processing may become centralized, the historical and enduring fact is processing operations must take place in remote locations. Hence, the fisheries businesses tend to locate where the fish harvesting takes place rather than where the people build their communities. True, some Alaskan communities grew up around old canneries, more typical is the abandoned cannery site that harkens back to the first half of the 20<sup>th</sup> Century when Salmon was the king of Alaskan industry.

Parallel to Alaska's fishery and mining industries, was the development of the Fair Labor Standards Act, which gave rise to the minimum wage, regular time, over time and what defined a work week. In 1938, when that Act became the law of the land, all industries and businesses were forced to adapt. This included the Territory of Alaska and its mining, fishing and logging industries.

What impacts did the Fair Labor Standards Act have on territorial industries when it was adopted in 1938? Like all American industries, Alaskan businesses struggled to conform their operations to the new framework of federal minimum wage, regular pay and overtime rules. Nationwide, there was a period of adjustment marked by lawsuits and modifications to the Fair Labor Standards Act. Interestingly, one such lawsuit that resulted in a modification to the Fair Labor Standard Act was *initiated in Alaska*.

#### Walling v. Alaska Pacific Consol Mining Co.

In 1938, the Admiral of the Wage and Hour Division of the federal Department of Labor sued a remote gold mine that operated in the Talkeetna Mountains, 70 miles from Anchorage. The case arose following the effective date of the Act, as the Company had considerable concerns as to how they could best comply with the requirements of the FLSA. Attempting to achieve the pre-1938 status quo, the employees and employer willingly negotiated a contract to achieve the same level of wages by creatively "tweaking" regular time and overtime by using an algebraic formula. One of the holdings in Walling v. Alaska Consolidated Mining case interpreted Section 3(m) of the Fair Labor Standards Act to mean,

**"It seems clear that the cost of board and lodging customarily furnished employees must also be included in the regular rate particularly as Section 3(m) of the Act itself specifically provides that "wages" include the reasonable cost of such board and lodging....We must look 'not to contract nomenclature' but to all payments, wages, piece work rates, bonuses, or things of value forming part of the normal weekly income to determine the statutory regular rate."**

Note that at this remote mining operation, the employer did provide board and lodging. Some miners utilized this, others did not, yet the employer was not precluded from charging the employee's room and board, regardless of the remote location.

At statehood, Alaska adopted the Wage and Hour Act which also adopted this language from the Fair Labor Standards Act. At that time, while the Alaskan seafood processors were not exempted from the Wage and Hour Act (as were the commercial fishermen), deference was paid in the form of AS 23.10.085 (c). Taking language from the federal Fair Labor Standards Act, this statutory provision provides a mechanism for flexibility in terms of the minimum wage.

#### **I. Alaska Statute**

The statute promulgated by the Alaska Legislature in 1959 states:

**"The regulations may permit deductions by an employer from the minimum wage applicable under the Wage & Hour Act 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." AS 23.10.085 (c)**

No doubt about this, the Wage and Hour Act permits deductions by an employer, on an occupation basis, from the minimum wage payable to employees for furnishing board or lodging that is customarily provided. Clearly, the seafood processors fit that description. In fact, this statute is permissive, in that it applies to *all employers* that customarily furnish board or lodging to their employees.

Next, we consider how that statute is treated by its enabling regulations.

#### **II. Enabling Regulations: 8 AAC 15.160**

The enabling regulations allow for deductions, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. The enabling regulations promulgated by the Alaska Department of Labor not only mimic the verbiage of the Fair Labor Standards Act, but 8 AAC 15.160(f) demonstrates that AS 23.10.085(c) and its enabling Regulations are utterly integrated. 8 AAC 15.160(f) stipulates that:

**(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if**

- (1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;**
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and**
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.**

**(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.**

(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3 - 531.5 and 531.29 - 531.35.

We assert that the Department of Labor has made an error in promulgating 8 AAC 15.160(d)(1) in that no authority independent of the Department's internal policy authorizes restricting deducting the cost of board and lodging to essentially rural areas of the state.

Not only is 8 AAC 15.160(d)(1) **NOT** supported by Statute or the federal Fair Labor & Standard Act, but it has distinct colors of Equal Protection violations. The Alaska Department of Labor's regs clearly treat remote or rural industries differently than urban industries.

Regulations not only alludes to provisions [Title 29, Chapter 8, Section 203.3(m)] in the Fair Labor Standards Act that discuss how "reasonable cost" of "furnishing" "board or lodging" that is "customarily" "furnished" by the employer and used by the employee, **THEY ACTUALLY CITE FLSA'S REGULATIONS WHEN MAKING THE DETERMINATION.**

### III Fair Labor Standards Act of 1938

Title 29, Chapter 8, Section 203.3(m) states:

**"Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded there from under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and ... defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to -**

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

### IV. FLSA's Enabling regulations in the Code of Federal Regulations

(These definitions and interpretations are critical to the discussion as they are cited by 8AAC 15.160 - *The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3-5 and 531.29-35. These items from the federal code interpret the Fair Labor Standards Act from which Title 29, Chapter 8, Section 203.3(m) is rooted in.*

**Title 29 - Labor**

HB 504 Position Paper  
Representative Peic Kott

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**Part 531 Wage Payments Under the Fair Labor Standards Act of 1938**  
**Subpart B – Determinations of “Reasonable Cost” and “Fair Value”; Effects of Collective Bargaining Agreements:**

**“reasonable cost”**

**29 C.F.R. 531.3**

- (a) The term reasonable cost as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.
- (b) Reasonable cost does not include a profit to the employer or to any affiliate person.
- (c) Except whenever any determination made under Section 531.4 is applicable, the “reasonable cost” to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5.5 percent) for interest on the depreciated amount of capital invested by the employer: Provided, that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term “good accounting practices” does not include accounting practices which have been rejected by the IRS for tax purposes, and the term “depreciation” includes obsolescence.
- (d) (1) The cost of furnishing “facilities” found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.  
(2) The following is a list of facilities found by the Administrator to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:
  - i. tools of the trade and other materials and services incidental to carrying on the employer's business;
  - ii. the cost of any construction by and for the employer;
  - iii. the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

**Making determinations of “reasonable cost”**

**29 C.F.R. 531.4**

- (a) Procedure. Upon his own motion or upon the petition of any interested person, the Administrator may determine generally or particularly the “reasonable cost” to the employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employee. Notice of proposed determination shall be published in the Federal Register... Consideration shall be given to all relevant matter presented in the adoption of any rule.
- (b) Contents of petitions submitted by interested persons. Any petition by an employee or an authorized representative of employees, an employer or group of employers, or by other interested persons shall include the following information:
  - 1. The name and location of the employer's place or places of business;
  - 2. A detailed description of the board, lodging, or other facilities furnished by the employer or employers, and whether or not they are alleged to constitute “wages;”
  - 3. the charges or deductions made for the facility or facilities by the employer or employers;
  - 4. When the actual cost of the facility or facilities is known an itemized statement of such cost to the employer or employers of the furnished facility or facilities;
  - 5. the cash wages paid;
  - 6. the reason or reasons for which the determination is requested, including any reason or reasons why the determinations in Sec. 531.3 should not apply; and
  - 7. whether an opportunity to make an oral presentation is requested; and if it is requested, the inclusion of a summary of any expected presentation.

**making determinations of “fair value.”**

**29 C.F.R. 531.5**

- (a) Procedure. The procedures governing the making of determinations of the “fair value” of board, lodging, or other facilities for defined classes of employees and in defined areas under section 3(m) of the Act shall be the same as that prescribed in Section 531.4 with respect to determinations of “reasonable cost.”

- (b) Petitions of interested persons. Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "fair value" under section 3(m) of the Act shall contain the information required under paragraph (b) of section 531.4 and in addition, to the extent possible, the following:
- i. A proposed definition of the class or classes of employees involved;
  - ii. A proposed definition of the area to which any requested determination would apply;
  - iii. Any measure of "fair value" of the furnished facilities which may be appropriate in addition to the cost of such facilities.

**Title 29 - Labor**

**Part 531 - Wage Payments Under the Fair Labor Standards Act of 1938**

**Subpart C - Interpretations:**

**Board lodging, or other facilities 29 C.F.R. 531.29**

Section 3(m) applies to both of the following situations:

- a. where board, lodging, or other facilities are furnished in addition to a stipulated wage; and
- b. where charges for board, lodging, or other facilities are deducted from a stipulated wage.

The use of the word "furnishing" and the legislative history of this section 3(m) clearly indicate that this section was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions or deductions from wages.

**"Furnished" to the employee. 29 C.F.R. 531.30**

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced.

Turning to the case law on how the federal court held relative to the essential quality that acceptance be voluntary and uncoerced, . See *Williams v. Atlantic Coast Line Railroad Co.* (E.D.N.C.). 1 W.H. Cases 289\*.

\*this case is unlocatable, but another case, on point that cites Atlantic Coast for its authority is *Davis Brothers v. Raymond Donovan, Sec'y of Labor*. This case is cited in the Federal Code as an authoritative interpretation of the issues of "furnished" and "voluntary and uncoerced. In 1983, the Secretary of the Department of Labor makes essentially the same argument that the Commissioner of the Alaska Department of Labor makes, but the federal court holding struck down the Secretary's interpretation of wage. A copy of this case is attached.

**"Customarily furnished." 29 C.F.R. 531.31**

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of the requirement if the facilities are furnished regularly by the employer to his employees or if the same or similar facilities are customarily furnished by other employees engaged in the same or similar trade, business, or occupation in the same or similar communities. Facilities furnished in violation of any Federal, State, or local law, ordinance or prohibition will not be considered facilities "customarily" furnished. *Note: from this case is the first judicial interpretation that board and lodging can be considered wage. It arose from a remote mine in the Talkeetna Mountains in 1938. The case has never been overturned and continues to be referenced in the Federal Code for its authority*

**"Other facilities" 29 C.F.R. 531.32**

- (a) "other facilities," as used in this section must be something like board or lodging. The following items have been deemed to be within the meaning of the term: Meals furnished at company restaurants or cafeterias, or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees, housing furnished for dwelling purposes; general merchandise furnished at company stores

In conclusion:

At best, the department of Labor's offensive regulation 8 AAC 15.160(d)(1) is misguided. The Legislature delegated to the agency the authority to formulate policy in carrying out this statute, but instead, they took this too far. While the Department allows some employers to take a credit on the cash component of their wage obligation for board and lodging regularly provided, it disallows it for others. Rather than making the determination on an occupational basis, the Department of Labor discriminates between remote and non-remote locations. The Department asserts that if the employee has no alternative board and lodging available, they cannot make a meaningful choice to accept the cash credit for the accommodations. This is not right, it is not grounded in Alaska statute, in Federal law or regulation, nor is it supported by case law.

**CS FOR HOUSE BILL NO. 504(FIN) am**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 4/17/02**  
**Offered: 4/16/02**

**Sponsor(s): HOUSE RULES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the wages of people working in the fisheries business."**

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

3 **\* Section 1. AS 23.10 is amended by adding a new section to read:**

4 **Sec. 23.10.072. Wages for fisheries businesses.** An employer who engages  
5 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount  
6 that is reasonable and without profit to the employer each eight-hour paid day worked  
7 from the applicable minimum wage paid to an employee working in the fisheries  
8 business for the combined cost of board and lodging the employer furnishes to the  
9 employee. A deduction up to \$15 each day for combined room and board shall be  
10 presumed to be a reasonable amount without profit to the employer. The department  
11 shall allow a deduction higher than \$15 each day for combined room and board if the  
12 employer demonstrates to the department that the cost to the employee is reasonable  
13 and without profit to the employer. A deduction made under this section may be made  
14 only if it is based on a negotiated union agreement or a written agreement with the  
15 employee entered into at the time of hire that specifies the daily rate of deductions for

I room and board.

CS FOR HOUSE BILL NO. 504(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

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1

board.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 504 (FIN)  
(H) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Labor & Workforce Dev.  
Title: Minimum Wage for Workers In Fisheries BRU: Labor Standards & Safety  
Sponsor: House Rules Component: Wage & Hour  
Requestor: \_\_\_\_\_ Component Number: 345

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

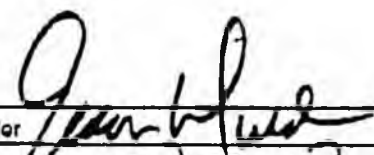

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder  Phone 465-2647/465-3424  
Co-Chair  
Representative Bill Williams  Date \_\_\_\_\_  
Co-Chair

# Statute

§ 23.10.085

LABOR AND WORKERS' COMPENSATION

EMPLOY

(3) require and subpoena from an employer a statement in writing, when the representative considers it necessary, of hours worked by and the wages paid to each 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 as 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 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 this chapter. (AS 23.10.050 — 23.10.150.)

(b) The regulations may, without limiting the generality of (a) of this section, define the 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 of board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(2) ch 171 SLA 1959)

## NOTES TO DECISIONS

This section and AS 23.10.096 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, 633 P.2d 1716, 72 L. Ed. 2d 137 (1982).

Applied in Alaska Int'l Indus., Inc. v. Musarra, 633 P.2d 1240 (Alaska 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 AS 44.62 (Administrative Procedure Act). (§ 6(2) ch 171 SLA 1959)

## NOTES TO DECISIONS

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

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

**Sec. 23.10.100. Employment records.** (a) An employer who has employed an employee for at least three years at the time of the hearing shall maintain records of the address, and occupation of each employee, and other payroll records for each employee, and other payroll records for each employee, and other payroll records for each employee. (b) The commissioner or the representative may require the employer to produce the employer's records at the hearing. The commissioner or the representative may also require the employer to produce the records, and the commissioner may require the employer to produce the records.

Public policy interest in the amount and extent of the employee's wages. The burden of proof in an action under the Wage and Hour Act is not shifted to the employer in a proceeding to determine the amount and extent of the employee's wages.

**Sec. 23.10.105. Post-employment records.** The commissioner shall keep records of the names of all persons who are employed. An employer shall request without charge.

**Sec. 23.10.110. Remedies.** (a) An employer is liable to an employee for overtime compensation, and for an additional equal amount.

(b) An action to recover overtime compensation from an employer is liable may be brought for other employees. The filing of an agent or representative shall be filed in the court. The amount to be recovered shall be the amount to be recovered. The commissioner may take such action as is necessary to collect the amount to be recovered.

(c) The court in an action brought under this section, reasonable costs of actions brought by the commissioner to the Department of Labor, and the filing fee or other costs of the action against the employer.

principal. To qualify for the exemption, all the requirements set out in ch. 5 of this title relating to the

Under this section will not be less than 75 established under AS 23.10.065.

Minimum wages for full-time students Fair Labor Standards Act of 1938, as implemented in 29 C.F.R. 519.1 — Payment subject to the provisions of Register 68)

AS 23.10.085

**FOR SEARCHING FOR PLACER**

The exemption from AS 23.10.050 — 23.10.055(10) applies to those activities "directly related to the search for a mineral source" and does not apply once development of a known mineral source has begun.

AS 23.10.085

**FOR INDIVIDUALS UNDER 18**

**EMPLOYEES.** The exemption from AS 23.10.055(11) does not apply to an individual normally within the family of an employer normally employed in excess of 30 hours. (Eff.

AS 23.10.085

**ON DETERMINING THE NUMBER OF EMPLOYEES**

AS 23.10.060(d)(1). In determining the number of employees an employer employs for purposes of AS 23.10.060(d)(1), all employees of a corporation who actively engage in mining operations will be counted regardless of whether they are full-time or part-time worked. (Eff. 12/9/78, Register 68; am

AS 23.10.085

**ON DETERMINING OPERATIONS.** (a) For purposes of AS 23.10.060(d)(1), "mining operations" means the cumulative operations are carried on during a period of 20 weeks.

(b) The payment for overtime under AS 23.10.060(d)(1) is not required for employees engaged in small mining operations is

Regs

available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060

AS 23.10.060

AS 23.10.085

**ARTICLE 4. REDUCTION OF WAGES.**

Section	Section
160. Deductions from an employee's wages	165. Purchase of uniform or equipment

**8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S**

**WAGES.** (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or overtime rates, or if it would require an employee to reimburse the employer for any of the following:

(1) customer checks returned due to insufficient funds or any other reason;

(2) non-payment for goods or services as a result of theft or credit default;

(3) cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;

(4) lost, missing, or stolen property, unless the employee admits, willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or

(5) damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting

in the employer's behalf or interest may derive any profit or benefit from the transaction.

(c) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

- (1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3 — 531.5 and 531.29 — 531.35.

(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, in clean and in a state of good repair, of uniforms or equipment issued by the employer, if

- (1) the deduction is based on a written agreement;
- (2) the total deposit does not exceed the cost of the item; and
- (3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.

(h) An employer shall give each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;

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 reimburse an employer for transpor-  
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- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) Federal Insurance Contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/3/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.095  
 AS 23.10.060 AS 23.10.085

**8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT.**

An employer may not require an employee to purchase a uniform or equipment if

- (1) the uniform or equipment is required by the federal state, or local safety or health codes, or
- (2) the nature of the employer's business requires the use of either and if the uniform or equipment
  - (A) is distinctive and advertises or is associated with the products or services of the employer; and
  - (B) cannot be worn or used during normal social activities of the employee. (Eff. 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.035 AS 23.10.095  
 AS 23.10.065

**ARTICLE 5. PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.**

Section 175. (Repealed)	Section 180. Investigations, conferences and persuasion
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**8 AAC 15.175. ASSIGNMENT OF CLAIM** Repealed 9/28/85.

**8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION.** (a) The labor standards and safety division will investigate potential violations of AS 23.10.050 — 23.10.150 on its own motion.

(b) If, after an investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 — 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

- (1) the division will provide the employer believed to have violated AS 23.10.050 — 23.10.150 with a copy of the assignment or a description of the alleged violation and inform the employer of the results of its investigation; and

Dayhoff v. Tomaco Helicopters, Inc., 772 P.2d 1025 (Alaska 1989).

person fails to comply or refuses to produce evidence may be lawfully interrogated by a prisoner or an authorized representative in the case of disobedience or refusal to testify before it. (§ 9(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

§ 23.10.150 — 23.10.150 do not limit the right of an authorized representative of their own choice to file a complaint or to bring a claim for a minimum wage or overtime pay shorter than the applicable statute. (71 SLA 1959)

§ 23.10.150 — 23.10.150 for unpaid minimum wage or overtime compensation under AS 23.10.050 — 23.10.150 after the cause of action accrues may be started on the date when the cause of action accrues. (7 ch 59 SLA 1982)

§ 23.10.150 — 23.10.150 on tolls statute. — Department of Labor's enforcement actions are a form of quasi-judicial relief; the statute of limitations for a statutory wage claim with the department tolls the statute of limitations. (Tomaco Helicopters, Inc., 772 P.2d 1025)

§ 23.10.150 — 23.10.150 on complaint tolls statute. — When a plaintiff files an initial motion to certify a class action, the trial court reserved the plaintiff's right to file a motion for certification again after further discovery. The statute of limitations was tolled from the original class complaint. (Fred Meyer v. Adams, 963 P.2d 1025 (Alaska 1998))

§ 23.10.050 — 23.10.150 if an authorized representative of the employee is not available for the enforcement of AS 23.10.050 — 23.10.150, an authorized representative to the employee as required under the provisions of AS 23.10.050 — 23.10.150 shall be accessible, or to furnish a sworn statement as required for the enforcement of AS 23.10.050 — 23.10.150 by a prisoner or an authorized representative of the employee as required by AS 23.10.050 — 23.10.150 against an employee because the employee is a prisoner or has caused to be instituted against him or her, or has testified or is about to testify in a proceeding against the employee, or has testified or is about to testify in a proceeding against the employee.

§ 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 30 days, or both. Each day a violation constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

NOTES TO DECISIONS

Noted in Gore v. Schlumberger Ltd., 703 P.2d 1025 (Alaska 1985).

§ 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)

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

NOTES TO DECISIONS

Applicability of federal regulatory definitions. This section directs the courts to apply federal 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 state regulations, pursuant to the authority under AS 23.10.085 and 23.10.095. (Dresser

Indus., Inc. v. Alaska Dept of Labor, 633 P.2d 985 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S.Ct. 1716, 72 L. Ed. 2d 137 (1982).

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.050. (McGinnis v. Stevens, 643 P.2d 1221)

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.]

Article 4. Employment of Children.

Section

- 355. Purpose
- 360. Exempt employment
- 362. Authorization for children under 17 to work
- 365. Employment of children under 14
- 370. Children under 16
- 375. Employment of person under 18

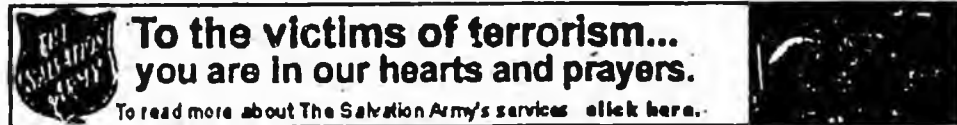
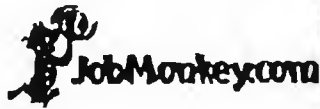
Section

- 355. Persons under 21
- 360. Regulations for minimum standards and work opportunities
- 365. Enforcement
- 370. Penalty

Collateral references. — 53 Am. Jur. 2d, Master and Servant, § 154.

51B C.J.S., Labor Relations, § 1021.

Sec. 23.10.325. Purpose. It is the purpose of AS 23.10.325 — 23.10.370 to establish protective standards for child labor to the end that their health, morals, education, and future welfare will be protected during the formative years and to the further end that any abuses or unjust exploitation of this labor will be effectively prohibited. (§ 1 ch 73 SLA 1949)

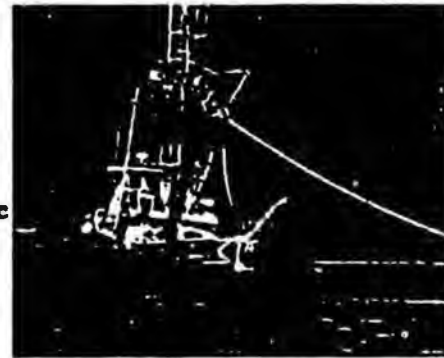


## Alaska Fisheries Home

- [Working In Alaska](#)
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## FOREWORD

In our modern, computerized, industrialized world, there are few places left on the planet that can still be considered frontier lands. Alaska is one of these frontiers. Sure, Alaska, the state once known as Seward's Folly, now has many modern cities such as Juneau, Anchorage, and Fairbanks, but most of the state is still a wilderness. The state's population density is only one person per square mile, compared to 71 people per square mile in the rest of the U.S.



This is just the spot for people with an adventurous spirit! And working in the Alaskan Fishing Industry is a great way to stay in this beautiful state for an extended visit, whether you're a college student on summer break or just someone who'd like to explore his or her horizons.

While the fishing industry has had its ups and downs, there is always a demand for young, energetic people from all over the country to help out on both onshore and offshore processors. Most of these jobs require no previous experience, just a willingness to work hard and an enthusiasm for exploring a rough and rugged lifestyle.

Alaska fish processing companies offer many benefits to their employees, including good wages, free lodging and meals, and often free transportation to and from Alaska if you fulfill all your contractual obligations. Jobs include working on the processing line, operating machinery, being a deckhand, quality control, or even finding a job as a government inspector or aquaculture scientist.

JobMonkey will tell you all you need to know about working in the Alaskan fishing industry. You'll get an overview of the industry, honest and frank portrayals of the working conditions, interviews with people who have actually worked there, a long list of job descriptions, tips on packing and safety, profiles of the various towns and cities, an introduction to the types of fish and crustaceans that are harvested, information about housing, and much more!

The information compiled here was written by people who have actually traveled to Alaska and worked in its fishing industry. We began hardcore research on Alaska fisheries employment in 1985, including annual summer trips to nearly every coastal fishing town and processing plant and meeting with hundreds of workers and employers, so we know what we're talking about! Read these pages, and you'll get the whole scoop. You'll not only be prepared for your foray up North, but you'll also be able to impress employers with your extensive knowledge, which will give you a distinct advantage in any interview you may have.

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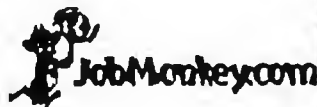
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## GENERAL OVERVIEW

In this section we discuss the nitty-gritty of working at a processing plant. The majority of first-time workers find a position within this branch of the commercial fishing industry, either at an onshore processing facility or on board a floating processor. We have included job descriptions, hiring practices, and an overview of each type of processor.

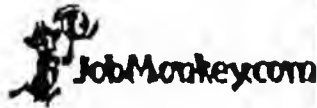
Some fishing vessels do their own processing right on board. Many in the crabbing industry, for example, work on boats that have been converted to combination catcher/processor vessels. These vessels might also buy other boats' catches and process them in addition to their own.

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## ACCOMMODATIONS

Many processing plants offer some or all of their employees fully or partially subsidized dormitory or camping facilities. The more remotely located plants almost always provide housing to all of their employees. Partially subsidized housing can cost \$2-\$8 a day for a tent platform at the local city-operated tent city, or up to \$15 per day for a nice dormitory-style room. Fortunately, many plants refund all housing costs to those employees who stay for the duration of the season, rewarding them for their dedication. You will find that costs vary from place to place. You may also find that a few companies even pay employees extra wages to seek housing elsewhere. Free housing can range from a nice dorm room to a place to pitch your tent.

For the most part, plants that have on-site dormitories or bunkhouses give employees a room that is shared with one to five other people. Better facilities have a television, VCR, laundry room, and shared bathrooms with showers. It's quite common to find the cafeteria (if they have one) next door. During our travels through salmon country, we have seen living quarters located right next to the main processing house, directly across the street, and spread out over the company's property. It seems every company has its own plan and every set of living quarters its own best—and worst—attributes. On a recent trip, we saw that one large company had actually brought a barge up from Seattle, parked it next to the plant, and had put temporary portable housing units onto it. In yet another town, one small processing plant had converted an old school bus into sleeping quarters just behind the facility.

For more information about onshore accommodations, see Heading North and Thriving.

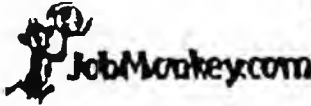
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## PLANT STRUCTURE

Processing operations in Alaska come in all shapes and sizes. During our journeys, we've toured almost every plant in Alaska. Some have hundreds of employees that feel more like huge unrelenting factories and others operate with only a dozen employees and have a family feel. Despite the difference in size, operational features at most company plants are the same.

Most plants are located on piers so that boats may dock-up and off-load their product. The plants themselves feature a main processing house in which the fish are processed and then later frozen or canned, and an egg house where salmon eggs are processed and boxed for shipment overseas. Many plants have additional features like on- or off-site living quarters (dormitories or camping areas), a cafeteria, and general offices. Plants are either centrally located in town or far from civilization, but they are always near active and productive fishing grounds.

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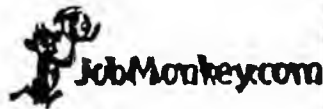
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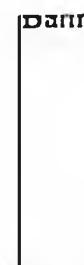
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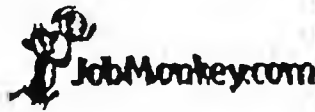
# KNOWING THE MIGRATIONS

Fishermen, processors, and deckhands alike should know when to be in a particular region so they can take advantage of work opportunities. Knowledgeable processors and deckhands often will work in many different regions during a single summer in order to hit the peak times in each and maximize their earnings. On a recent summer research trip to Southeast Alaska we met several college students who had been following salmon migrations from north to south, hitting fishing and processing peaks in several regions. One student had worked in Kenai during early and mid-July and had made his way to Ketchikan by mid-August to finish out the season. This type of story is not uncommon.

Because it's relatively easy to predict yearly salmon runs, it is fairly simple to decide on your employment plans. Salmon usually will arrive in an area no more than one or two weeks ahead of or behind schedule. Once you know when a salmon season begins in a particular region, you should try to get there just ahead of the peak to find processing plants looking for workers.

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## SUMMER FISHERIES REGIONS

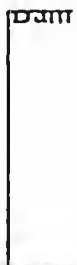
Alaska fishing grounds can be broken down into five distinct regions, each with its own peak season, employment opportunities, and types of fish. Region 1 is Southeast Alaska, where the major fisheries are salmon, halibut, cod, crab, and herring. Region 2, covering Prince William Sound and the Kenai Peninsula, is primarily fished by purse seiners and gillnetters in search of pink and sockeye salmon. Region 3, Kodiak Island, is home to eleven seafood processing plants, many of them operating year-round. Region 4 is the Alaska Peninsula and the Aleutian Islands, which includes Dutch Harbor and is the center of the winter fisheries. Region 5, Bristol Bay, has one of the world's richest salmon runs. Though the season is very short—lasting just over six weeks—it is considered the most lucrative fishery in North America.

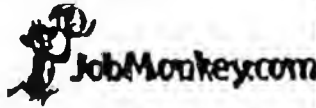
The chart below shows the peak months for each of the five fishery regions. This will give you a general idea as you read through this information where the most opportunities are for new workers. In City Profiles we list individual town profiles with employer information so you can narrow down your job search.

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Though traditionally busiest in summer, much of the fishing industry now operates year-round. Some fisheries, like those in Kodiak, the Aleutian Islands, and the Alaska Peninsula, employ many workers during the winter months, and provide other opportunities for year-round employment. Also, floating processors, factory longliners, and crab catcher/processors operate during winter. The fisheries active during the winter or on a year-round basis include crab and most species of groundfish.

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## SEASONAL OPPORTUNITIES

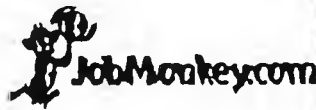
Autumn in Alaska means the end of the bustling salmon season and a shift to a variety of other fisheries throughout the state. Numerous employment opportunities exist during this period in all three major sectors of the industry—onshore processing plants, offshore processing vessels, and harvesting vessels.

Factory trawlers harvest during most of the fall, winter, and spring months. In fact, the most lucrative time to work on a factory trawler is during the Pollock A season, which extends from late January through February. Factory longliners also harvest the bulk of their fish during these non-summer months. The majority of crab are caught during the late fall and early winter months by both individual crabbing boats and the larger crab catcher/processors. During the fall and spring months hundreds of boats also fish for halibut, sablefish, and a variety of species of groundfish. In addition, the sac roe herring fishery also takes place during spring.

While fewer fishing and processing positions exist during winter, far fewer people are looking for jobs, so your chances of getting hired during the winter are still excellent. However, winter hiring practices are generally different from summer salmon hiring practices. First, almost all winter hiring is done from the corporate offices, usually located in Seattle. Because the onshore facilities are generally located in more remote locations, very little hiring is done at the facilities. It is not recommended that you travel to Alaska seeking employment during the non-summer months without a prearranged job. Secondly, the majority of winter employees are provided free room and board and round-trip transportation from Seattle, a benefit not as often afforded summer workers. A third major difference in winter hiring practices is that the employers are often looking for a longer commitment. For example, in the summer fisheries, some companies offer contracts that are six to eight weeks in length. In the winter fisheries, many companies require three- to six-month contracts. Finally, most processing work is either done offshore or in onshore processing facilities in Region 3 (Kodiak Island) and Region 4 (Alaska Peninsula and Aleutian Islands). Because Region 3 lends itself to a more permanent, year-round processing crew, Region 4 should be your main focus for onshore processing positions during the fall, winter, and spring months. The bustling town of Dutch Harbor in Region 4 is the hub of the non-summer fishing industry. If you desire an offshore processing position during these non-summer months, such as on a factory trawler, floating processor, factory longliner, or crab catcher/processor, please refer to the sections regarding these opportunities.

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## SUMMER PROCESSING

During the peak of a productive salmon season, first-time workers put in twelve- to eighteen-hour days, seven days a week. They are paid base wages ranging from \$5.50 to \$6.50 per hour with returnees earning even more. Substantially boosting one's earnings is overtime pay, calculated at one and one-half times the normal rate (\$8.25 to \$9.75). Performance bonuses and extras (30¢ to 50¢ per hour worked for the freezer crew), are also commonplace. Raises are typically given after an employee has worked 300 hours (about a month) and your hours often carry over from year to year.

In the words of a seasonal worker:

*"I came up here to make money and expecting to hate it, but I managed to have a blast and went home with enough money to buy a car."*

Working conditions? Many specific jobs require the employee to stand in one place for long periods of time, performing repetitious tasks. However, there can be great variance between one type of job and another, and the foreman may frequently assign individual employees to different tasks on a weekly or daily basis. You could be working inside or outside, in the freezer or warehouse.

One worker pointed out that the job really isn't as bad as it sounds:

*"Though it was real repetitive work, sliming really wasn't that bad. They played good tunes and fed us real well. The management was much cooler than I expected."*

Variety exists, but newcomers or "green" workers should be aware that they will probably begin as slimers or egg house employees. Hard workers may spend only a short time sliming (a few days to a week) before moving on to a better job and added responsibility.

Although working in a fresh frozen plant or cannery can mean long hours and cold, wet work, it's not all bleak! Most companies give employees paid ten-minute breaks every two hours and longer meal periods every four hours. If you are working at a plant that has a cafeteria and company-provided food, take comfort in the fact that you can eat very well at a low cost (or free). Many operations even provide donuts, fresh fruit, and coffee during shorter break periods. So, if you regularly put in fifteen-hour days you are assured of several breaks and meals. Additionally, during your breaks, you'll have the opportunity to meet people, talk to those you have been working with on the slime line, and make friends. As one worker said:

*"They expected us to work long, hard hours; however, they treated us fairly. They did everything possible to make the bunkhouse pleasant. The meals and break snacks were delicious."*

In order to give you a better idea of the kind of work available, we have put together the

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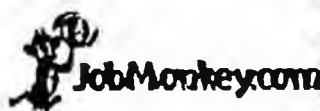


In order to give you a better idea of the kind of work available, we have put together the list of jobs below. Though each plant has its own crew structure, these jobs are commonly found at canneries and fresh frozen plants.

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## FRESH FROZEN PLANT JOBS

### Slime line positions

**Belly slitter:** The slitter uses a fillet knife to cut a slit from the throat to the end of the abdomen and then sends the fish to the next station.

**Head decapitator machine:** Usually two people work this machine, but this depends upon the size of the plant and how many slime lines are going. Basically, fish are fed into this "guillotine," beheaded, and moved down the line.

**Gut puller:** Workers on the slime line, often positioned after the belly slitter, pull out guts and egg sacs as fish are passed to them. In many plants, a machine does this task.

**Spooning:** This is the process of cleaning out any leftover guts and removing the organs that run down the spine of the fish.

**Washing:** This is done manually with a small hose or by machine. The machine is sometimes like a dishwasher, showering fish with ice water as they come down the line. Usually, one or two people are in charge of running fish into the washer.

**Fish grading:** Graders are at the end of the slime line. These people separate the fish into three or four grades: 1=excellent, 2=good, 3=fair, 4=mushy (not fit for human consumption). After grading, individual fish are sorted into bins.

**Weighing:** Fish are slid quickly onto a scale and then sorted into bins according to their size.

**Sorting:** People in this position ensure that fish are placed into proper bins according to type of fish, size, grade, and weight.

**Tray stacking:** Often fish go directly from the scales at the end of the slime line onto trays that are stacked on rolling racks. Once the racks are loaded, they are wheeled to the walk-in freezer room.

### Freezer crew

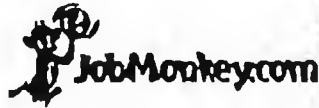
**Glaze line:** Workers here break frozen fish from their trays and run them through a brine solution before packing.

**Packing room:** Frozen fish are packaged according to classification and readied for shipment. Workers move pallets, label boxes, and ensure proper loading of fish.

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## SALMON PROCESSING JOBS

### General summary of positions

**Iron chink machine:** These are machines (some dating from the 1930s) designed to cut the head, tail, and fins from the fish. Also, the machine crudely guts the fish and separates out egg sacs. Up to two people are responsible for feeding fish into this amazing machine (not every cannery will have the same type of machine). Unlike fresh frozen facilities which process many species of salmon, canneries typically process only pink (humpy) and sockeye (red) salmon.

**Slime table:** After the iron chink, fish go directly to the slimers who clean out remaining guts, wash, and grade the fish. From here, the fish are fed into the filler machine which fills cans with fish.

**Patch cutter:** Oversized and undersized fish are sorted out and sent to the patch cutting table. Here fish are cut into small pieces that will be used to bring cans up to a certain weight.

**Filler:** This is a machine that basically slices and dices fish to fill the cans. Usually, one or two people work here to feed the fish into it properly and make sure it comes out without any problems.

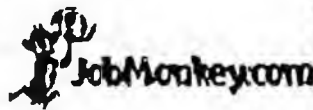
**Patching table:** Underweight cans go to the patching table where workers take individually cut pieces of fish and place them in the cans. After the cans are filled, they are sent back to the can line and fitted with lids.

**Cooking (retorts):** After lids are put onto cans, they end up in large metal rolling bins. Many workers see to the proper loading and transfer of these bins into retort cookers. These cookers hold the bins for approximately seventy or ninety minutes (depending on the size of the cans). Working in the retort oven rooms can be hot, but you do stay dry.

**End of line:** This is a separate crew in charge of removing bins full of cooked cans from the retorts and wheeling them into a cooling area.

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# GENERAL PROCESSING JOBS

## Outside work

**Beach crew (dock crew)** This crew greets the incoming boats and helps the boat crew unload their holding tanks. Sometimes a large "fish vacuum" is used to withdraw fish. Tender boats operate a little differently, often packing fish into iced plastic crates where they are later lifted up by a small crane. Beach crews sort fish into rolling bins according to species before taking them to the processing line.

**Ice and bait:** Some plants supply tender boats (which often work for the plant) and other fishing vessels with ice, bait, and other things like soda pop, groceries, and living necessities. Ice and bait are sometimes supplied free of charge to vessels.

## Inside work

**Britestacks:** After cooling, cans are sent via conveyor belt to a warehouse area where a machine, generally a big magnet, palletizes them. Several employees work in this noisy environment. One operates the machine, making sure cans end up in the holding area right-side up, while another employee assists. Two other people stack and move the filled pallets.

**Night clean up:** Many plants operate on a twenty-four-hour schedule. They process during the day, and in the evening they thoroughly clean the plant. The crew spends a lot of time hosing down bins and slime lines, cleaning machinery, and doing other tasks to reduce the risk of fish contamination.

**Forklift driver:** This is a rather specialized position. Pallets, boxes, and heavy ice-filled bins need to be moved by a fork lift. Usually, only the most tenured employees can hope to get this job.

**Truck loading:** This is considered to be a warehouse position. Boxes and crates are loaded into trucks and vans which take them to container ships or the airport for shipment.

**Office staff:** This can include reception, accounting, payroll, filing, and order processing. Office staff also put in long hours, but these jobs usually are filled by people with "connections" or returning employees.

## The egg house

Canneries and fresh frozen plants make additional profits from the sale of salmon roe (eggs), usually to Japanese or other foreign-owned companies. In many Asian countries, salmon roe and caviar are in high demand. On the grounds of almost every plant, you will find what is often referred to as the "egg house," where the careful processing of

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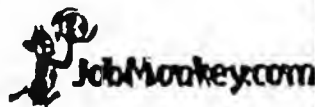
Working in the egg room is less hectic than working on your average slime line. There's often less noise, little in the way of fish guts, and it's a bit drier; note, however, that it is quite monotonous. Here's a quick breakdown of the process: skeines of eggs (the long egg-filled sacs taken from the salmon) that have been removed by slimers are put into baskets and weighed, agitated in a sodium nitrate brine solution (in large stainless steel vats), graded by technicians, sorted into boxes according to quality and size, sometimes salted (for preservation and taste), and, finally, packed artistically into boxes for overseas shipment. The packing process is quite an art, actually. Many egg houses also make caviar, which entails breaking skeines of eggs down into single eggs before packing. Workers are almost always supervised by a technician from each of the foreign companies to which the cannery or fresh frozen plant sells (usually three or four). The technicians, called sujiko technicians, are present to supervise the enforcement of quality controls. Women are often given first shot at these positions because their hands are usually smaller, and thus better able to get at the eggs. The bottom line on egg room work: employees assigned to the egg room should be prepared to stand at a table packing eggs into boxes for many long hours.

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## OTHER FISHERIES

During the summer many fresh frozen plants process cod, sablefish, snapper, and other species of fish concurrently with salmon; however, the majority of this processing occurs during other times of the year. Crabbing, halibut, groundfish, herring, and shellfish harvests (see [charts](#)) combine to provide many onshore processing plants with year-round work.

### Bottomfish

Bottomfish processing is far more automated than salmon processing, but still requires quite a few workers in the inspection, freezing, and packing phases. Most flatfish are simply put in a block and frozen whole. Another common process is to take the head and tail off, leave in the guts (called kirimi), and then freeze the fish. Flatfish are difficult to fillet by hand, so that stage of the process usually waits until the fish gets to the retailer or restaurant.

### Cod



Most processing is done either at onshore plants or on board factory trawlers, factory longliners, and floating processors. First the head is removed by an automated cutter and then the product is filleted by a fillet machine (two pieces). The skin is removed by an automated skinner. After skinning the fillets, the flesh is run by bright lights and inspected for defects in a process called candling. Other workers remove remaining bones and dress up the fillets by cutting out bad areas. After that they're frozen by a variety of methods, including IQF (individually quick-frozen) on a quick-freezing belt, or shatter-packed (putting plastic between layers of fillets and then freezing), or blocked, by putting in cardboard boxes about 2 inches thick. Blocked cod usually goes to a fish-stick plant after freezing.

### Pollock

Pollock is processed into both surimi and fillets, in about a 50-50 split. Fillets are made in a process identical to that for cod. For surimi, first the fish are filleted, then minced, washed in lots of fresh water, and pressed to remove any liquid. The resulting paste-like substance is put in batter and mixed with moisture-retentive agents and anti-oxidants. Then it is extruded from a mixer and into a freezer pan, and a block of surimi is produced. Some plants remove more flesh from the backbone, and send that through

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part

part

another surimi line that produces low-grade surimi. This process only requires two people to load on the front end and two to smooth the freezer pan and load. The majority of surimi processing is done in Kodiak, Dutch Harbor, and on floating processors and factory trawlers.

### Halibut

After being gutted at sea, this giant fish is processed into two forms. In the primary form, the head is cut off at the dock and the cheeks are cut out and sold separately. The fish is then weighed, washed, and frozen whole. If the halibut is over 120 pounds it's "fletched." A fletch is a special way of dividing the halibut so it yields four fillets for each fish.

### Crab

Crab Seasons by Region												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
REGION 1												
REGION 2												
REGION 3												
REGION 4												
REGION 5												

Crab processing is different, and actually quite a bit simpler than fish processing. Here's an overview of how it works:

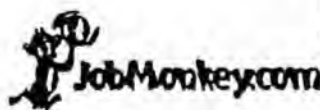
- First the foreman or his assistant uses a giant crane to load crabs off the crabbers and onto the processing boat. Most crabbing is done during the winter months, and because these off-loading jobs are outside it can be cold and wet.
- The first people to handle the crabs are the butchers, who ram the crabs against a stationary blade that separates the shell from the rest of the crab and rips the legs off the body.
- The legs are thrown into a big bin that is taken to the gillers, who rip the gills off the legs with a metal brush apparatus.
- The legs are then stacked in big wire cages and lowered into a cooker tank by the cooker, who then removes them from the tank.
- The cooler worker then slides the cages into the cooler tank, which is a long basin of cold water that holds several baskets of crabs at a time. The crabs sit and cool off for a few minutes before being removed and put into the brine tank, which contains super-cold salt water.
- The legs freeze inside the salt water, and are removed and put in boxes by boxers.
- The boxes are then placed inside the freezer by the freezer crew, and are ready for off-loading to freighters.
- Quality-assurance people work to maintain and insure product freshness and overall quality.

A worker on a crab vessel pointed out that while the work is steady, it's not overwhelming:

*"The pace of work is basically set by the assembly line and is kind of limited by the cooking machinery, since only a certain number of crabs can be cooked at one time. The pace isn't real fast, but you are definitely expected to keep up, which everybody manages to do."*

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## TRAVEL REIMBURSEMENT

Many Alaska job-seekers are concerned with the cost of travel to and from a company's plant or processing site. Transportation reimbursement policies differ significantly from company to company, region to region, and fishery to fishery—there are no industry-wide standards. This section describes the various transportation options that are most typically made available by employers.

Most companies pay for travel from the point of hire (usually Seattle), especially if the facility for which they are hiring is in a remote location. Other companies require their employees to finance all travel costs to the Alaska facility and then reimburse those costs upon completion of the contract. Still other companies only pay for the costs of an employee's return travel. Persons hired, but unable to finance their trip to Alaska, are sometimes offered advances to purchase a ticket, and the debt is repaid out of the employee's first paycheck. Companies with facilities in the more populous areas (such as Ketchikan, Kenai, and Kodiak) usually only reimburse travel for employees who return year after year.

Most people can count on having their travel costs covered by the company only if they work for the whole season (usually two to three months). If an employee quits before completing his or her contract, the employer will usually pro-rate travel costs and offer partial travel cost reimbursement. Although it is still possible to find companies that pay for full travel expenses no matter where an employee is traveling from, in recent years this has become increasingly rare. Currently, most companies only purchase tickets to and from company headquarters (usually Seattle). If the facility you work at is unionized, however, all or five-sixths of your travel will be paid for.

If requested by an applicant, most companies will send out a company fact sheet highlighting their transportation policy and other benefits. Be sure that whatever you are promised appears on your contract in writing, or the promise may not be honored when you arrive in Alaska.

Companies that operate floating processors and factory trawlers may allow employees to travel on the vessel from Seattle to Alaska. These trips are generally very safe and quite enjoyable. If you are hired to work on a floating processor or a factory trawler and do not ride aboard the processor to Alaska, you will probably be flown to Alaska and will meet up with the ship in port.

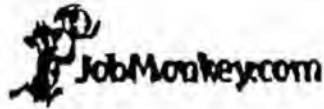
We recommend getting a working contract with a specific company prior to going up to Alaska, because those who find work after they arrive often are unable to get many of the preferred benefits offered by the company.

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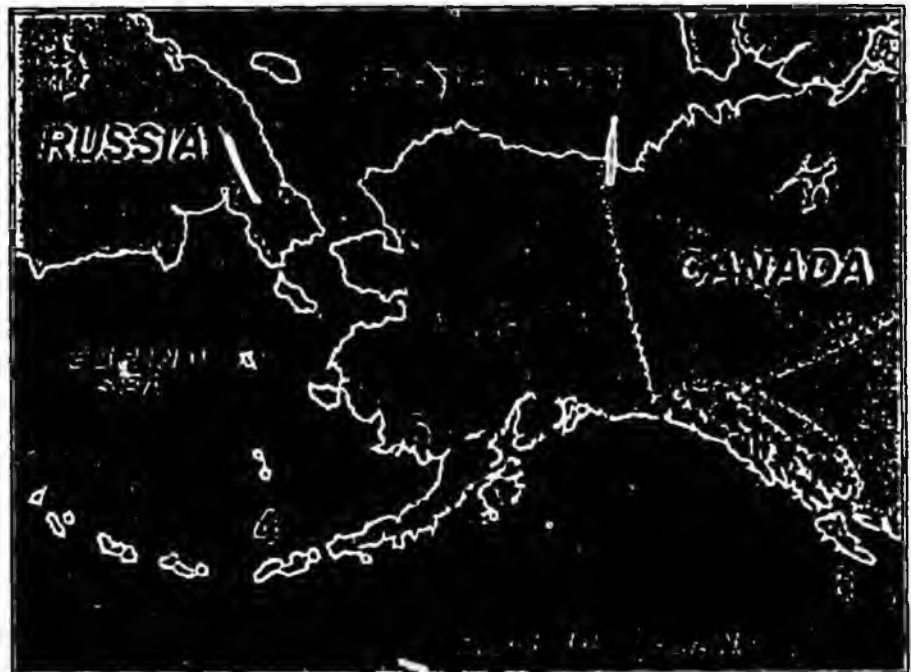
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**MAPS**

All maps are in PDF format which can be viewed in Acrobat Reader. If you don't have Acrobat Reader you can get a free copy by clicking on this banner.



If you need some help understanding what PDFs are, go here for a quick explanation. If you click on one of the regions below to get a map of that region, plus links to individual cities in that region, you'll be taken directly to a map of Seattle.

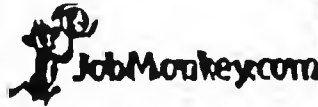


- |   |  |                |
|---|--|----------------|
| 1. Southeast Alaska                       | 3. Kodiak Island                       | 5. Bristol Bay |
| 2. Prince William Sound & Kenai Peninsula | 4. Alaska Peninsula & Aleutian Islands | 6. Seattle     |

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## ABOUT UNIONS

Some processing plants in Alaska are unionized. Though only about 20 percent of plants have workers who are members of a union, it might help to have a general understanding of the role unions play in the Alaska fishing industry.

### *History*

Local unions first began to be recognized in Alaska around 1937, when workers organized to represent themselves through unions in contract negotiations, thereby replacing the notorious contractors' system. This was the heyday of Alaska cannery unions.

Although not as strong as they once were, several unions are still active in the Alaska seafood processing industry. The two most important are the Inlandboatmen's Union and the Alaska Fisherman's Union. The International Associations of Machinists and Aerospace Workers, the Teamsters' Union, and the Alaska Fish Cannery and Crab Workers Union of the Pacific also represent workers in the industry.

### *Seafood industry unions today*

#### Cannery Workers Union

Region 37 of the Inlandboatmen's Union (once called Cannery Workers Local 37) is the oldest union founded by and for workers in the Alaska seafood processing industry. The union has contracts representing workers all over Alaska in salmon, crab, herring, cod, black cod, pollock, and halibut processing. Region 37 is actually a subsidiary of the Inlandboatmen's Union, and the IBU is, in turn, a division of the International Longshoremen's and Warehousemen's Union.

Region 37 represents only seafood processors. Among the benefits of membership are: professional representation in labor-management disputes; better wages (\$6.35 per hour minimum) and benefits; paid room, board, showers, and laundry; decent food; paid equipment (rain gear, gloves, boots); full or five-sixths payment of round-trip airfare between Seattle and Alaska; and medical benefits. The union also works to defend workers' civil rights and to ensure that seniority, re-hire rights, and fair termination policies are adhered to. The CWU also was instrumental in securing a settlement out of EXXON to pay fishermen and other seafood industry workers for lost wages and other damages after the Valdez oil spill.

Region 37 has an office in Seattle, and its members work primarily for two companies, Wards Cove Packing and Peter Pan Seafoods. Wards Cove operates plants all over Alaska. Workers in seven plants—two in Kodiak, two in Bristol Bay, and one each in Gustavus, Ketchikan, and Kenai—are unionized. Peter Pan Seafoods also has plants all over the state, and workers in three of them—King Cove, Dillingham, and Port Moller—are unionized.

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Both companies do all their own hiring. Many of their seasonal workers have been coming up from the Lower Forty-eight for years. Because wages and benefits at these facilities are higher than at most non-unionized facilities, jobs with these processors (especially for inexperienced workers) can be more difficult to come by.

For more information contact:

*IBU Region 37  
500 John Street  
Seattle, WA 98109  
(206) 441-5111*

#### Alaska Fishermen's Union

The Alaska Fishermen's Union (AFU) is the other major union in Alaska representing seafood workers. Unlike the Inlandboatmen's Union which represents only processors, the AFU also represents all manner of shoreside workers, including culinary personnel, construction workers, machinery operators, beach gangs, and dock workers. The only offshore workers represented by the AFU are tender boat workers.

In the fish processing sector, the AFU only represents Alaska residents, so if you're coming from the Lower Forty-eight and work as a processor, you cannot be a member of the AFU and would have to join the IBU instead. The AFU represents workers at all the Wards Cove Packing plants, the Nelbro facility in Naknek, and several plants in Dillingham and King Cove. The AFU offers about the same benefits as the IBU including wages that are often higher than non-union plants, free room and board, and paid equipment.

For more information contact:

*The Alaska Fishermen's Union  
2505 First Avenue, Room 3  
Seattle, WA 98121  
(206) 441-3425*

#### *Pros and cons of unionization*

From an employee's standpoint, the benefits of union representation in the seafood processing industry include:

- better wages
- protected rehire rights
- better benefits
- full or majority airfare to job site
- notification of job openings
- protection from unsafe or illegal working conditions
- professional representation in labor or management disputes
- protection from discrimination and arbitrary termination
- camaraderie

There are few short-term drawbacks of unionization from a worker's standpoint. Dues, which amount to anywhere from \$60 to \$200 a season, are the only real negative.

Cannery owners generally consider the costs of a unionized work force greater than the benefits. The seafood processing industry is very competitive. Labor, safety, and employee benefit costs are major expenses, and can jeopardize profits. Especially if only a few plants are unionized, it can be tough for a unionized plant to compete. When this happens, unionized plant managers sometimes respond by reducing labor costs (either through labor negotiations or by breaking the union) or by shutting down. Few corporations willingly settle for lower profits, and no one wants to shut down, so many seafood processing workers' wages and benefits have been cut in recent years.

Although most employers oppose unions, some people argue that unions can actually benefit employers. First, unions frequently ensure that employers will have access to a better-qualified, more reliable work force. Turnover is very high in the seafood processing industry, and having to constantly recruit and hire new workers is expensive. Unionized workers are generally happier with their jobs, and as a result they're less likely to quit mid-season and they tend to come back year after year. For these reasons, some companies consider working with union labor a sound business decision.

#### *The future of unions*

Labor unions of all kinds have been in decline for decades, and those discussed herein are no exception. Today only about 10–15 percent of the seafood processing industry's employees are unionized, and there are few signs that this number will increase.

On the other hand, things change very quickly. A rise in the demand for (and price of) Alaska seafood could improve the industry's profit margins, and unions could start organizing again tomorrow. Also, labor groups may move away from traditional union tactics, which focused primarily on wages and benefits, and try innovative new approaches.

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March 25, 2002

Representative Lisa Murkowski, Chairwoman  
 House Labor and Commerce Committee  
 State Capitol  
 Juneau, Alaska 99801

Dear Representative Murkowski:

I am writing on behalf of Trident Seafoods Corporation to express our strong support for House Bill 504, which allows a deduction from the minimum wage increase for seafood processors that provide room and board. This bill is important to help maintain Alaska's fishing industry. Put simply the revenues generated from the industry do not support a substantial increase in the minimum wage.

As you are aware, Alaska's seafood industry is facing a severe crisis. The traditional fisheries like salmon and herring, which have supported many of the State's coastal communities, are no longer economically viable under the existing market conditions. An increasing number of operations are simply not able to open given the difficult economic climate. Alaska's fishermen are also suffering because there simply is not the revenue from the fisheries to pay more for their catch. Adding an increase in the minimum wage will only compound the problem faced by the industry.

Just to give a rough example of the impact that the increase in the minimum wage bill might have for a company like Trident, we employ approximately 4,000 hourly workers during the peak production seasons. Our annual payroll in Alaska is well over thirty million dollars. We believe that the proposed increase in the minimum wage would increase the amount Trident pays to hourly labor by more than five million dollars per year.

Because seafood processing is very labor intensive, especially during the peak season, the industry has historically provided room and board for its employees. There is a substantial cost to providing this housing which is frequently not charged against the people who work for our company. House Bill 504 would simply allow for processors to deduct the costs that they incur for room and board from the increase in the minimum wage that is being adopted. This legislation is very important to an industry which is cannot afford additional costs imposed upon its operations.

We greatly appreciate your consideration of these comments.

Sincerely,

Alaska

Washington

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA TV

FIRST JUDICIAL DISTRICT AT JUNEAU

GLOBEN A. DIAZ, )  
 For Himself and on Behalf of All Others )  
 Similarly Situated, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 SILVER BAY LOGGING, INC., )  
 )  
 Defendant. )

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Case no. 1JU-98-1521 CI

MEMORANDUM AND ORDER

I. INTRODUCTION

This matter is before the court on defendant Silver Bay Logging's motion for partial summary judgment. The question presented is whether Silver Bay Logging's deductions from employee wages for board and lodging, made pursuant to a written agreement between the parties, were lawful under 8 A AC 15.160. This requires an interpretation of the meaning of that regulation. While the court addresses the legal question of interpretation in this memorandum, summary judgment is inappropriate at this time. Summary judgment is granted only where the evidence in the record fails to disclose a genuine issue of material fact and the moving party is entitled to judgment as a matter of

law.<sup>1</sup> In considering a motion for summary judgment, the facts must be viewed in the light most favorable to the nonmoving party.<sup>2</sup> Because plaintiffs say there exist genuine issues of material fact and they have not had the opportunity for discovery, summary judgment is not decided at this time and further discovery is allowed.

## II. GENERAL BACKGROUND

Globen A. Diaz, as the named plaintiff, has brought a class action lawsuit against his former employer, Silver Bay Logging ("SBL"). The class has not yet been certified. In his complaint, he seeks damages for unlawful deductions from wages by SBL; damages for unpaid overtime compensation; liquidated damages equal to unpaid wages; statutory penalties; and an award of costs and attorney's fees.<sup>3</sup> SBL's motion for partial summary judgment was filed only as to the question of unlawful deductions. On February 3, 1999, the court ordered a stay of all discovery except with regard to the proper interpretation of 8 AAC 15.160 and its authorizing statutes.<sup>4</sup> Oral arguments were heard on September 10, 1999.

For the purposes of this motion, the following facts are viewed in the light most favorable to Diaz.<sup>5</sup> Diaz was an employee of SBL during the 1994 through 1997 logging

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<sup>1</sup> Mathis v. Sauser, 942 P.2d 1117, 1120 (AK 1997).

<sup>2</sup> Id.

<sup>3</sup> Complaint at 1.

<sup>4</sup> Scheduling and Discovery Order filed February 8, 1999.

<sup>5</sup> Alaska R. Civ. P. 56(a).

seasons. He and the other members of the class were assigned to remote logging sites in Alaska. SBL provided its employees with board and lodging at these remote sites. Prior to beginning employment, each employee was required to authorize, in a written agreement, the deduction of \$10.00 per day as payment for board and lodging at SBL's facilities. There were no alternative public lodging facilities accessible within 50 road miles of the logging site. Over the course of Diaz's employment, he estimates that \$6,500.00 was withheld from his wages alone for board and lodging. Since 1992, Diaz estimates that more than \$1,000,000.00 has been withheld from the wages of the class. Factual disputes may exist as to whether the deductions taken reduced any employee's wage below the applicable minimum wage, whether the amount of the deduction was reasonable and whether Diaz took his wages "free and clear." None of these matters needs to be resolved in order to answer the question presented regarding the meaning of 8 AAC 15.160. Drawing all inferences in favor of Diaz and against SBL does not change the analysis of the meaning of 8 AAC 15.160. Rather the meaning of the regulation is necessary in order to apply those facts to the law.

### III. DISCUSSION

#### 1. Summary of Defendant's Argument

SBL contends that wage deductions for room and board are lawful where they do not reduce an employee's wage below the applicable minimum wage per 8 AAC 15.160(a). Under SBL's interpretation, 8 AAC 15.160(d) is applicable only where there is a choice of facilities and not at remote sites where there is no choice. SBL claims that there is

no agency expertise or fundamental policymaking involved and that substitution of judgment is the proper standard of review.<sup>6</sup> Further, SBL argues that the written agreement is merely a condition on an offer of employment, that there is no "entitlement" to compensation prior to being hired and doing some work, and that 8 AAC 15.160(a) does not prohibit conditioning job offers on accepting such terms of employment.<sup>7</sup>

## 2. Summary of Plaintiff's Argument

Diaz claims that SBL's deductions from his wages for board and lodging are unlawful. He bases that conclusion on the Department of Labor's ("DOL") interpretation of 8 AAC 15.160. Under this interpretation, such deductions are proper only where (1) the employee has a choice between the employer's facility and alternate public facilities, (2) the facilities are customarily furnished by the employer and used by employees, and (3) the cost is reasonable and without profit to the employer.<sup>8</sup> Diaz argues that the background of the promulgation and revisions of 8 AAC 15.160 together with Wage and Hour Opinion letters establishes that this is agency policymaking requiring judicial deference.<sup>9</sup> Diaz also claims that the written agreement is unlawful because it is a "condition of employment" and

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<sup>6</sup> Defendant Supplemental Reply at 5-8.

<sup>7</sup> Defendant Reply in Support at 21-25.

<sup>8</sup> Plaintiff Opposition at 7.

<sup>9</sup> Plaintiff Supplemental Opposition at 23.

therefore violates 8 AAC 15.160(a) which prohibits an employer from requiring an employee to give up, under duress, any part of the compensation to which the employee is entitled.<sup>10</sup>

### 3. Applicable Law

#### a. Statutory Grant of Rulemaking Authority by the Legislature to DOL

The Alaska Wage and Hour Act ("AWHA"), section AS 23.10.085(a), grants rulemaking authority on the director of the Department of Labor. It states that:

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.

The language of AS 23.10.085(c) is clearly permissive with regard to deductions for board and lodging. It states:

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.

#### b. Deductions from Employee Wages

8 AAC 15.160 provides for deductions from an employee's wages. It states in pertinent part:

(a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person

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<sup>10</sup> Plaintiff Opposition at 12.

acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum, or if it would require an employee to reimburse the employer for any of the following:

...  
(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

- (1) alternative public board and lodging facilities are accessible to the work site and the employee has declined to use such facilities;
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

...  

#### 4. Standard of Review

Four standards of review of administrative decisions have been recognized in Alaska.<sup>11</sup> Questions of law which do not involve agency expertise require application of the "substitution of judgment" standard.<sup>12</sup> It is well settled that "an agency's interpretation of its own regulation presents a question of law."<sup>13</sup>

Since the interpretation of 8 AAC 15.160(d) does not implicate agency expertise or fundamental policymaking, no deference is required and the court may substitute its own judgment.<sup>14</sup> The record shows a history of competing interpretations by the DOL.

---

<sup>11</sup> In this case, it is not the validity of the regulation itself that is at issue, although defendant suggests that notice may not have been proper should the court find that Diaz's interpretation is correct. Whether the procedures of the Alaska Administrative Procedure Act were followed is not an issue before the court in this motion. Rather, it is the validity of the interpretation of the regulation put forth by Diaz that is at issue. There is no agency interpretation specific to the facts in this case for the court to assess, although the agency has interpreted the regulation on other occasions.

<sup>12</sup> Handley v. State, Dept. of Revenue, 838 P.2d 1231, 1233 (Alaska 1992).

<sup>13</sup> Rose v. Commercial Fisheries Entry Comm'n., 647 P.2d 154, 161 (Alaska 1982).

<sup>14</sup> Id.; Madison v. Alaska Dept. of Fish and Game, 696 P.2d 168, 173 (Alaska 1985).

The matter involves no agency expertise or fundamental policymaking. Rather, it is a question of statutory and regulatory interpretation. Therefore, this court interprets the regulation independently. Since it is legislative in character, it is to be "interpreted using the same principles applicable to statutes."<sup>15</sup> When interpreting a statute, the court is to "adopt the most persuasive rule of law in light of precedent, reason, and policy."<sup>16</sup>

### 5. Interpretation of the Regulation

SBL argues that 8 AAC 15.160 arises out of and implements AS 23.10.085(c).<sup>17</sup> Under SBL's interpretation, subsection (a) is a general rule, and subsections (b) through (d) establish exceptions to (a) and allow deductions which do reduce an employee's wage below the statutory minimum so long as all the "if" clauses of the applicable subsection are met.<sup>18</sup> SBL also argues that if subsection (d) is in fact the general rule for all board and lodging deductions then it would render the regulation invalid because it was never the intent of the legislature to tie all such deductions to the existence of alternative housing.<sup>19</sup> If the interpretation is as Diaz claims, SBL finds that the regulation is *ultra vires*. SBL finds no authority for the agency to prohibit employers from securing reimbursement irrespective of its impact on wages.<sup>20</sup>

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<sup>15</sup> Piquini Management Corp. v. Reeves, 965 P.2d 732, 734 n. 5 (Alaska 1998), citing State, Dept. of Highways v. Green, 586 P.2d 595, 603 n. 24 (Alaska 1978).

<sup>16</sup> Piquini at 734 n.5.

<sup>17</sup> Defendant Motion for Summary Judgment at 6.

<sup>18</sup> Id.

<sup>19</sup> Id. at 12.

<sup>20</sup> Id. at 13-14.

Diaz argues that the regulation makes clear that deductions from employee wages are disfavored and that subsection (a) generally prohibits such deductions while the other subsections provide alternate rules that allow for deductions only in special circumstances.<sup>21</sup> Diaz reads the first sentence of 8 AAC 15.160(a) as an "interpretive rule" and not a regulation that authorizes broad authority to make wage deductions; it merely explains that the statute should not be read to prohibit the director from adopting regulations governing deductions not specifically included in the statute.<sup>22</sup> Diaz also contends that subsection (d) allows board and lodging deductions only when all three of its requirements are met.

While these are both possible interpretations, they are contrary to the language and legislative history of AS 23.10.085(c) as well as subsections (a) and (d) of the regulation. Neither the regulation nor the statute expressly addresses board and lodging deductions from employee wages at remote work sites where only the employer's facility is available. Whether that silence means that such deductions are prohibited is at the heart of this motion. "The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others."<sup>23</sup> Because the prior interpretations of the regulation conflict, the court interprets it in light of its enabling

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<sup>21</sup> Plaintiff Opposition at 9.

<sup>22</sup> *Id.* at 13.

<sup>23</sup> City of Dillingham v. CH2M Hill Northwest, Inc., 873 P.2d 1271, 1276 (Alaska 1994) (citations omitted).

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statute, looking to the purpose of AS 23.10.085(c) and 8 AAC 15.160, and to legislative history and finds that board and lodging deductions at remote sites where no alternative public facilities are available should be allowed where such facilities are customarily furnished and the cost is reasonable and without profit to the employer.

The purpose of the AWhA is to "establish minimum wage and overtime compensation standards ... and [to] safeguard existing minimum wage and overtime compensation standards that are adequate to maintain the health, efficiency and general well-being of workers...".<sup>24</sup> In furtherance of this purpose, the agency has been granted authority to promulgate regulations "not inconsistent with" and that are necessary for the administration of the AWhA.<sup>25</sup> The enabling statute specifically authorizes the director to "permit deductions by an employer from the minimum wage ... to employees for the reasonable cost ... of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee."<sup>26</sup> The language of AS 23.10.085(c) is permissive with regard to allowing board and lodging deductions.<sup>27</sup>

Reading the language of the regulation in light of its enabling statute supports a finding, as a matter of law, that the regulation does not preclude the deduction of board and lodging costs from employee wages at remote sites where no alternative public facilities are

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<sup>24</sup> AS 23.10.050.

<sup>25</sup> AS 23.10.085.

<sup>26</sup> AS 23.10.085(c).

<sup>27</sup> "The regulations may permit deductions by an employer from the minimum wage. . . ."

available. The legislative history indicates that the language in this section of the Wage and Hour Act was left virtually untouched from its inception. The statute takes the language of the Act verbatim.<sup>28</sup> It specifically grants authority to the agency for promulgating regulations allowing deductions from the minimum wage for board and lodging costs. The regulation states specifically that AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions for monetary obligations of the employee.<sup>29</sup> The regulation does prohibit such agreements where they are made by force, threat, or intimidation. Subsection (a) of 8 AAC 15.160 and its reference to AS 23.10.085(c) concerns allowing board and lodging deductions generally. The regulation goes on to provide for situations in which other costs may or may not be deducted based on agency determination. Subsection (b) addresses a non-board/lodging cost (deductions to third parties) that the agency has determined may be deducted from wages under the proper conditions, as does subsection (c) (transportation).<sup>30</sup> Subsection (d) addresses the conditions

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<sup>28</sup> AS 23.10.085(c).

<sup>29</sup> 8 AAC 15.160(a).

<sup>30</sup> 8 AAC 15.160(b): Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting in the employer's behalf or interest may derive any profit or benefit from the transaction.

8 AAC 15.160(c): Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment when such transportation is incidental to a recruiting program, if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

under which board and lodging deductions may be made. It includes three subsections. Subsection (d)(1) requires both the existence of alternative public facilities and the employee's consent to use the employer facility. If there is no alternative facility available, then the employee can not decline its use and subsection (d) either becomes moot, the deduction must be prohibited, or the requirements of subsections (2) and (3) must be met. Because language of the regulation expressly joins subsections (2) and (3) with the word "and," the latter is the correct interpretation.

The regulation should be read as allowing board and lodging deductions in the following circumstances: a) if alternate public facilities are available then (d)(1) is applicable and (d)(1), (d)(2), and (d)(3) must be satisfied; or b) if there are no alternate public facilities available then (d)(1) does not apply and (d)(2) and (d)(3) both must be satisfied. Diaz's position, while consistent with the current agency interpretation, is not consistent with, nor does it take into account the permissive nature of AS 23.10.085(c) and 8 AAC 15.160 with regard to board and lodging deductions. It is also arguable that the interpretation espoused by Diaz renders 8 AAC 15.160(d) invalid as beyond the grant of authority to the DOL to promulgate regulations protecting the minimum wage. Contrary to SBL's interpretation which makes subsection (d) inapposite where there are no alternate facilities available, 8 AAC 15.160(d) applies to all deductions for board and lodging. The court therefore interprets the regulation to mean that board and lodging deductions are allowable either where an employee chooses the employer housing when there is a choice between that and public

housing, or, where there are no alternate facilities available, the employer-provided facilities are customarily furnished by the employer and the cost for its use is reasonable and without profit to the employer.

6. The Written Agreement is a Lawful Condition for an Offer of Employment

The parties dispute whether, under the second sentence of 8 AAC 15.160(a),<sup>31</sup> it is lawful to condition an offer of employment on an agreement by a prospective employee to the deduction of board and lodging costs from his wages. SBL argues that such an agreement is not precluded by the regulation and that it is a valid condition on an offer of employment that a prospective employee accepts when he accepts the job after being fully informed of the condition. SBL finds no expertise or policy formulation behind this interpretation in that such a condition does provide a choice and is lawful.<sup>32</sup> On the other hand, Diaz finds this to be a involuntary agreement contrary to the requirement that there be no force, intimidation or threat of dismissal in agreeing to wage deductions.<sup>33</sup>

The AWA and the regulations promulgated under it were enacted to establish and safeguard minimum wage and overtime compensation standards that can adequately

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<sup>31</sup> "Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited."

<sup>32</sup> Defendant Supplemental Reply at 23 - 25.

<sup>33</sup> Plaintiff Opposition at 12.

protect and maintain adequate health, efficiency, and general well being of workers.<sup>34</sup> There is no indication that there was an intent to preclude an employer from conditioning an offer of employment on the acceptance of specific work conditions by the employee. The terms of 8 AAC 15.160(a) apply only where the employer/employee relationship has commenced. Prior to accepting and commencing employment with SBL, Diaz was not "entitled" to any remuneration because he was not yet an employee of SBL and had not performed any services for them. Also, contrary to Diaz's claim, his agreement with SBL was not made with "force, intimidation, or threat of dismissal ... or any other manner..." under 8 AAC 15.160(a). The court agrees with SBL that hiring and firing are not similar circumstances and that conditioning employment on acceptance of SBL's terms for board and lodging does not, on its face, constitute force, intimidation or "any other manner" under 8 AAC 15.160(a).

Although a case decided under the Federal Labor Standards Act, Lopez v. Rodriguez sheds light on what constitutes voluntary and uncoerced acceptance of a condition of employment where the "living-in" aspect of the job is an integral part of the job.<sup>35</sup> In Lopez, a resident alien who had obtained employment as a professional housekeeper, won a judgment for unpaid minimum wages against her employer. The court of appeals found that the district court had erred in denying the employers credit for board and lodging furnished to the employee on the ground that the employee's acceptance of the job was coerced and not

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<sup>34</sup> AS 23.10.050.

<sup>35</sup> 668 F.2d 1376 (D.C. Cir. 1981).

voluntary. The court of appeals held that voluntary acceptance of a job that required that the employee "live-in" in order to do the job, where the employee understood that requirement prior to accepting the job, indicated voluntary "acceptance of the lawful conditions of employment."<sup>36</sup> The court distinguished three other cases where the prospective employee could have chosen to live elsewhere and still performed the job.<sup>37</sup>

This construction of what constitutes voluntary and uncoerced acceptance of a lawful condition of employment in an offer of employment makes sense. There is no authority stating that the condition required by SBL is unlawful. The AWHA was not enacted to prevent employers and employees from entering lawful contracts. It does however preclude the imposition of coercive conditions regarding wage deductions after the employment relationship has arisen. In this case, it appears that the condition of employment was entered into voluntarily since Diaz accepted the seasonal position several years in a row. It also appears that the condition was not changed during the employment contract.

#### IV. CONCLUSION

The court finds as a matter of law, in light of precedent, reason and policy, that 8 AAC 15.160 does not prohibit deductions for board and lodging costs from employee wages at remote sites where alternative public facilities are not available so long as the requirements of 8 AAC 15.160(d)(2) and (d)(3) are met. The court also finds that 8 AAC

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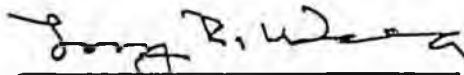
<sup>36</sup> *Id.* at 1380.

<sup>37</sup> *Id.*

15.160(d)(1) addresses such deductions in the specific circumstance where the employee does have a choice between employer provided housing and alternative housing and does not preclude deductions where such a choice does not exist. Further, requiring deductions for room and board as a condition of employment, where the requirements of 8 AAC 15.160 are met, is lawful.

The court defers a decision on the summary judgment motion at this time to allow for additional discovery pursuant to Alaska R. Civ. P. 56(f). Plaintiff shall have 120 days from the date of this order to conduct further discovery and to file any additional materials in opposition to the motion.

Dated this 29<sup>TH</sup> day of September, 1999, at Juneau, Alaska.



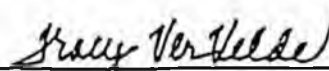
Larry R. Weeks  
Superior Court Judge

I certify that on the 30<sup>th</sup> day of September 1999, I served the above order on the following parties:

Laurel Jatsuda - mail

David Walker - c+box

W. Ruddy - c+box



Tracy Ver Velde  
Secretary to Judge Weeks

# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-6511  
Phone 907-225-8114  
FAX 907-225-5920

November 19, 1998

Mr. Dick Buhler, Sr.  
President  
Silver Bay Logging  
P.O. Box 1291  
Wrangell, AK 99929

Dear Dick:

The issue of camp costs and room and board deductions is one of great importance to the members of the Alaska Forest Association, as you well know. In the last two weeks, I have polled the affected members of the Association (approximately a dozen companies) to clarify what the practice is and what it has been historically in the Alaska timber industry.

It is very clear from my conversations with other members that the practice of charging a nominal fee for room and board in the camps is virtually universal. Furthermore, everyone I talked to uses a payroll deduction process to facilitate the payments, and the employee signs an agreement to that effect when he or she is hired. What is also clear is that the general practice has been for the charges to be nominal. In no case that I could find did the charges reflect anything approaching costs.

Finally, it is clear that the practice of charging room and board in the camps goes back a long way in the history of Alaska's relatively young industry, and certainly antedates the mid-1980s.

I hope this information is useful to you at this time. Feel free to give me a call if there is any further information that you need from me relative to this matter.

Sincerely,

Jack E. Phelps  
Executive Director

cc: Jim Clark, Robertson, Monagle & Eastaugh



# SENATE COMMITTEE REPORT

DATE: 4/22/02

FURTHER: Finance

DATE TURNED  
IN TO OFFICE:

4/26/02

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 504(FIN) am

*HB 504 WAGES FOR WORKERS IN FISHERIES*

"An Act relating to the wages of people working in the fisheries business."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
H/FIN	4/16/02	2	0	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Allen Austin</i>	✓			
<i>Betty Dan</i>			<del>30%</del>	X
<i>Loren D. Heman</i>	✓			
CHAIR: <i>Ben Heman</i>	✓			





HB 504-WAGES FOR WORKERS IN FISHERIES  
SENATE FINANCE COMMITTEE

SIGN-IN

NAME: Robert Reges Subject/Bill No: CSHB 504 (Fin)  
Co./Dept./Title: Attorney representing AK. Forest Assoc. Phone: 789-0047  
Address: P.O. Box 34338, Juneau AK Zip: 99803  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Don Etheridge Subject/Bill No: HB 504  
Co./Dept./Title: AFL-CIO Phone: 586 3707  
Address: 710 W 9TH ST Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Stephanie Madsen Subject/Bill No: HB 504  
Co./Dept./Title: Pacific Sfd. Processors Phone: 586-6366  
Address: 213 Third St. Suite 204 Juneau Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Barbara Huff Tucker Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: Leg / Gov Dir Teachers Phone: 565-8236  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Kris Norosz Subject/Bill No: CS HB 504

Co./Dept./Title: Ice Ice Seafoods Phone: 907 772-4294

Address: P.O. Box 1147 Petersburg Zip: 99833

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions