

HB

255

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB255CS-DOLWD-WH-01-30-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Wages: Training/Flex-Time/Definitions RDU: Labor Standards & Safety
 Component: Wage & Hour
 Sponsor: Representative Rokeberg
 Requester: House Finance Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone 465-4855
 Division: Division of Labor Standards & Safety Date/Time 1/30/04 11:38 AM
 Approved by: Greg O'Claray, Commissioner Date 1/30/2004
 Agency: Department of Labor and Workforce Development

Adopted
5.5.04

CS FOR HOUSE BILL NO. 255 ()

IN THE LEGISLATURE FOR THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE – SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

1 **“An Act amending the Alaska Wage and Hour Act as it relates to the scope of**
2 **administrative regulations defining a person employed in a bona fide executive,**
3 **administrative, or professional capacity as it pertains to minimum salaries.”**

4

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

6 ***Section 1. AS 23.10.085(b) is amended to read:**

7 (b) The regulations may, without limiting the generality of (a) of this section,
8 define terms used in AS 23.10.050 – 23.10.150, and restrict or prohibit industrial
9 homework or other acts or practices that the director finds appropriate to carry out
10 the purpose of AS 23.10.050 – 23.10.150, or to prevent the circumvention or evasion
11 of As 23.10.050 – 23.10.150. **If the regulations defining an individual employed**
12 **in a bona fide executive, administrative, or professional capacity for purposes of**
13 **AS 23.10.055 require that the individual receive a minimum salary, the required**
14 **minimum salary shall be two times the state minimum wage for the first forty**
15 **hours of employment each week.**

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amendment Pg 3 line 23
adopted NO OBJ 4-27-04

23-LS0827AB

Craver
4/26/04

CS FOR HOUSE BILL NO. 255()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

[amended]

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act to eliminate an exemption explicitly
2 made for persons employed in a supervisory capacity and to substitute definitions for
3 persons employed in administrative, executive, and professional capacities, and
4 repealing an exemption in that Act from the payment of minimum wage for learners."

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

6 * Section 1. AS 23.10.060(a) is amended to read:

7 (a) An employer who employs employees engaged in commerce or other
8 business, or in the production of goods or materials in the state, may not employ an
9 employee for a workweek longer than 40 hours or for more than eight hours a day.
10 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON
11 ACTING IN A SUPERVISORY CAPACITY.]

12 * Sec. 2. AS 23.10.145 is amended by adding a new subsection to read:

13 (b) In AS 23.10.050 - 23.10.150,
14 (1) "individual employed in an administrative capacity" means an

1 employee

2 (A) whose primary duty consists of work directly related to
3 management policies or supervising the general business operations of the
4 employer;

5 (B) who holds a position of responsibility;

6 (C) who performs work only under general supervision;

7 (D) who is paid on a salary fee or basis at least two times the
8 state minimum wage for the first 40 hours of employment each week;

9 (E) who regularly and directly assists a proprietor or exempt
10 executive of the employer; and

11 (F) who performs work along specialized or technical lines
12 requiring special training, experience, or knowledge;

13 (2) "individual employed in an executive capacity" means an employee

14 (A) whose primary duty consists of management of the
15 enterprise in which the employee is employed or of a customarily recognized
16 branch, department, or subdivision of the enterprise;

17 (B) who customarily and regularly directs the work of two or
18 more other employees, or who is in sole charge of an independent
19 establishment or a physically separated branch establishment of the enterprise;

20 (C) who has the authority to hire, fire, or effect any other
21 change in status of other employees or whose suggestions or recommendations
22 regarding those types of changes are given particular weight;

23 (D) who holds a position of responsibility; and

24 (E) who is compensated on a salary basis at least two times the
25 state minimum wage for the first 40 hours of employment each week;

26 (3) "individual employed in a professional capacity" means an
27 employee, except for a registered and licensed practical nurse,

28 (A) whose primary duty is to

29 (i) perform work requiring knowledge of an advanced
30 type in a field of science or learning customarily acquired by prolonged
31 course of specialized intellectual instruction and study, as distinguished

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from a general academic education or from apprenticeship or training in the performance of routine mental, manual, or physical processes;

(ii) perform work that is original and creative in character in a recognized field of artistic endeavor as opposed to work that can be produced by a person with general, manual, or intellectual ability and training, and the result of the work depends primarily on the invention, imagination, or talent of the employee;

(iii) teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized in a school or other educational establishment or institution; or

(iv) perform computer related occupations that are exempted from the Fair Labor Standards Act by 29 C.F.R. sec. 541.303;

(B) whose work is

(i) in a position of responsibility;

(ii) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, and is of such character that the output or the result accomplished cannot be standardized on a time basis; and

(iii) compensated on a salary or fee basis of at least two times the state minimum wage for the first 40 hours per week.

* Sec. 3. AS 23.10.070(3) is repealed.

} delete

Adopted 2.5.04

23-LS0827U
Craver
5/6/03

change is on page 3, line 17

Rep. Rokeberg

CS FOR HOUSE BILL NO. 255()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour
2 plans, the provision of training wages, and the definitions of certain terms; and
3 repealing the exemption in the Act from the payment of minimum wages for learners."

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

5 * Section 1. AS 23.10.055(9) is amended to read:

6 (9) an individual employed in a bona fide executive, administrative, or
7 professional capacity or in the capacity of an outside salesman or a salesman who is
8 employed on a straight commission basis; for purposes of this paragraph,
9 "executive capacity," "administrative capacity," and "professional capacity"
10 have the meanings given in the federal regulations defining those terms as used in
11 sec. 13(a)(1) of the Fair Labor Standards Act of 1938, as amended;

12 * Sec. 2. AS 23.10.060(a) is amended to read:

13 (a) An employer who employs employees engaged in commerce or other
14 business [,] or in the production of goods or materials in the state may not employ an

1 employee for a workweek longer than 40 hours or for more than eight hours a day.
2 This section does not apply to the employment of a person acting in a supervisory
3 capacity. In this subsection, "supervisory capacity" means the primary duties
4 performed by an employee who is employed for the purpose of regularly
5 assigning and directing the activities of other employees and is responsible for
6 results of the work performed.

7 * Sec. 3. AS 23.10.060(d) is amended to read:

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

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

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

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

20 (4) an employee engaged in agriculture;

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

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

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

30 (8) an employee employed as a seaman;

31 (9) an employee employed in planting or tending trees, cruising, or

1 surveying, or bucking, or felling timber, or in preparing or transporting logs or other
2 forestry products to the mill, processing plant, railroad, or other transportation
3 terminal if the number of employees employed by the employer in the forestry or
4 lumbering operations does not exceed 12;

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

7 (11) casual employees as may be liberally defined by regulations of the
8 commissioner;

9 (12) an employee of a hospital whose employment includes the
10 provision of medical services;

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

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

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

→ 17 (B) [THE DEPARTMENT HAS ISSUED A CERTIFICATE
18 APPROVING] the plan provides that [STATES] the work is for 80 [40] hours
19 in a two-week period [A WEEK] and not more than 10 hours a day; [FOR
20 WORK OVER 40 HOURS A WEEK OR 10 HOURS A DAY UNDER A
21 FLEXIBLE WORK HOUR PLAN NOT INCLUDED AS PART OF A
22 COLLECTIVE BARGAINING AGREEMENT, COMPENSATION AT THE
23 RATE OF ONE AND ONE-HALF TIMES THE REGULAR RATE OF PAY
24 SHALL BE PAID FOR THE OVERTIME;]

25 (15) an individual employed as a line haul truck driver for a trip that
26 exceeds 100 road miles one way if the compensation system under which the truck
27 driver is paid includes overtime pay for work in excess of 40 hours a week or for more
28 than eight hours a day and the compensation system requires a rate of pay comparable
29 to the rate of pay required by this section;

30 (16) an individual employed as a community health aide by a local or
31 regional health organization as those terms are defined in AS 18.28.100;

1 (17) work performed by a mechanic primarily engaged in the servicing
2 of automobiles, light trucks, and motor homes if the mechanic

3 (A) is employed as a flat-rate mechanic by a nonmanufacturing
4 establishment primarily engaged in the business of selling or servicing motor
5 vehicles;

6 (B) has signed a written agreement with the employer that
7 specifies the mechanic's flat hourly rate of pay and the automotive manual or
8 manuals on which the flat rate is to be based;

9 (C) is compensated for all hours worked in any capacity for
10 that employer up to and including eight hours a day and 40 hours a week at an
11 hourly rate that is not less than the greater of

12 (i) 75 percent of the flat hourly rate of pay agreed upon
13 by the employer and employee under (B) of this paragraph; or

14 (ii) twice the state minimum wage; and

15 (D) is compensated for all hours worked in any capacity for
16 that employer in excess of eight hours a day or 40 hours a week at one and
17 one-half times the rate described in (C) of this paragraph;

18 (18) work performed by an employee under a voluntary written
19 agreement addressing the trading of work shifts among employees if

20 (A) the employee is employed by an air carrier subject to
21 subchapter II of the Railway Labor Act (45 U.S.C. 181-188), including
22 employment as a customer service representative;

23 (B) the trading agreement is not a flexible work hour plan
24 entered into under (13) or (14) of this subsection;

25 (C) the trading agreement is filed with the employee's
26 employer; and

27 (D) the trading agreement states that the employee is not
28 entitled to receive overtime for any hours worked by the employee when the
29 employee voluntarily works those hours under a shift trading practice under
30 which the employee has the opportunity, in the same or other work weeks, to
31 reduce hours worked by voluntarily offering a shift for trade or reassignment.

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* **Sec. 4.** AS 23.10 is amended by adding a new section to read:

Sec. 23.10.072. Training wages. (a) Notwithstanding AS 23.10.065, an employer may pay a newly hired employee who is less than 20 years of age a wage that is not less than \$5.15 an hour during the first 30 consecutive calendar days after the employee is initially employed by the employer. An employer may not take an action to displace an employee, including partial displacements such as reduction in hours, wages, or employment benefits, for purposes of hiring individuals at the wage authorized in this subsection.

(b) The wage authorized by (a) of this section does not apply once the employee has attained 20 years of age.

* **Sec. 5.** AS 23.10.070(3) is repealed.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

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Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

Sponsor Statement for CSHB 255 (), version __

By, Representative Norman Rokeberg

Last Updated May 5, 2004

CSHB 255 (), version __ is a compromise between the labor groups and small business. This bill sets reasonable minimum salary rates for employees who are exempt from overtime provisions under the AK Wage & Hour Act.

Where Alaska's Wage & Hour statutes state which employees are exempted, Alaska's Wage & Hour regulations contain a minimum salary rate for certain exempt employees. These regulations were enacted in 1976. The regulations set a minimum salary rate that applied to certain administrative and executive employees. Employees who (1) were in the retail or service industry and (2) who spent no more than 40% of their time outside of their primary administrative or executive duties, could be exempted from overtime provisions if they were salaried at 2.5 times minimum wage for the first forty hours of employment per week.

The minimum wage increase that went into effect January 1, 2003 rendered this multiplier unfeasible. Prior to 2003, the minimum wage was \$5.65 per hour. The 2.5 multiplier set the minimum salary for certain employees at \$565 per week or \$29,380 per year.

In 2003, minimum wage was increased to \$7.15 per hour. At no time during the process of increasing minimum hourly wages was the resulting increase in minimum salary rates discussed. This increase inadvertently increased minimum salary rates to \$715 per week or \$37,180 per year for entry-level management positions. This was nearly an \$8000 yearly increase that caused many small business owners to reduce their number of employees.

By changing the multiplier to 2.0, minimum salaries will be set at \$572 per week or \$29,744 per year. This is a salary that small business owners can afford and a reasonable salary for entry-level management positions.

I urge your support for CSHB 255 (), version ____.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
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Representative Norman Rokeberg

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Sectional Analysis for CSHB 255 (), version __

By, Representative Norman Rokeberg

Last Updated May 5, 2004

- Title change:** The bill content is limited to Wage and Hour Act provisions that relate to Alaska regulations that set minimum salary rates.
- Section 1:** This section will set any minimum salary at two times minimum wage for the first 40 hours per week.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
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Representative Norman Rokeberg

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CSHB 255 (), version B

Sponsor Statement, by Representative Norman Rokeberg

CSHB 255 () brings Alaska's Wage & Hour Act provisions into the 21st century. The current regulations do not reflect the dynamics of today's modern workplace when defining who qualifies for an exemption. This bill addresses these flaws.

Overview

The Alaska Wage & Hour Act provides overtime to employees who work more than 40 hours a week or 8 hours a day. Certain employees are exempt from the overtime rules and, therefore, may be considered salaried employees. Administrative, executive, and professional employees are among those exempted. Alaska state regulations set out what requirements must be met in order for an employee to qualify for an exemption.

Exemptions

Currently, an exemption exists for supervisory employees. Supervisory employees are exempt from overtime provisions and therefore may be salaried, although their salaries are not subject to a multiplier (discussed below). CSHB 255 () removes the exemption for supervisory employees.

Current regulations require that 60/40 administrative and executive employees may be exempt if their salaries are 2.5 times minimum wage for the first 40 hours per week. Under CSHB 255 (), the multiplier would change to 2.0 and would be applied to any administrative, executive, or professional employee.

Administrative and executive positions must satisfy an 80/20 or 60/40 rule. These rules require that salaried employees (1) must not spend more than 20% of their time doing work outside of their primary duties (80/20 rule) or (2) must not spend more than 40% of their time doing work outside of their primary duties and are subject to the 2.5 multiplier (60/40 rule). Today's workplace recognizes the benefits of management working closely with workers instead of being disconnected from them. CSHB 255 () removes both 80/20 and 60/40 rules.

The final change to these definitions is that the controversial "exercises discretion and independent judgment" test is being replaced with "holds a position of responsibility".

We encourage your support of CSHB 255 (), version B.

4.26.04

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
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Representative Norman Rokeberg

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CSHB 255 (), version B Sectional Analysis of Changes Representative Norman Rokeberg

- Sec. 1** Removes the supervisory capacity exemption.
- Sec. 2** "Administrative Employee" shall be salaried at 2.0 times minimum wage for the first 40 hours per week.
- "Executive employee" shall be salaried at 2.0 times minimum wage for the first 40 hours per week. The "sole charge" exception is put in AS 23.10.145(b)(2)(B) to clarify the meaning that the executive either customarily or regularly directs the work of two or more employees or is the sole charge of the establishment or branch thereof.
- "Professional employee" shall be salaried at 1.5 times minimum wage for the first 40 hours per week.

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General Teamsters Local 959 State of Alaska

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GERALD L. HOOD, Secretary-Treasurer

Nancy Shaw, General Counsel
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May 2, 2003

Representative Bill Williams
Co-Chair, House Finance Committee
State Capital Building
Juneau, Alaska 99801

Re: HB 255 - Amending White Collar Definitions, Flexible Work Hour Plan,
Training Wage

Dear Representative Williams: *Bill*

The following addresses some of Teamsters Local 959's concerns with the proposed changes to the Alaska Wage and Hour Act, as it relates to white collar definitions, flexible work hour plans, and training wages for workers under 20 years of age.

Under current state law, the so-called white collar definitions are, and have been, applied very strictly. If enacted, Section 1 of HB 255 would, in fact, make it easier for employers to classify more of their hourly workforce to an exempt status, thus avoiding the payment of overtime. This action could have a detrimental affect on thousands of employees around our state.

The federal government is currently proposing changes to the Federal Labor Standards Act (FLSA), with respect to white collar definition changes. Under FLSA, the "short test" employee must earn at least \$250 a week, which equates to \$6.25 an hour. The proposed change would only raise the bar to \$425 a week or \$10.63 an hour, which is not even double our minimum wage. The federal government is also looking at removing the "long test" for employee exemptions. We are concerned HB 255 would place the workers of this state under a federal law that is currently being redefined.

Furthermore, in Section 2 of HB 255 under the definition of "supervisory capacity", primary duties are referenced. While one would think this somewhat innocuous, you must realize the federal government has interpreted "primary duty" to apply to positions that spend as little as 10% of their time managing other employees, with their remaining time performing production work of the business. This bill also removes the term "solely" and eliminates the 20% test, so that virtually anyone who oversees the work, time reporting, or training of another worker would be ineligible for overtime.

The federal government also recognizes what is called a "sole charge exemption" as part of the administrative exemption. (This position is like a night manager at 7-Eleven, who



Representative Bill Williams

May 1, 2003

Page 2.

runs the shift and does all the work - stocking, cleaning, and cashiering, because they are the only employee on the premises.) Our current state law does not recognize "sole charge exemption" and protects this type of employee from abuse, such as denial of overtime compensation.

Prior to our own state law changes; fast food restaurants classified their assistant managers as "exempt administrators" because they supervised another employee on a shift. It made no difference that supervision was limited to turning in time records for the other workers, or that the majority of the alleged manager's time was spent flipping hamburgers just like the rest of the crew. They were considered "administrators" and paid a salary, instead of the hourly rate they should have received. In exchange for being considered "management", these workers got the privilege of working longer hours for less money than the employees they worked beside, while performing essentially the same work.

We have heard the argument raised that current state law requires an employer to pay two and one-half times the minimum wage. We find this a specious misrepresentation. The requirement being referred to only applies in those cases where a retail or service establishment desires to assign an exempt executive or administrator non-exempt work for up to 40% of their workweek. If the individual's non-exempt work is less than 20% of the workweek, there is no minimum salary that must be paid.

Under Section 3 of this bill, an employee's overtime protection for work over eight hours in a day, or over 40 hours in a week, is taken away. It also removes the Department of Labor's oversight protection and its approval of such work schedule. While Section 3 addresses flexible work schedules, it allows an employer to effect any type of creative schedule for the purpose of avoiding overtime pay.

Section 4 of HB 255 establishes a training wage, which allows an employer to reduce the wage of an employee under the age of 20 by \$2.00 an hour for a 90-day period. While it states an employer may not take action to displace an employee for purposes of hiring another under this section, it does not, however, establish a penalty for such violation. It further raises questions as to whether an employer could terminate for cause during this period, and if so, would they be in violation of the law?

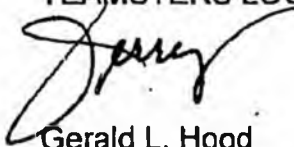
We believe Section 4 may also discriminate against workers based on age. For example, if an employer has two applicants, one 21 years of age and the other 19 years of age, HB 255 would encourage the hiring of the younger applicant so the employer could legally pay two dollars per hour less in wages. This is discriminatory and I do not believe this is a system the Legislature wants to encourage.

Representative Bill Williams
May 1, 2003
Page 3.

Gentlemen, I ask that you support the workers of this state by not supporting HB 255.

Sincerely,

TEAMSTERS LOCAL 959



Gerald L. Hood,
Secretary-Treasurer

AKennedy\BA\BHUFF\03D29.Williams-Harris, Hse Finance



General Teamsters Local 959 State of Alaska

Affiliated with International Brotherhood of Teamsters

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April 14, 2003

Rep Tom Anderson
Chair Labor & Commerce Committee
Alaska State Capitol
Juneau, AK 99801

RE: HB 255

Dear Chairman Anderson:

After review of HB 255, I must go on record as the Secretary-Treasurer of Teamsters Local 959 strongly opposing this bill.

First, the bill proposes the definitions of executive, administrative, and professional fall under the Fair Labor Standards Act. Additionally, the proposed definition of supervisory capacity needs further clarification. Currently the federal government is looking at possible changes. Why would we agree to such changes without even knowing their impact?

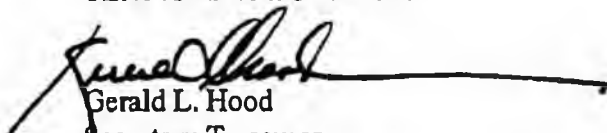
Secondly, the bill proposes to remove the employee protection section regarding flexible work schedule, i.e. the requirement of the department to approve such work hours. The bill also removes the 10 hour a day limit and the overtime protections should an employee be required to work beyond those scheduled hours under a flexible work plan. Under HB 255 an employer could simply have an employee sign an agreement at the time of hire or thereafter, without any follow up or outside review, on behalf of these employees who are not represented under a collective bargaining agreement.

The third issue of concern that this bill does is create a "Training wage". This section of the bill would simply allow employers, to cut the hourly rate of employees under the age of 20 by two dollars an hour, under the guise that they are in training. Passage of this would send a message to our young workers that your knowledge, skill and training are not important and more importantly send to some a question "Why should I even work". At a time when we are trying to recruit and train young workers for future employment, HB 255 sends a negative message that our young people do not deserve.

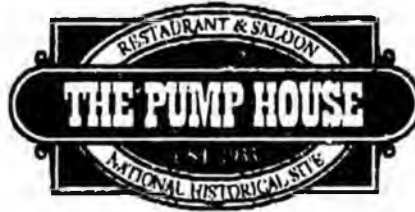
As such we ask that HB 255 not move from committee, it is bad public policy and a bad message to send to our young people who are the future of our state.

Sincerely,

TEAMSTERS LOCAL 959


Gerald L. Hood
Secretary-Treasurer

F:\P\gates\lbt-legis\2003\hb255#1.wpd



TO: Representative Harris 465-2040
Representative Williams
CO-Chairs of House Finance Committee

FROM: Bill Bubbel, THE PUMPHOUSE RESTAURANT FAIRBANKS
RE: Support for HB 255
DATE: April 26, 2004

Dear Representatives Harris and Williams,

House Bill 255 will be before you this afternoon in the House Finance Committee. I am writing to request your support as the passage of this bill is very important to my business.

We have 100 employees during the summer season and the varied nature of the restaurant business makes it impossible to track what part of their duties fall into either the 80 or 20 percent rule. These functions change daily depending on the daily situational needs. 2.5 times the min wage precludes an employee from attaining management experience on their resume and actually reduces their earning potential because they will fall into the crack between a salary that is above the minimum wage but below the 2.5 times rule because the food industry cannot afford that scale except for key management people, which in our case, is usually one individual.

This bill effectively eliminates the 80/20 rule currently in wage and hour law by creating a new category of exemption for supervisory employees in our industry. It does this by considering employees exempt if they supervise other employees and they have the ability to hire and fire. This exemption removes the requirement that the percent of time the employee is performing non exempt work be considered and instead focuses on their job responsibilities. This is key because it is virtually impossible for most employers to track the amount of time their employees spend at various tasks and more befitting to our industry that the definition of supervisor be specific to job responsibilities.

With only a few weeks left in this legislative session, it is most urgent that this bill move out of House Finance today. Thank you for your support.

Bill Bubbel
The Pumphouse Rest.,
Fairbanks AK

796 Chena Pump Rd. • P.O. Box 80545 • Fairbanks, AK 99708 • Phone: 907/479-8452 • FAX: 907/479-8432
email: pumphse@ptialaska.net • www.pumphouse.com



This restaurant is a proud recipient of the DORNA award designating it as one of 500 distinguished restaurants in North America.



April 26, 2004

TO Representative Harris
Representative Williams

FROM Bill Dugdale *BD*
Westmark Anchorage Hotel
Support for HB 255

Dear Representatives'

House bill 255 will be before you this afternoon in the House Finance Committee. I am writing to request your support.

Our hotel has approximately 105 employees in the summer and 75 in the winter months. It is impossible to track how they spent their workday and it varies from week to week and what time of the year. The current rule of paying a supervisor 2.5 times minimum wage or 37,500 is too high and preventing many employees the opportunity of being a supervisor.

This bill effectively eliminates the 80/20 rule that is currently in wage and hour law by creating a new category of exemption in our industry. These employees really are supervisors with hiring capabilities and other supervisory responsibilities. This is key as I mentioned earlier due to our ability not to track the amount of time they spend in each of their job functions.

I hope you will move this bill forward with only a few weeks left in this session. Thank you for the time and consideration.

April 25, 2004

VIA FACSIMILE

Representative Williams
Fax (907) 465.3793

Dear Representative Williams:

Subject: HB 255



I am writing to you to express my support for HB 255.

Under current law individuals in "bona fide executive, administrative or professional" capacities are exempt from overtime. While these exemptions are similar to those under the Fair Labor Standards Act (FLSA), the similarity in labeling is somewhat deceptive. Under the federal FLSA, administrative and executive employees paid at least \$250 per week are, for the purposes of overtime, evaluated under a "primary duties" test. Under Alaska law, on the other hand, regardless of the amount of money paid to an individual in an executive or administrative capacity, the individual's qualification for overtime is evaluated under an "80/20 test." In short, the "80/20 test" requires the employer to show that at least 80% of the employee's duties are exempt. This dissection of an employee's work and measuring the amount of time they spend on all duties during the work week is both cumbersome and costly to perform as well as subject to abuse. Fundamentally, the "80/20 test" is no more than a proxy or a shortcut to a proper analysis of the employee's "primary duties." It is this complete analysis that ought to be the prime consideration in determining whether or not an individual qualifies for an exemption. HB 255 would provide a "primary duties" approach in determining the application of overtime exemptions.

Under the current regulatory definitions of "administrative" and "executive," one component for qualifying for an overtime exemption is for an employee to be paid a salary of at least 2½ times the state minimum wage (per hour) for the first forty hours of worked during the workweek. With Alaska's minimum wage current set at \$7.15, an employer must pay at least \$37,160 per year in order to meet one of the qualification criteria for an administrative or executive exemption. Having such a high starting salary for exempt position may discourage employers and willing employees from pursuing entry-level exempt opportunities. To qualify for an exemption under HB 255, employers are required to pay at least 1½ times the state minimum wage in equivalent salary (\$22,308).

In conclusion, HB 255 is a fair and reasonable interpretation of the exemptions currently provided for under Alaska law. HB 255 does not penalize employers in Alaska or employers who would like to do business in Alaska with an archaic system that is both costly and not reflective of the business world as it pertains to exempt administrative and executive employees.

Respectfully,

Brooke McGrath
Director of Food & Beverage, Human Resources

4800 Spenard Road
Anchorage, Alaska 99517-3236 USA
Telephone 907.243.2300
Fax 907.243.8815
Reservations 866.866.8086
www.millenniumhotels.com

Rob Morris
4600 Abbott Road
Anchorage, AK 99507

April 22, 2004

Representative Bill Williams
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

RE: HB 255

Dear Representative Williams,

I am writing you on behalf of Alaska Children's Services, a non-profit organization dedicated to providing quality care and treatment for children, to seek your support for HB 255. I recently learned of HB 255, which would, among other things, amend current definitions for the "administrative," "executive," and "professional" exemptions in Alaska overtime law.

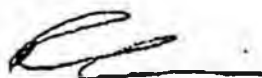
Currently, the Alaska state law pertaining to the exempt level definitions is burdensome and unfair to Alaskan employers. For instance, using the current definitions the burden of proof lies with the employer to ensure their exempt employees are actually performing the exempt level duties that they are assigned for at least 80% (60% in the service and retail industries) of their workweek every week. This is costly and difficult to monitor when there is only general supervision of the exempt employee. It is the exempt employee's duty to assign tasks appropriately. When the employee fails to perform the essential duty of task assignment (either intentionally or unintentionally), the employer is at risk. Given the significant costs and penalties of defending overtime claims, employers are often forced to settle regardless of the claim's merits.

A better and more reasonable approach is that set out in HB 255. Under HB 255, the focus is not on the impossible task of measuring the amount of time supervisors, executives, and administrative personnel perform certain duties. Instead, the focus is, as it should be, on the primary duties of the job as a whole.

With regard to the interpretation of these definitions, the proposed modifications would finally bring Alaska in line with the federal definitions and the majority of the other states. HB 255 is a fair and reasonable solution to the current definitions, which are antiquated and do not reflect the business world as it pertains to exempt administrative and executive employees.

I urge you and your colleagues to support HB 255.


Sincerely,



Rob Morris,
Director of Human Resources
Alaska Children's Services

Memorandum

To: Representative Bill Williams, Co-Chairman House Finance

From: Representative Norman Rokeberg by
Amanda Wilson, Legislative Assistant 

Date: January 29, 2004

Re: CS for House Bill 255

Attached is a draft blank CS for HB 255, version u. The change in this version is on page 3, line 19. The change applies to flexible work hour plans. The overtime provisions will not apply to voluntary flexible work hour plans that are up to 80 hours in a two week period and no more than 10 hours a day. The previous version used up to 12 hours a day. The change is intended to create a safer and healthier work schedule for employees.

We appreciate your consideration of version u. If you have any questions, please call me at x6848.

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

January 29, 2004

Memorandum

TO: Representative Norman Rokeberg

FROM: Kathleen L. Wakefield, Legislative Analyst

RE: Changes to the Fair Labor Standards Act (LRS Report 04.125)

You asked for information on the changes to the Fair Labor Standards Act (FLSA) regarding overtime eligibility for workers proposed by the U.S. Department of Labor (USDOL). The department announced last year that it would be promulgating changes to the regulations implementing the minimum wage and overtime exemptions portions of the FLSA.

Although much media attention was given to the 2004 appropriations bill, the proposed changes to the FLSA are not a part of that bill (or any other). Opponents of the changes tried to amend the appropriations bill to prevent USDOL from adopting the alterations to the overtime provisions of FLSA, but ultimately they were unsuccessful.¹

The history surrounding the proposed changes is confusing, but we believe the following is an accurate timeline:

March 2003—USDOL announces proposed changes to the regulations issued under the FLSA. The revisions are published in the Federal Register on March 31, 2003.

July 2003—the U.S. House of Representatives passes the 2004 appropriations bill, HR2660 and sends it to the Senate for consideration.

September 2003—S1485, the Harkin-Kennedy bill, is offered as an amendment to HR2660 to prevent the adoption of the proposed changes to the FLSA. The Senate adopts the amendment.

October 2003—The House accepts the stipulation added to HR2660 by the Senate, even though the President vows to veto the bill if the overtime provision is retained.

December 2003—Congress considers the Consolidated Appropriations Bill offered by the Conference Committee, HR2673. This bill does not contain the overtime provision. The House passes HR2673 on December 8. Opponents in the Senate vow to prevent passage unless the overtime provision is reinstated.

¹ The only other bill we are aware of that addresses the FLSA is S292, which exempts funeral directors and licensed embalmers from the minimum wage and overtime provisions of the act. This bill was introduced in February 2003 and referred to committee.

January 2004—After heavy lobbying and a filibuster, the Senate passes HR2673 without the overtime provision on January 22, 2004.

Since the amendment opposing the changes to overtime was excluded from the final appropriations bill, at this point the department is free to issue the final regulations, which it plans to do by March 2004.²

We include the following attachments with this memo:

"Eliminating the Right to Overtime Pay," Economic Policy Institute, June 2003, <http://www.epinet.org>.

"House Says 'No' to Bush Overtime Pay Attack," AFL-CIO, October 1, 2003, <http://www.aflcio.org/yourjobeconomy/overtimepay/ns10012003.cfm>.

"Labor Secretary Elaine L. Chao Testifies in Support of Proposal to Update Overtime Protections for White-Collar Workers, News Release, U.S. Department of Labor, January 20, 2004.

"Part II, Department of Labor, Wage and Hour Division, 29 CFR Part 541: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule," *Federal Register*, March 31, 2003.

"U.S. Department of Labor Proposal to Strengthen Overtime Protection: Side-By-Side Comparison," U.S. Department of Labor, http://www.dol.gov/_sec/media/speeches/541_Side_By_Side.htm.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

² "Overtime Pay Under Attack," AFL-CIO, <http://www.aflcio.org/yourjobeconomy/overtimepay/underattack.cfm>.



General Teamsters Local 959 State of Alaska

Affiliated with International Brotherhood of Teamsters

ANCHORAGE, AK 99503, 520 E. 34TH AVE (907) 565-8122 FAX (907) 565-8265 GERALD L. HOOD, Secretary-Treasurer
www.akteamsters.com

FAIRBANKS, ALASKA 99707, P.O. BOX 70609
JUNEAU, ALASKA 99801, 306 WILLOUGHBY
KENAI, ALASKA 99611, P.O. BOX 3150

(907) 452-2959
(907) 586-3225
(907) 283-4486

FAX (907) 452-5051
FAX (907) 586-1227
FAX (907) 283-8030

April 14, 2003

Rep Tom Anderson
Chair Labor & Commerce Committee
Alaska State Capitol
Juneau, AK 99801

RE: HB 255

Dear Chairman Anderson:

After review of HB 255, I must go on record as the Secretary-Treasurer of Teamsters Local 959 strongly opposing this bill.

First, the bill proposes the definitions of executive, administrative, and professional fall under the Fair Labor Standards Act. Additionally, the proposed definition of supervisory capacity needs further clarification. Currently the federal government is looking at possible changes. Why would we agree to such changes without even knowing their impact?

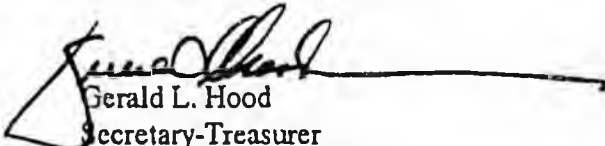
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The third issue of concern that this bill does is create a "Training wage". This section of the bill would simply allow employers, to cut the hourly rate of employees under the age of 20 by two dollars an hour, under the guise that they are in training. Passage of this would send a message to our young workers that your knowledge, skill and training are not important and more importantly send to some a question "Why should I even work". At a time when we are trying to recruit and train young workers for future employment, HB 255 sends a negative message that our young people do not deserve.

As such we ask that HB 255 not move from committee, it is bad public policy and a bad message to send to our young people who are the future of our state.

Sincerely,

TEAMSTERS LOCAL 959


Gerald L. Hood
Secretary-Treasurer

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General Teamsters Local 959 State of Alaska

Affiliated with International Brotherhood of Teamsters
520 E. 34th Avenue • Anchorage, AK 99503
Toll Free (800) 478-0959

GERALD L. HOOD, Secretary-Treasurer

Nancy Shaw, General Counsel
907-565-8258 • Fax 907-565-8195
nshaw@akteamsters.com

May 2, 2003

Representative Bill Williams
Co-Chair, House Finance Committee
State Capital Building
Juneau, Alaska 99801

Re: HB 255 - Amending White Collar Definitions, Flexible Work Hour Plan,
Training Wage

Dear Representative Williams:

Bill

The following addresses some of Teamsters Local 959's concerns with the proposed changes to the Alaska Wage and Hour Act, as it relates to white collar definitions, flexible work hour plans, and training wages for workers under 20 years of age.

Under current state law, the so-called white collar definitions are, and have been, applied very strictly. If enacted, Section 1 of HB 255 would, in fact, make it easier for employers to classify more of their hourly workforce to an exempt status, thus avoiding the payment of overtime. This action could have a detrimental affect on thousands of employees around our state.

The federal government is currently proposing changes to the Federal Labor Standards Act (FLSA), with respect to white collar definition changes. Under FLSA, the "short test" employee must earn at least \$250 a week, which equates to \$6.25 an hour. The proposed change would only raise the bar to \$425 a week or \$10.63 an hour, which is not even double our minimum wage. The federal government is also looking at removing the "long test" for employee exemptions. We are concerned HB 255 would place the workers of this state under a federal law that is currently being redefined.

Furthermore, in Section 2 of HB 255 under the definition of "supervisory capacity", primary duties are referenced. While one would think this somewhat innocuous, you must realize the federal government has interpreted "primary duty" to apply to positions that spend as little as 10% of their time managing other employees, with their remaining time performing production work of the business. This bill also removes the term "solely" and eliminates the 20% test, so that virtually anyone who oversees the work, time reporting, or training of another worker would be ineligible for overtime.

The federal government also recognizes what is called a "sole charge exemption" as part of the administrative exemption. (This position is like a night manager at 7-Eleven, who



Representative Bill Williams
May 1, 2003
Page 2.

runs the shift and does all the work - stocking, cleaning, and cashiering, because they are the only employee on the premises.) Our current state law does not recognize "sole charge exemption" and protects this type of employee from abuse, such as denial of overtime compensation.

Prior to our own state law changes, fast food restaurants classified their assistant managers as "exempt administrators" because they supervised another employee on a shift. It made no difference that supervision was limited to turning in time records for the other workers, or that the majority of the alleged manager's time was spent flipping hamburgers just like the rest of the crew. They were considered "administrators" and paid a salary, instead of the hourly rate they should have received. In exchange for being considered "management", these workers got the privilege of working longer hours for less money than the employees they worked beside, while performing essentially the same work.

We have heard the argument raised that current state law requires an employer to pay two and one-half times the minimum wage. We find this a specious misrepresentation. The requirement being referred to only applies in those cases where a retail or service establishment desires to assign an exempt executive or administrator non-exempt work for up to 40% of their workweek. If the individual's non-exempt work is less than 20% of the workweek, there is no minimum salary that must be paid.

Under Section 3 of this bill, an employee's overtime protection for work over eight hours in a day, or over 40 hours in a week, is taken away. It also removes the Department of Labor's oversight protection and its approval of such work schedule. While Section 3 addresses flexible work schedules, it allows an employer to effect any type of creative schedule for the purpose of avoiding overtime pay.

Section 4 of HB 255 establishes a training wage, which allows an employer to reduce the wage of an employee under the age of 20 by \$2.00 an hour for a 90-day period. While it states an employer may not take action to displace an employee for purposes of hiring another under this section, it does not, however, establish a penalty for such violation. It further raises questions as to whether an employer could terminate for cause during this period, and if so, would they be in violation of the law?

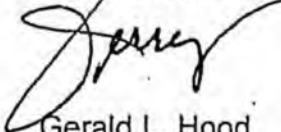
We believe Section 4 may also discriminate against workers based on age. For example, if an employer has two applicants, one 21 years of age and the other 19 years of age, HB 255 would encourage the hiring of the younger applicant so the employer could legally pay two dollars per hour less in wages. This is discriminatory and I do not believe this is a system the Legislature wants to encourage.

Representative Bill Williams
May 1, 2003
Page 3.

Gentlemen, I ask that you support the workers of this state by not supporting HB 255.

Sincerely,

TEAMSTERS LOCAL 959



Gerald L. Hood,
Secretary-Treasurer

AKennedy\BA\BHUFF\03D29.Williams-Harris, Hse Finance



February 5, 2004

Esteemed Members of the Finance Committee
Industry Participants
And Other Attendees

Good Afternoon

My name is Susan Motter. I am the General Manager of the SpringHill Suites by Marriott in Fairbanks, Alaska. Our team is comprised of 40 dedicated hospitality associates. I am a Board Member of the Alaska Hotel and Lodging Association.

Thank you for the opportunity to address the committee and participants today on HB 255. I speak in support of this bill. The hospitality industry is an industry of the heart. We serve our guests, our community, and our peers with warmth and genuine concern for each other's well being. Success in this industry mandates that each one of us take on duties that may range outside of the job description we hired into. Personal career growth comes from learning every task and taking ownership of those tasks regardless of what position we fill. At our hotel we promote from within all associates who understand and live by this premise. Our hotel has been honored by the former Governor for its' efforts and success in the "welfare to work" program. It is a great satisfaction to see lives change by providing a job and stability for every associate.

In this industry one can be promoted quickly to a management position if the associate "works from the heart". It is unfortunate therefore, that we hesitate to promote to exempt positions at this time, as the current law mandates that we invoke the 80/20 clause. This essentially can affect a very negative financial picture for the hotel profitability. Even more important is the effect it has on career growth for dedicated associates.

In addition, we believe that our associates and their families will benefit from the ability to allow flexible work hours upon agreement of employer and associate.

I ask you to give consideration to HB255 and the positive effect it can have on the associate, his career, and the hospitality business that provides the opportunity for our citizens to live productively.

Thank you for the opportunity to express my views.

Susan Motter

LEGISLATIVE RESEARCH REPORT

JANUARY 31, 2003



REPORT NUMBER 03.069

MINIMUM SALARY FOR EXEMPT ADMINISTRATIVE AND EXECUTIVE EMPLOYEES

PREPARED FOR REPRESENTATIVE NORMAN ROKEBERG

BY DONALD M. BULLOCK JR., LEGISLATIVE ANALYST

You asked for an explanation of the Alaska minimum wage provision that requires an employer to pay an executive or administrative employee two and one-half times the minimum wage. Specifically, you asked for the history of the provision and whether other states currently have or have had similar salary requirements for an exemption from state minimum wage laws.

METHODS FOR DETERMINING MINIMUM SALARIES

The Alaska Wage and Hour Act (AWHA or Act) establishes minimum wage and overtime compensation for many workers in Alaska.¹ However, not all employees are covered by the AWA—the Act specifically exempts “an individual employed in a bona fide executive, administrative, or professional capacity.”² State labor regulations set the criteria to be used when determining whether an employee is employed in one of the exempt categories.

According to regulations adopted by the Department of Labor (DOL), one of the requirements for exempting an administrative or executive employee from the AWA is that the employee be paid

¹ The Alaska Wage and Hour Act is codified at AS 23.10.050. The public policy underlying the act is set forth in AS 23.10.050.

² Section 23.10.055 of the Alaska Statutes list individuals for whom the AWA is not applicable. Bona fide executive and administrative employees are exempt from the Act pursuant to AS 23.10.055(9). Individuals employed in a professional capacity and certain salesmen are also exempt from coverage under the Act.

two and one-half times the Alaska minimum wage per hour during the first 40 hours of employment each week.³ Based on the current Alaska minimum wage, ~~\$7.15~~ ^{\$7.15} per hour, an employer must pay an administrative or executive employee a total of ~~\$286~~ for the first 40 hours of each workweek to continue the employee's exemption from the AWA.⁴ Besides Alaska, California is the only other state we identified that requires, or has required in the past, the salary of an exempt executive or administrative employee to be a multiple of the state's minimum wage. In California, the minimum salary is twice the minimum wage, computed on a monthly basis using a 40-hour workweek.⁵

Regulations adopted by the U.S. Department of Labor under the Fair Labor Standards Act (FLSA), and other states pursuant to state wage and hour laws, also require employers to pay administrative and executive employees a minimum salary as a condition of exemption. Federal regulations and the regulations in other jurisdictions, such as the District of Columbia and North Carolina, require an employer to pay an exempt employee a minimum weekly salary of a fixed dollar amount.⁶ For example, the minimum salary under the FLSA to exempt an executive or administrative employee from the provisions of that act is \$155 per week under one test and \$250 per week under the alternative test.⁷

ALASKA'S MINIMUM WAGE MULTIPLIER FOR EXEMPT EXECUTIVE AND ADMINISTRATIVE EMPLOYEES

In order for an executive or administrative employee to be exempt from the AWA, the employer must satisfy the requirements in 8 AAC 15.910. One of the requirements is that the employer pay an exempt employee a salary of two and one-half times the minimum wage for the first 40 hours of employment during each week. The two and one-half minimum wage multiplier was adopted by DOL in 1993.

According to Randy Carr, Chief of Labor Standards and Safety in DOL's Anchorage office, the department adopted the two and one-half minimum wage multiplier after the legislature had

³ The DOL's definitions of an administrative employee and an executive employee are in the Alaska Administrative Code at section 8 AAC 15.910(a)(1) and (a)(7), respectively. Other criteria for determining an employee's status include the type work performed, the degree of supervision over the employee, and the extent to which the employee engages in work that is not classified as executive or administrative.

⁴ The Alaska minimum wage is defined in AS 23.10.065 as \$7.15 per hour.

⁵ California determines exemptions from its wage and hour act on an industry basis. For example, the exemptions for executive and administrative employees in the mercantile industry are defined in Barclay's Official Code of California Regulations at 8 CCR 11070 (2003).

⁶ Other states adopting a minimum salary for exempt employees, using a fixed dollar amount, are Montana (Montana Admin. R. 24.16.204), Minnesota (Minn.R. 5200.0200 [2002]), and New Jersey (NJAC §4A:3-5.4, applicable to state service). Regulations for the District of Columbia and North Carolina, CDCR 7-999 (2002) and 25 NCAC 1D.1942 - 43 (2002), respectively, follow the federal minimum salary requirements.

⁷ The federal regulations have two tests for exempting administrative and executive employees from the FLSA. The two tests differ in the amount of minimum salary required and the nature and time devoted to executive and administrative activities. The higher minimum salary, \$250 per week, is generally applicable to employees who supervise others. The requirements for meeting the executive and administrative employee exemptions are located in the Code of Federal Regulations at 29 C.F.R. 541.1 and 541.2, respectively.

considered a bill to enact a minimum salary of twice the minimum wage.⁸ Mr. Carr said that the department worked with Senator Drue Pearce, a proponent of establishing a minimum salary for exempt executive and administrative employees.

During the Seventeenth Alaska Legislature, lawmakers considered SB 262, by the Senate Labor and Commerce Committee, entitled, "An Act relating to coverage of certain executive or administrative employees of retail or service establishments under the state minimum wage laws; and providing for an effective date." According to Senator Pearce, chair of the Senate Labor and Commerce Committee, the bill was introduced at the request of the restaurant and hotel owners and operators in the state because many managers in the hotel and restaurant business spend considerable time performing non-managerial duties. The original bill proposed to reduce the time an executive or administrative employee was required to spend on exempt work—executive and administrative activities—without becoming subject to the AWhA.⁹

The Senate Labor and Commerce Committee substituted the original bill with a committee substitute, CSSB 262 (L&C). The committee minutes report the reasons for the substituted bill as follows:

Senator Pearce pointed out that a committee substitute had been drafted to address concerns expressed by the Department of Labor. First, there was concern that some managers who are barely making minimum wages would be adversely affected if they were not able to collect overtime. To address that concern, the committee substitute applies the exemption for overtime only to employees who make at least two times the minimum wage. As a result of that amendment, the legislation no longer logically fit in [AS] 23.10.055, so, instead, it is now amending 23.10.060, which deals with overtime workers' compensation.¹⁰

The committee substitute contained two significant changes. First, the focus of the bill was limited to an exemption from overtime pay rather than an exemption from all provisions of the AWhA. Second, the committee substitute established a minimum salary for the executive and administrative employees who would be ineligible for overtime because of their employment status. The proposed minimum salary was twice the minimum wage.

Nancy Bear Usera, Commissioner of the Department of Labor, testified in support of establishing a minimum salary for exempt administrative and executive employees and calculating that minimum salary as a multiple of the minimum wage. With regard to setting a minimum salary, the minutes reflect the commissioner's opinion that people who are called managers ought to be paid a salary that is comparable to management wages, especially in light of the fact that there is no additional restriction on the number hours that those people would have to work.¹¹

The commissioner favored using the minimum wage in calculating the minimum salary for the exempt employees. She explained that the minimum salary under the FLSA—\$155 per week for exempt employees—was established in 1972 and had not been adjusted. She recommended

⁸ J.R. "Randy" Carr can be contacted at 907-269-4914.

⁹ Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

¹⁰ Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

¹¹ Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

using the minimum wage as a factor in determining the minimum salary was a better alternative, because the minimum wage changes over time.¹²

Although SB 262 was limited to the exemption from the overtime provisions of the AWA and did not pass the legislature, the DOL subsequently adopted a regulation—8 AAC 15.910—that defined executive and administrative employees for all purposes of the Act. Pursuant to that regulation, an employer must pay an executive or administrative employee two and one-half times the minimum wage during the first 40 hours of employment as a condition of exempting the employee from the AWA.¹³

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹² Minutes of the Senate Labor and Commerce Committee, May 8, 1991. Commissioner Usera estimated that the \$155 per week in 1972 would be the equivalent of \$372 in 1990 dollars.

¹³ "Administrative employee" is defined in 8 AAC 15.910(a)(1); "executive employee" is defined in 8 AAC 15.910(a)(7).

ice of the Times

A CONSERVATIVE VOICE FOR ALASKANS

WILLIAM J. TOBIN
Senior editor

It's time to revise overtime rules

By **LARRY BAKER**

Because the U.S. Department of Labor dropped the ball years ago, what should be a very simple task is actually very complex.

Most people think they have a pretty good idea about the types of workers who should be legally entitled to overtime for working more than 40 hours in a week. The laborer on an assembly line clearly deserves this legal protection, but the well-paid corporate executive, doctor, or attorney probably does not.

That's why the Fair Labor Standards Act established the now familiar rule that guarantees most workers time and one-half wages for working more than 40 hours in a week.

The law established categories of employees who were not entitled to its protections, including the "white collar" exemption for certain executive, administrative and professional employees.

When Congress enacted the law in 1938, it knew that the work force would continue to evolve and that it could not anticipate what future jobs — as well as the economic reality of the workplace — would be far into the future.

For that reason, it gave the Labor Department the responsibility to define precisely who qualified as a white-collar employee outside of the scope of the FLSA's protections and ordered the Labor Department to update those definitions periodically.

Unfortunately, the Labor Department has not made comprehensive modifications since 1949.

The failure of the regulations to keep pace with the realities of the workplace means that what should be a simple test, determining an employee's overtime eligibility, is in fact a very complex test with little certainty.

Even the best-intentioned employer with expert legal counsel will often not know at the end of the day whether he or she has properly classified employees.

Court cases are replete with examples of absurd results caused by sorting modern jobs into categories created in a different era. For example, in 1994 a federal court in Texas ruled that employees responsible for training NASA



space shuttle ground control personnel were not exempt professionals because they did not exercise enough discretion.

That decision was based on the fact that those employees made decisions in groups and relied on technical manuals. By that measure, not even the astronauts themselves would be exempt from overtime, which could balloon the cost of extended space travel.

In December, a court approved a \$4.1 million settlement that included overtime payments to corporate lawyers, a former human resource director, and corporate vice presidents based on technical violations of the "salary basis" test. A court even ruled that a top NBC network producer earning in excess of \$80,000 per year was entitled to overtime.

If such companies could not determine how to classify their employees, how then can a small business be expected to interpret regulations that are so outdated that they describe occupations like straw boss, gang leader, leg man, keypunch operator, and under-bookkeeper?

Perhaps that's why reform of the regulations has been on the regulatory agenda of every administration, Republican and Democrat, since Jimmy Carter's.

Indeed, in 1999, during the Clinton era, the General Accounting Office issued a report recommending that the Labor Department "comprehensively review the regulations for the white-collar regula-

tions and make necessary changes to better meet the needs of both employers and employees in the modern work place."

This spring, the Labor Department finally moved forward on a comprehensive review. It developed several revisions and simplifications and solicited comments on proposed changes. However, some members of Congress are leading an effort to prevent modernization.

They characterize the regulations as an attack on the American worker. While this sort of inflammatory rhetoric may be common in Washington, politicians should realize that clearer and more modern regulations would help employers and employees alike.

While reasonable people can disagree over what the precise test should be for determining whether an employee is eligible for overtime, all should agree that updating the regulations is long overdue.

American workers would be a lot better off if their employers could focus on growing their businesses rather than spending precious resources trying to apply outdated rules in today's workplace.

The Labor Department should be allowed to evaluate the comments received and move forward on bringing the regulations into the 21st century.

Larry Baker is president of Burger King of Alaska.

The Anchorage Times

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Freedom and Flexibility in the Workplace

by Thomas J. Donohue, U.S. Chamber President and CEO

Did you ever have great employees quit because they were so stressed out by trying to juggle work, family, errands, doctor appointments, and soccer games they couldn't take it anymore? Ever wish you could lend them a helping hand without compromising productivity, profits, and customer service? If Congress passes some long overdue changes to labor laws, you may get your wish.

Current labor law forbids employers from giving employees the option of taking their overtime in the form of paid time off, such as extra vacation, instead of cash payments. But many members of the workforce--especially single parents--may value paid time off more than additional income. Under the current law, if a single parent needs to take off extra time to care for a child, it often requires that he or she accept unpaid leave.

If adopted by Congress, H.R. 1119, the Family Time Flexibility Act (FTFA), will allow employers to offer this option to their employees. Many critics of the plan cite concerns that employers will bully their workers into accepting paid leave in place of monetary payments. This is illegal under FTFA guidelines, just as it is today, and businesses will face stiff penalties if they engage in such misconduct.

America's labor code is 65 years old and badly out of date. Today's workforce is vastly different than in it was in 1938--there are vastly more dual-income families, commuting times have dramatically increased, the economy has shifted from manufacturing to service and information-based, sophisticated technology has changed the responsibilities of almost every job--underscoring the dramatic need to modernize these one-size-fits-all regulations. FTFA will help provide employers with the tools they need to create a flexible work schedule, giving workers a set of options from which to choose.

Most employers agree that FTFA would improve employee-employer relations, too. Pat Orzano, a member of the U.S. Chamber's Small Business Council and owner of a 7-Eleven franchise, said FTFA "would promote a more family-oriented working relationship. Business owners would become involved in the lives of their employees, and workers would learn that employers are willing to listen and accommodate them when possible."

Hard-working people like Pat and her employees are behind every successful enterprise and making these men and women happy is key. Employers also get something out of the deal--by offering greater flexibility, they will attract the very best workers. Tell your members of Congress that passing FTFA, which is expected to reach the House floor next month, will help you and your workers achieve two things Americans cherish--freedom and flexibility.

NFIB Talking Points

Overtime Reform Faces Test in Senate

September 5, 2003

Next week the Senate is expected to face an attempt to stop the Labor Department from making important changes to federal overtime regulations. Friends of labor unions in the Senate will attempt to amend a funding bill to prevent the Labor Department from spending any money to modernize these outdated rules. **This week's edition of *Talking Points* reviews the Labor Department's attempt to modernize overtime regulations.**

The Overtime Law

The Fair Labor Standards Act (FLSA) creates a clear division between what are colloquially termed "blue-collar" employees and "white-collar" employees. The law is designed to require blue-collar employees, who generally receive lower base pay, to be paid for overtime if they work beyond 40 hours per week. It is also the clear intent of the law that white-collar employees, who generally receive a higher base salary, not be additionally compensated for overtime.

Determining whether an employee is blue collar or white collar can be tricky for small-business owners. When it passed the FLSA, Congress left it to the Department of Labor to create regulations that define specifically which jobs are eligible for overtime and which are exempt. Each employer must understand and implement these regulations for each employee.

The Labor Department currently has multiple "tests" for employers to determine whether an employer is eligible for or exempt from overtime pay. In addition, the regulations – which were written in 1949 – mention a number of job classifications that no longer exist in today's economy, like key-punch operator, straw boss, leg man, and gang leader.

The department is attempting to modernize these tests and job definitions, so that both employers and employees can more easily determine whether their jobs are eligible for or exempt from overtime pay. Clarifying the rules would circumvent costly litigation of disagreements between employers and employees. The proposed new regulations would also raise the minimum salary of an exempt employee from \$155 a week to \$425 a week, moving about 1.3 million employees from the exempt category to become eligible for overtime pay.

The Regulatory Process and a Legislative Roadblock

Congress often passes laws that leave a great many details for federal agencies to clarify through regulations. In order to create these regulations, agencies must proceed through a number of bureaucratic processes that are designed to protect various interested parties and groups from hasty or secretive changes in the regulations. This means that it can take months or years for a proposed regulation to become final and assume the force of law.

This is the case for the overtime-modernization regulation. Labor unions have been working hard to derail these reforms. Unable to stop the process at the Department of Labor, the unions have enlisted their allies in Congress to halt the process.

Every year, Congress must pass appropriations bills to fund the government. Legislators will often attempt to amend these appropriations bills with provisions that would otherwise never pass, because the appropriations bills must pass for the government to continue running.

In the case of the overtime modernization, opponents in the Senate are expected to amend the appropriations bill that funds the Labor Department (among other government agencies) with language that would prohibit the department from spending any money on changing the overtime regulations. This would stop the process of reform dead in its tracks.

Fortunately for small business, the House voted down a similar amendment by a vote of 213 to 210 earlier this summer. However, the Senate must vote on the bill as well, and it is expected that the vote – slated for consideration next week – will be just as close or even closer in the Senate. If the House and Senate pass differing versions of the appropriations bill, they must work out a compromise bill that both chambers can pass, which is where the issue could be finally settled.



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Fax: (907) 245-2344

VIA FACSIMILE (907) 265-2040

April 21, 2003

Representative Norman Rokeberg
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

RE: HB 255

Dear Representative Rokeberg:

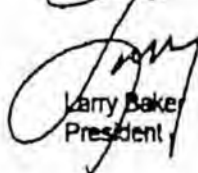
I have a particular concern with HB 255 and the provision dealing with "Training Wages". I read last week in the press that this provision was receiving particular attention in the legislative hearings. In my opinion this is one of the most important provisions in this particular legislation.

The vast majority of my employees (approximately 500) started their careers in our firm with little or no previous work experience. They simply were unqualified to perform basic employment tasks without some training. Perhaps you could lower the 90 day provision to a lower threshold, say 45 days. But it is absolutely essential we maintain the Training Wage provision. These entry level teenagers come to us with little or no skill set and simply are a financial burden on the company at the outset, until such a time as they are trained.

In a normal 30 day month, an employee only works 20 days (5 shifts per week). Therefore, if you set a 45 day Training Wage period, they would only actually have 30 days of training before they would advance to a productive higher wage employee. I think this request is not unreasonable and would be of significant financial assistance to the businesses who have to carry the financial burden of training these unskilled teenage employees.

Your support of this provision is greatly appreciated.

Sincerely,



Larry Baker
President

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515

Regional Office:
601 West 5th Ave., Suite 600
Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643



April 16, 2003

Representative Tom Anderson
Chairman, House Labor and Commerce Committee
Alaska State Capitol
Juneau, Alaska

Re: HB 255 - Wage: Training/Flex-Time/Definitions

Dear Chairman Anderson:

The Alaska State Chamber of Commerce, representing approximately 700 member businesses and 35 local chambers of commerce, supports the HB 255 as introduced by the sponsor. The minimum wage bill that was passed into law last session contained provisions that the members of the Alaska State Chamber of Commerce believe to be detrimental to business. We request your support and assistance to amend the current law in the following manner:

We urge elimination of the 80/20 provision in Alaska Department of Labor regulations, which requires that exempt employees performing non-exempt work greater than 20% of the time be paid two and one-half times the minimum wage. The minimum wage increase to \$7.15 per hour had the effect of increasing the annual salary of administrators and supervisory employees from \$29,000 per year to \$37,000 per year – an increase of 26%. House Bill 255 proposes to apply the federal definitions and terms regarding supervisory and administrative workers. The federal definitions are more understandable and will lead to less confusion and better compliance.

We support the introduction of a training wage consistent with that that is federally allowable. This will result in employers having the ability to afford to hire untrained workers and provide them with on-the-job training. It will mean more jobs for inexperienced workers and development of a stronger workforce for the state.

Finally, the voluntary flexible work hour plan proposed in HB 255 is greatly desired by Alaskan employers and employees alike. The plan provides flexibility for employees to have shorter work-weeks and in have reduce work-related expenses such as travel and child care. The plan provides the employer with greater flexibility in scheduling that can reduce costs and improve production and/or customer service.

We respectfully request the committee's support for this legislation.

Sincerely,

Pamela La Bolle

Pamela La Bolle
President



General Teamsters Local 959 State of Alaska

Affiliated with International Brotherhood of Teamsters

ANCHORAGE, AK 99503, 520 E. 34TH AVE (907) 565-8122 FAX (907) 565-8285 GERALD L. HOOD, Secretary-Treasurer
www.alteamsters.com

FAIRBANKS, ALASKA 99707, P.O. BOX 70609
JUNEAU, ALASKA 99801, 306 WILLOUGHBY
KENAI, ALASKA 99611, P.O. BOX 3150

(907) 452-2950
(907) 586-3225
(907) 283-4488

FAX (907) 452-5051
FAX (907) 586-1227
FAX (907) 283-8030

April 14, 2003

Rep Tom Anderson
Chair Labor & Commerce Committee
Alaska State Capitol
Juneau, AK 99801

RE: HB 255

Dear Chairman Anderson:

After review of HB 255, I must go on record as the Secretary-Treasurer of Teamsters Local 959 strongly opposing this bill.

First, the bill proposes the definitions of executive, administrative, and professional fall under the Fair Labor Standards Act. Additionally, the proposed definition of supervisory capacity needs further clarification. Currently the federal government is looking at possible changes. Why would we agree to such changes without even knowing their impact?

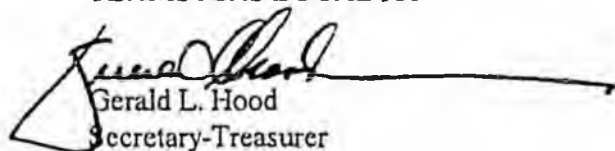
Secondly, the bill proposes to remove the employee protection section regarding flexible work schedule, i.e. the requirement of the department to approve such work hours. The bill also removes the 10 hour a day limit and the overtime protections should an employee be required to work beyond those scheduled hours under a flexible work plan. Under HB 255 an employer could simply have an employee sign an agreement at the time of hire or thereafter, without any follow up or outside review, on behalf of these employees who are not represented under a collective bargaining agreement.

The third issue of concern that this bill does is create a "Training wage". This section of the bill would simply allow employers, to cut the hourly rate of employees under the age of 20 by two dollars an hour, under the guise that they are in training. Passage of this would send a message to our young workers that your knowledge, skill and training are not important and more importantly send to some a question "Why should I even work". At a time when we are trying to recruit and train young workers for future employment, HB 255 sends a negative message that our young people do not deserve.

As such we ask that HB 255 not move from committee, it is bad public policy and a bad message to send to our young people who are the future of our state.

Sincerely,

TEAMSTERS LOCAL 959


Gerald L. Hood
Secretary-Treasurer

F:\Pgalos\lhl-logis\2003\hb255#1.wpd





ALASKA

April 10, 2003

Representative Norman Rokeberg
State Capitol Room 214
Juneau, Alaska 99801-1182

Subject: SUPPORT for HB 255 – Wage & Hour Improvement

Dear Representative Rokeberg,

Thank you for introducing House Bill 255 making several important improvements to the Wage and Hour Act. The bill clarifies the definition of a supervisory employee, streamlines the process for an employee/employer flexible work plan and provides for temporary training wages for young employees.

NFIB members have voted to support training wages for employees under 20 years of age during the first 90 days of employment. The Alaska minimum wage is now the highest in the nation at \$7.15 per hour. This would be a helpful option for employers to use to train entry level employees.

The Federal Labor Standards Act allows states to develop their own job-training wage for employees under age 20. Twenty-eight other states have sub-minimum wage provisions for persons under 20.

NFIB/Alaska supports passage of House Bill 255.

Thanks for all you do in support of small business.

Sincerely,

A handwritten signature in black ink, appearing to read "Thyes Shaub", is written over a horizontal line. The signature is fluid and cursive.

Thyes Shaub, NFIB Alaska Lobbyist

Alaska Hospitality Alliance



Alaska Hospitality Alliance!

ARBA AKH&LA

120 Members

- F&B Operations
- Suppliers

**AHA
Education
Foundation**

145 Members

- Lodging Properties
- Supplier

Alaska Restaurant & Beverage Association

ARBA is a private non-profit trade association representing over 120 food and beverage operations & suppliers across the state of Alaska. Established in 1973, as an Anchorage based association, ARBA has expanded its membership statewide.

Alaska Hospitality Alliance Education Foundation

AHAEF is a non-profit education foundation dedicated to developing Alaska's labor force for the Hospitality Industry. Established in 1999, AHAEF is the exclusive provider of a nationally renowned high school hospitality curriculum developed by the Hospitality Business Alliance.

Alaska Hotel & Lodging Association

AkH&LA is a private, non-profit trade association representing over 80% of the lodging rooms in the state of Alaska and over 35 industry suppliers. Established in 1983, AkH&LA is a federation member of the American Hotel & Lodging Association.

Our Goal: To develop and sustain the best possible environment in the state of Alaska in which Hospitality Businesses can flourish. Through:

- Legislative Representation***
- Education and Training***
- Supplier Discount Programs***
- Industry Communications***



AkH&LA 2004 Legislative Priorities

SUPPORT WAGE & HOUR LEGISLATION CHANGES

We request your support for our initiative to amend the current wage & hour law. Specifically, we would like to see the following points addressed in legislation during the 2004 session:

- The creation of a new category of exemption for supervisory employees in our industry where they are considered to be exempt if they supervise other employees and they have the ability to hire and fire. This exemption removes the employer's requirement to consider the percent of time the employee is performing non exempt work.
- The introduction of a tip credit provision which protects minimum wage. The Federal Gov't. and 42 other states recognize tips as wages. We ask that the State of Alaska do the same.
- The modification of current state's training wage to increase the number of hours an employee who qualifies for the training wage works to from 30 to 40 hours per week.

SUPPORT WORKFORCE DEVELOPMENT

Support workforce development & training programs for the hospitality industry supported by funding from the Unemployment Insurance Tax training appropriation.

OPPOSE TARGETED TAXES

Oppose taxes targeted at our industry which are not earmarked exclusively for tourism marketing. Accordingly, we oppose the Governor's proposed:

- 5% Transient accommodations "Bed" tax
- Cruise Ship Head Tax
- Cruise Ship gaming tax

SUPPORT BRC ADBASED SOLUTION AS PART OF STATE'S FISCAL PLAN

Support the long-range fiscal plan submitted to State Legislators and Governor Murkowski in October 2003 by 20 businesses, civic and trade organizations, calling for budget discipline, a "Percent of Market Value" structure for the Permanent Fund, and institution of a broad based tax. This is a way for the entire state to work together toward long-term economic benefits to Alaska.

SUPPORT INCREASED TOURISM MARKETING FUNDING

We support the concept of a 2% broad based hospitality & visitor industry self assessment to be used for tourism marketing.

SUPPORT A TWO-YEAR FERRY SCHEDULE

Support legislation that provides for a two year ferry schedule. This would benefit hotels, as well as the Marine Highway, because it would significantly reduce lost revenue from groups that have to cancel their hotel room blocks because the ferry schedule cancellation gave no lead-time to rebook.



ARBA 2004 Legislative Priorities

SUPPORT WAGE & HOUR LEGISLATION CHANGES

We request your support for our initiative to amend the current wage & hour law. Specifically, we would like to see the following points addressed in legislation during the 2004 session:

- The elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2.5 times the minimum wage.
- The introduction of a training wage consistent with that, which is federally allowable.
- The introduction of a tip credit provision. The Federal Government and 42 other states recognize tips as wages. We ask that the State of Alaska do the same.

OPPOSE TARGETED TAXES

The Alaska Restaurant & Beverage Association supports a broad based solution to solving the fiscal challenges of the State, and not one that simply targets the Hospitality Industry.

SUPPORT INCREASED TOURISM MARKETING FUNDING

Support additional Tourism Marketing funding.

SUPPORT CHARITABLE GAMING REFORM

Supports responsible charitable gaming reform.



ALASKA HOSPITALITY ALLIANCE EDUCATION FOUNDATION

Established in 1998 to provide training and educational support to the hospitality industry, the Alaska Hospitality Alliance Education Foundation (AHAEF) encompasses three arenas:

High School Hospitality Programs: The AHAEF is the Alaska conduit for the nationally recognized high school curricula in culinary and hotel management. The ProStart Culinary Program, created by the National Restaurant Association, and the Lodging Management Program, created by the American Hotel and Lodging Association offer high school students an early introduction to the exciting careers in hospitality and culinary management. In 2003, the AHAEF expanded the program from two to seven high schools throughout Alaska with two more schools expected to start the program by Fall of '04. Students in the program earn high school credit and attend instructional classes in their respective interest area while they work with mentors in a paid internship. Providing industry support through mentorships, educational seminars, guest speakers, field trips and fund-raising events, the Alaska Hospitality Alliance Education Foundation provides the connecting link between hospitality education and the industry.

Postsecondary Programs: The AHAEF works closely with postsecondary establishments to create, grow and support hospitality education programs. The University of Alaska, Anchorage and the Alaska Vocational Technical Program in Seward currently teach hospitality programs. Articulation agreements between high school and postsecondary programs allow students to get an early start on their hospitality postsecondary education.

Current Workforce Development: ServSafe Food Safety training, T.I.P.S. Alcohol Server training, AlaskaHost Customer Service training, Going the Extra Mile Front Desk training and AlaskaHost Train the Trainer are just a few of the programs offered by the Alaska Hospitality Alliance Education Foundation to support the training needs for the current workforce.

Subject: HB 255 wage and hour bill requires your support!

Date: Fri, 11 Apr 2003 14:07:59 -0400

From: "Terry Latham" <tlatham@gci.net>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Terry Latham
1000 E. 36th Ane.
Anchorage, AK 99508-4304

April 11, 2003

Dear Rep Rokeberg:

I am writing to urgently request your support of HB255.

The wage and hour legislation provided by this bill is critically important to my business. Current wage and hour law that mandates minimum salaries equal to 2.5 times the min wage for supervisory employees is onerous and unnecessary. The minimum wage increased from \$5.65 to \$7.15 increased employment costs to businesses by 26% for salaried supervisory employees because by law, they must be paid 2.5 times the min wage. Therefore, the annual minimum salary required by current regulations increased supervisors pay from \$14.12 per hour to \$17.87 per hour which equates to an increase from \$29,369 per year to \$37,169 per year.

Second, This bill allows for a voluntary flexible work hour plan for casual employees which is very important in our 24 x 7 industry. Currently union collective bargaining agreements allow such provisions, our employees ask for such provisions and our businesses demand such flexibility.

Third, by creating a new statute that allows for a workable training wage we are able to more easily hire young, first-time and entry-level employees.

Thank you for your support.

Sincerely,

Terry Latham Best Western Golden Lion

Subject: Wage & Hour Legislative Support is Needed - LC

Date: Wed, 09 Apr 2003 01:32:17 -0400

From: "Frank Rose" <fwr@alaskalm.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Frank Rose
POB 72478
Fairbanks, AK 99707-2478

April 9, 2003

Dear Rep Rokeberg:

I would like to convey our support of the wage and hour legislative issues as outlined below. You will soon see legislation that deals with most of these issues

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
- We support the elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2 ½ times the minimum wage.
- We support the modification of Alaska's training wage which currently allows an employer to pay the Federal Minimum wage of \$5.15 per hour to employees under the age of 17 who work less than 30 hours per week. The proposed modification changes this from 30 to 40 hours per week.
- We support the introduction of a tip credit provision which freezes the min wage at it's current hourly rate and allows employers to forgo future minimum wage increases in recognition of an employees' tips. The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Couple this with the two year economic downturn we have experienced, rising insurance costs (by as much as 30% in my case) and occupancy levels in my hotels that will not sustain a seasonal operation-- you have a sure formula for failure.

Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Frank W. Rose, President-Alaska Lodging Mgt., Inc.



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HL & C

Committee on HB 255 Committee Name
Dated 4/14/03

Bill / Subject

My name is JOHN DAVID RAGAN, I live at 0.1 Mile Ester Creek Drive in Ester, I work out of Laborers' Local Union 942 in Fairbanks, I am an elected board member of the Ester Community Association and a Volunteer Fire Fighter with the Ester Volunteer Fire Department. I strongly urge you to OPPOSE HB 255 and not to ever let it get out of this committee.

Henry Ford once said that he wanted every worker in his factory to earn enough money to buy their own automobile. American workers making a Decent Wage, buying automobiles, houses and consumer goods, patronizing local businesses, sending their children to college and raising families have been the Motor Creating American prosperity in the 20th century.

That "Decent Wage," as Franklin D. Roosevelt called it, was guaranteed by the great labor victories of the 19th and 20th centuries, like the 8 hour day and minimum wage laws. That "Decent Wage" is what made the American economy so different from the economies of Third World Countries like Mexico, where money is concentrated in the hands of a few and the mass of people barely make enough to buy the basic necessities of life. Because the majority of people in many Third World Countries had no buying power, their economies stagnated and were unable to develop. Because American workers were paid a "Decent Wage," the United States of America became the economic powerhouse of the world.

HB 255 is a direct attack on the minimum wage laws and the 8 hour day, which American labor movements fought and died to make the law of the land in 20th century America. It is a direct attack on the very laws which created American prosperity in the 20th century and made the American economy great.

I am angered that after I and many others went to a great deal of trouble to come to the Legislative Affairs Agency in Fairbanks on Monday to testify on this bill, you did not even have the courtesy to listen to what we had to say. Instead, you allowed paid industry lobbyists and supporters of the bill who were present in Juneau to speak at length, without imposing a 3 minute time limit on their testimony, while silencing normal working people like us in Fairbanks who could not travel to Juneau.

HB 255 is a direct attack on America, and on the very things which make America great, and I will fight this bill and its supporters with all my heart and soul.

SIGNED:

John David Ragan
Testifier

Self

Representing JOHN DAVID RAGAN, 0.1 Mile ESTER CREEK DRIVE
P.O. Box 294, ESTER, ALASKA 99725
1-877-950-9631

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HLC
 Committee on HB 255 Committee Name Dated 4/15/03
Bill / Subject

This bill would be bad for the Alaskan worker, and would only benefit the employers. Discrimination against someones age is wrong. Just because your under 20 doesnt mean that you dont deserve to get paid the same same as anyone else. Minors have bills to!!!

SIGNED:

Scott Anderson
 Testifier

Self
 Representing

2307 Holland Aviation st. (907) 347-4690
 Address / Phone Number NORTH POLE AK 99705



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the

HL & C

Committee Name

Committee on

HB-255

Bill / Subject

Dated

4-14-03

On Sept 11, 343 blue collar working folk died in doing their job/duty.

The vast majority of young people who broke the Taliban & put the Beast of Saddamism on the run, were from working class families, and it would stink if, after their tour of duty they would come back to such re-gressive legislation - NO! To HB-255

SIGNED:

Leon J. Tomatic

Testifier

EUOE-302

Representing

4785 Anheuser dr, F3K3, AK, 99209

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (H) LSC

Committee on HB 255 Committee Name
Bill / Subject Dated 4/14/03

This bill takes away from anyone
 whos livelihood is work thru seasonal.
 we work out of town, away from family
 or drive a 100 miles a day & we should
 get O.T.? I strongly disagree with
 this bill & anyone who doesn't work in
 an office all warm & fed does, too.
 We work hard for what we get
 now.
 And as far as minimum \$5.15, I
 can't even express how I feel
 about that.

SIGNED:

Carol Pardini

Testifier

Laborers 942 / (Self)

Representing

P.O. Box 61582 FBKS AK 99706

Address / Phone Number (907) 451-9431



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HL9C
 Committee on HB-255 Committee Name
 Dated 4/14/03
 Bill / Subject

I strongly disagree with the elimination of overtime in Alaska for anything other than work over 40 hours in a work week. As a wife of a seasonal worker I believe that I represent other wives that are feeding their families with a paycheck brought home by her seasonal worker husband. We depend on the overtime money/wage on that paycheck to see us through the winter season of no work. Please DO NOT put this bill through. Alaska is not like the Lower 48 states in that over 50% of our workers cannot afford to live without our overtime.

Think of our regular, common Alaska families here! You are working for us & we need you. I am a registered voter.

SIGNED: Alysia Mitchell
 Testifier

Alaska mom's
 Representing

P.O. Box 85107, Fairbanks AK 99708
 Address / Phone Number 907-458-8675

Letters of Support for HB 255

Date	Name	Business
9-Apr-03	Frank W. Rose	Alaska Lodging Mgt., Inc.
11-Apr-03	Terry Latham	Best Western Golden Lion
11-Apr-03	David Fickes	
2-Feb-04	Douglas Dimbat	
2-Feb-04	Richard Carr	Bema Construction Company
16-Apr-03	David Wallis	
13-Apr-03	Jack Reiss	ARAMARK Corporation
11-Apr-03	Karen Haas	Papa Murphy's Take 'N Bake Pizza
11-Apr-03	Darren Nolan	Princess Cruises
11-Apr-03	Richard Muhlenbruch	Quiznos Subs
11-Apr-03	Ron Eagley	
14-Apr-03	Max J. Love	
14-Apr-03	Chris Buchholdt	Denali Lodge
14-Apr-03	Fritha Hopkins	Denali Cabins
14-Apr-03	John F. Wilson	Outback Steakhouse Inc.
14-Apr-03	Eric Downey	Denali Lodges
14-Apr-03	Sharlene A. Berg	
14-Apr-03	Patti Fitzpatrick	Stone Bridge Hotel
14-Apr-03	Lance Swick	Lake Lucille Inn
14-Apr-03	Dan Pearson	Denali Wilderness Lodge
14-Apr-03	Sue Hayner	Young's Motel/Fast Eddy's
14-Apr-03	Richard Dowd	Alyeska Resort
14-Apr-03	Luke J. Peroni	Alyeska Resort
14-Apr-03	Pam La Bolle	Alaska State Chamber of Commerce
3-Apr-03	Meghan L. Popely	
2-Apr-03	Jay W. Sutherland	
2-Apr-03	Amey Armachain	



Bryan Quinn
1120 E. 35th Avenue
Anchorage, AK 99508
April 22, 2004

Bill Williams, Co-Chair
State Capital Building, Room 515
Juneau, AK 99801

via fax: 907-465-3793

Re: IIB 255

Dear Representative Williams,

I am writing to you on behalf of Capital Office Systems to express my support for IIB 255.

Under current law individuals in "bona fide executive, administrative or professional" capacities are exempt from overtime. While these exemptions are similar to those under the Fair Labor Standards Act (FLSA), the similarity in labeling is somewhat deceptive. Under the federal FLSA, administrative and executive employees paid at least \$250 per week are, for the purposes of overtime, evaluated under a "primary duties" test. Under Alaska law, on the other hand, regardless of the amount of money paid to an individual in an executive or administrative capacity, the individual's qualification for overtime is evaluated under an "80/20 test." In short, the "80/20 test" requires the employer to show that at least 80% of the employee's duties are exempt. This dissection of an employee's work and measuring the amount of time they spend on all duties during the work week is both cumbersome and costly to perform as well as subject to abuse. Fundamentally, the "80/20 test" is no more than a proxy or a shortcut to a proper analysis of the employee's "primary duties." It is this complete analysis that ought to be the prime consideration in determining whether or not an individual qualifies for an exemption. HB 255 would provide a "primary duties" approach in determining the application of overtime exemptions.

Under the current regulatory definitions of "administrative" and "executive," one component for qualifying for an overtime exemption is for an employee to be paid a salary of at least 2½ times the state minimum wage (per hour) for the first forty hours of worked during the workweek. With Alaska's minimum wage current set at \$7.15, an employer must pay at least \$37,180 per year in order to meet one of the qualification criteria for an administrative or executive exemption. Having such a high starting salary for exempt position may discourage employers and willing employees from pursuing entry-level exempt opportunities. To qualify for an exemption under HB 255, employers are required to pay at least 1½ times the state minimum wage in equivalent salary (\$22,308).

In conclusion, IIB 255 is a fair and reasonable interpretation of the exemptions currently provided for under Alaska law. HB 255 does not penalize employers in Alaska or employers who would like to do business in Alaska with an archaic system that is both costly and not reflective of the business world as it pertains to exempt administrative and executive employees.

Sincerely,

Bryan Quinn
Principal
Capital Office Systems

1120 E. 35th Ave.
Anchorage, AK 99508
(907) 777-1500
Fax (907) 777-1515

1211 Cushman Street
Suite 205
Fairbanks, AK 99701
(907) 456-3944
Fax (907) 452-6257

5312 Commercial Blvd.
Juneau, AK 99801
(907) 780-3636
Fax (907) 780-2290

April 22, 2004

Bosco Baldwin
550 W. 64th Avenue
Anchorage, AK 99518

Rep. Williams, Co-Chair
via fax 907-465-3793

RE: HB 255

Dear Representative Williams,

I am writing you on behalf of Alaska Commercial Company, the largest rural Alaskan retailer with an employment base of more than 700 employees, to seek your support for HB 255. I recently learned of HB 255, which would, among other things, amend current definitions for the "administrative," "executive," and "professional" exemptions in Alaska overtime law.

Currently, the Alaska state law pertaining to the exempt level definitions is burdensome and unfair to Alaskan employers. For instance, using the current definitions the burden of proof lies with the employer to ensure their exempt employees are actually performing the exempt level duties that they are assigned for at least 80% (60% in the service and retail industries) of their workweek every week. This is costly and difficult to monitor when there is only general supervision of the exempt employee. It is the exempt employee's duty to assign tasks appropriately. When the employee fails to perform the essential duty of task assignment (either intentionally or unintentionally), the employer is at risk. Given the significant costs and penalties of defending overtime claims, employers are often forced to settle regardless of the claim's merits.

A better and more reasonable approach is that set out in HB 255. Under HB 255, the focus is not on the impossible task of measuring the amount of time supervisors, executives, and administrative personnel perform certain duties. Instead, the focus is, as it should be, on the primary duties of the job as a whole.

With regard to the interpretation of these definitions, the proposed modifications would finally bring Alaska in line with the federal definitions and the majority of the other states. HB 255 is a fair and reasonable solution to the current definitions, which are antiquated and do not reflective the business world as it pertains to exempt administrative and executive employees.

I urge you and your colleagues to support HB 255.

Sincerely,

Bosco Baldwin, SPHR
Director of Human Resources
Alaska Commercial Company

Cathy Scanlon
NMS Employee Leasing
4041 "B" Street
Anchorage, AK 99518
April 22, 2004

Representative Bill Williams
Juneau, AK

via fax

Re: HB 255

Dear Representative Williams,

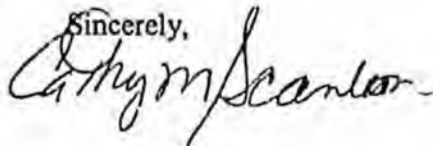
I am writing to you on behalf of Anchorage Society of Human Resource Management to express my support for HB 255.

Under current law individuals in "bona fide executive, administrative or professional" capacities are exempt from overtime. While these exemptions are similar to those under the Fair Labor Standards Act (FLSA), the similarity in labeling is somewhat deceptive. Under the federal FLSA, administrative and executive employees paid at least \$250 per week are, for the purposes of overtime, evaluated under a "primary duties" test. Under Alaska law, on the other hand, regardless of the amount of money paid to an individual in an executive or administrative capacity, the individual's qualification for overtime is evaluated under an "80/20 test." In short, the "80/20 test" requires the employer to show that at least 80% of the employee's duties are exempt. This dissection of an employee's work and measuring the amount of time they spend on all duties during the work week is both cumbersome and costly to perform as well as subject to abuse. Fundamentally, the "80/20 test" is no more than a proxy or a shortcut to a proper analysis of the employee's "primary duties." It is this complete analysis that ought to be the prime consideration in determining whether or not an individual qualifies for an exemption. HB 255 would provide a "primary duties" approach in determining the application of overtime exemptions.

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In conclusion, HB 255 is a fair and reasonable interpretation of the exemptions currently provided for under Alaska law. HB 255 does not penalize employers in Alaska or employers who would like to do business in Alaska with an archaic system that is both costly and not reflective of the business world as it pertains to exempt administrative and executive employees.

Sincerely,



Pilar Humphrey
NMS Employee Leasing
900 E Benson Blvd.
Anchorage, AK 99508
April 22, 2004

Representative Bill Williams
Juneau, AK

via fax

Re: HB 255

Dear Representative Williams,

I am writing to you on behalf of Anchorage Society of Human Resource Management to express my support for HB 255.

Under current law individuals in "bona fide executive, administrative or professional" capacities are exempt from overtime. While these exemptions are similar to those under the Fair Labor Standards Act (FLSA), the similarity in labeling is somewhat deceptive. Under the federal FLSA, administrative and executive employees paid at least \$250 per week are, for the purposes of overtime, evaluated under a "primary duties" test. Under Alaska law, on the other hand, regardless of the amount of money paid to an individual in an executive or administrative capacity, the individual's qualification for overtime is evaluated under an "80/20 test." In short, the "80/20 test" requires the employer to show that at least 80% of the employee's duties are exempt. This dissection of an employee's work and measuring the amount of time they spend on all duties during the work week is both cumbersome and costly to perform as well as subject to abuse. Fundamentally, the "80/20 test" is no more than a proxy or a shortcut to a proper analysis of the employee's "primary duties." It is this complete analysis that ought to be the prime consideration in determining whether or not an individual qualifies for an exemption. HB 255 would provide a "primary duties" approach in determining the application of overtime exemptions.

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In conclusion, HB 255 is a fair and reasonable interpretation of the exemptions currently provided for under Alaska law. HB 255 does not penalize employers in Alaska or employers who would like to do business in Alaska with an archaic system that is both costly and not reflective of the business world as it pertains to exempt administrative and executive employees.

Sincerely,





Lakes Medical Clinic

February 3, 2004

Representative Bill Williams and Representative John Harris, Co-Chairmen
House Finance Committee
State of Alaska

RE: House Bill 255/Wage and Hour Act

Congressman Williams and Congressman Harris:

I am aware that House Bill 255 is presently in the House Finance Committee. I appreciate the fact you are in the process of hearing this bill and I am very much in favor of the passage of this bill. I have been a partner in a family practice medical clinic for 6 years now. Charles Layman, MD, is my partner and we have several employees in our clinic who are presently involved with voluntary work plans allowing them to work four 10-hour days weekly. There have been occasions where we had employees who would desire to work 30 hours one week and 50 hours the next week, or something similar to this. The present plan you have before your committee would allow the employee to have this flexibility in the way they desired to work their schedules without requiring the employer to pay the overtime on the week when the 40-hour limit had been exceeded. The new recommendations provided in this bill would help the employees, as well as the employer with flexibilities of work schedules.

My only concern would be that should some employer force employees to work these schedules when that was not the desire of the employee, then there should be some penalty to the employer, as exists now. This would probably be a rare occasion, but one that should not be allowed.

The employees of Lakes Medical Clinic would benefit from the passage of this bill. Any consideration that you may be allowed to give to this bill would be greatly appreciated. Should you have any questions please feel free to contact me at Lakes Medical Clinic at the above number or at my home, 907-373-6361.

Sincerely,

Ed Manning, PA, Partner
Lakes Medical Clinic

cc: Representative Norman Rokeberg

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



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FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS HB 255

BY: Representative Norman Rokeberg

Title: An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wage, and the definition of certain terms; and repealing the exemption in the Act for the payment of minimum wages for learners.

- Section 1:** Redefines "executive capacity," "administrative capacity," and "professional capacity" to have the meaning found in the federal regulations. Currently these three terms are defined in the Alaska Administrative Code. This amendment references the federal definitions.
- Section 2:** Defines "supervisory capacity" for purposes of the overtime statute.
- Section 3:** Amends the requirements for voluntary flexible work to make it easier for an employer and employee to use such a plan. The employee and employer must have a signed written agreement.
- Section 4:** Creates a new statute allowing for training wages. An employer may pay a newly hired employee, who is less than 20 years old, \$5.15 an hour during the first 90 consecutive calendar days after initial employment.
- Section 5:** Repeals AS 23.10.070 (3), which allowed for learner wages lower than the minimum wage subject to the restrictions and for the periods of time that were fixed by the commissioner. The training wage provisions found in Section 4 are replacing this section.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

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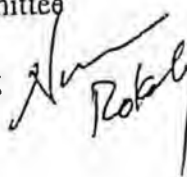
SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM

To: House Labor & Commerce Committee

From: Representative Norman Rokeberg 

Date: April 4, 2003

Re: Minimum wage provisions regarding those under 20 years of age

AS 23.10.55(11) states that an individual under 18 years of age, who is employed on a part-time basis of not more than 30 hours in a week, is **EXEMPT** from Alaska's Wage and Hour Act. This means that they don't have to be paid Alaska's minimum wage, but are still subject to the Federal minimum wage of \$5.15/hour.

AS 23.10.070(3) states that the commissioner may by regulation or order provide for employment at wages lower than the minimum wage set forth in Alaska's Wage and Hour Act for a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the commissioner.

Section 4 of HB 255 repeats AS 23.10.070(3) and implements a more workable training wage provision. A newly hired employee who is less than 20 years of age can be paid not less than \$5.15 an hour during the first 90 consecutive calendar days after initial employment. A similar provision can be found in Federal law.

How do these provisions interact? Here are some examples:

- A 16 or 17-yr old working no more than 30 hours a week must be paid at least \$5.15/hr.
- A 16 or 17-yr old working a 40-hour a week job must be paid at least \$7.15/hr. However, during the first 90 days of employment, the 16 or 17-yr old could receive a training wage of at least \$5.15/hr.
- An 18 or 19-yr old starting a new job could be paid \$5.15/hr during the first 90 days, and would then receive \$7.15/hr after that those initial 90 days have passed.
- A 20-yr old would be subject to the regular Wage & Hour provisions and should receive at least \$7.15/hr.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
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SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SPONSOR STATEMENT FOR HB 257

BY: Representative Norman Rokeberg

Title: An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wage, and the definition of certain terms; and repealing the exemption in the Act for the payment of minimum wages for learners.

HB 255 makes several improvements to Alaska's Wage and Hour Act. These amendments will make provisions in the Wage and Hour laws more "user friendly" for employers and employees.

Changes to Definitions

Section 1 refers to AS 23.10.055(9), which exempts an individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis from the Wage and Hour provisions. As currently defined in our administrative code, the definitions of "executive capacity," "administrative capacity," and "professional capacity" are confusing and difficult to interpret. These definitions were based on similar federal definitions. HB 255 references the federal definitions for these terms, which are much more understandable, and will therefore lead to greater compliance with the statutes.

In addition, "supervisory capacity" has been defined in Section 2 in order to clarify its meaning in statute.

Voluntary Flexible Work Hour Plan

Section 3 of the bill amends the requirements for a voluntary flexible work hour plan. AS 23.10.060(d)(14) states that payment for overtime does not apply to work performed by an employee under a voluntary flexible work hour plan. Currently, to qualify for this exemption, there are several onerous requirements that must be met. This amendment deletes these requirements and allows for a voluntary flexible work hour plan if the employee and employer have signed a written agreement.

Training Wages

Sections 4 and 5 of the bill amend the current learner exemption. Section 4 creates a new statute allowing for training wages. An employer may pay a newly hired employee, who is less than 20 years old, \$5.15 an hour during the first 90 consecutive calendar days after initial employment. Section 5 repeals AS 23.10.070 (3), which allowed for learner wages lower than the minimum wage subject to the restrictions and for the periods of time that were fixed by the commissioner. The training wage provisions found in Section 4 are replacing this section.

I encourage your support of this legislation.

Letters of Opposition for HB 255

Date	Name	Business
4/15/2003	Joshua Butcher	
4/15/2003	Earl Sammer	
4/15/2003	Zenon Tarasinski	
4/15/2003	Thomas W. Titus	
4/15/2003	Ronald L. Jays	
4/15/2003	Charlie Joswiak	
4/15/2003	Muriel J. Johnson	
4/15/2003	John K. Pike	
4/15/2003	Rose Schatz	
4/15/2003	Erwin Keiester	
4/15/2003	Jimmy Connor	
4/15/2003	Charles Paskuan	
4/15/2003	John Zuleger	
4/15/2003	Joel Fitzgerald	
4/15/2003	Norman Gallen, Jr.	
4/15/2003	Jerome Byrd	
4/15/2003	Katherine Bailey	
4/15/2003	Kevin Meenagher	
4/15/2003	Mario Jose Perez	
4/15/2003	Neil W. Eklund	
4/15/2003	Rocky R. Riley	
4/15/2003	Patrick J. Sweeney	
4/15/2003	David Nickels	
4/15/2003	Stewart A. Thompson	
4/15/2003	Phillip Lipari	
4/15/2003	James A. Harty	
4/15/2003	Steven Baskin	
4/15/2003	Toney Roybal	
4/15/2003	Jonna Weed	
4/15/2003	Harry L. Riley	
4/15/2003	Darlene R. Herbert	
4/15/2003	Frederick L. Titus	
4/15/2003	Christina L. Brown	
4/15/2003	James Worthley	
4/15/2003	Jolene A. Riley	
4/15/2003	Cathaleen E. Hosack	
4/15/2003	Mark Freshwaters	
4/15/2003	Parker Frank	
4/15/2003	Dean A. Johnson	
4/15/2003	Thomas Mulligan	
4/15/2003	Seth Dana Thomas	
4/15/2003	Dale D. Riley	
4/15/2003	Jeff Oates	
4/15/2003	Clyde W. Mayo	
4/15/2003	Chris White	
4/15/2003	Erik Wilkins	
4/15/2003	Rafael Armstrong	
4/15/2003	Stephen K. Hovenden	
4/15/2003	Michael C. Tally	
4/15/2003	Hartwell S. Roberts	
4/15/2003	Travis Kent	

Letters of Opposition for HB 255

4/15/2003 Michael C. Forley
4/15/2003 Bonnie Bielling
4/15/2003 Holly Davis
4/15/2003 Stephen P. Holmstock
4/15/2003 J. A. Richmond
4/15/2003 Susan McKinney
4/15/2003 Lyman M. Hamm
4/15/2003 William Kithe
4/15/2003 Jason Tinsly
4/15/2003 Lisa Boehmke
4/15/2003 Greg Elliott
4/14/2003 Jason W. Dollard
4/14/2003 Andrew Fahrman
4/14/2003 Carl S. Benson
4/14/2003 Ruth G. Benson
4/14/2003 John M. Johnson
4/14/2003 Donald E. Lowry
4/14/2003 Scott Fulton
4/14/2003 Alysia Mitchell
4/14/2003 Peter T. Elsther
4/14/2003 Carl S. Weed
4/14/2003 Bruce W. Mitchell
4/14/2003 Leon F. Tomasic
4/14/2003 Carl L. Cardin
4/14/2003 Tammie Loomis
4/14/2003 Dan Ward
4/14/2003 David Schieber
4/14/2003 Frank Loomis
4/14/2003 Michael Streiffert
4/14/2003 Thomas L. Cox
4/15/2003 Daniel Chase
4/15/2003 Thomas B. Rawlins
4/15/2003 Larry R. Hamilton
4/15/2003 Lester McConnell
4/15/2003 Walter Coon
4/15/2003 Julie Burton
4/15/2003 Jim Bushey
4/15/2003 Angela Braumberger
4/15/2003 Daryl A. Olson
4/15/2003 Mary S. Dew
4/15/2003 Charles R. Rogers
4/15/2003 Lois M. Cabe
4/15/2003 Roy D. Lambert
4/15/2003 McKinley McGill
4/15/2003 John David Rogan
4/15/2003 Jennifer Sampson
4/15/2003 Louisa T. Okpik
4/15/2003 Thomas Pratt
4/16/2003 Corrie F. Senterd
4/15/2003 Dalna R. Worthley
4/15/2003 Beth Matthews
4/16/2003 Jhonna Brignoni

Teamsters Local 959

Letters of Opposition for HB 255

4/15/2003 Kristy Danks
4/16/2003 Ben Rowland
4/16/2003 Tobi Denick
4/16/2003 Doris J. Thompson
4/16/2003 Jeff Scadding
4/15/2003 Anna Merchant
4/15/2003 Etta L. Maillard
4/16/2003 Tony Simko



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U.S. Department of Labor

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Proposal to Strengthen Overtime Protection Summary of Proposed Changes

[Statisti
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Minimum Salary Level Increased: Under current rules, an employee earning only \$155 a week can qualify as a "white collar" employee not entitled to overtime pay. The Department's proposal would raise this minimum salary to \$425 a week—an increase of \$270 a week and the largest increase since the Fair Labor Standards Act was passed by Congress in 1938. The proposed changes would guarantee overtime to:

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- An employee working 50 hours per week managing a restaurant for \$15,600 per year.
- A worker putting in 60 hours a week managing a department store for \$18,000 per year.
- An employee working 42 hours a week supervising a machine shop for \$17,000 per year.

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Duties Tests Rely on "Primary Duty": The proposed rule retains the current "short test" reliance on an employee's primary duty. The proposal would eliminate the long-inactive "long test" rule restricting exempt employees from devoting more than 20% of time in a workweek performing non-exempt duties.

[Interac](#)

- **Executive Duties:** The proposed executive duties test has three requirements: managing the enterprise; directing the work of two or more employees; and having authority to hire or fire (or such recommendations are given particular weight).
- **Administrative Duties:** The proposal would replace the "discretion and independent judgment" test, which has been the subject of confusion and litigation, with a new test that employees must hold a "position of responsibility."
- **Professional Duties:** The proposal recognizes as exempt "learned professionals" certain employees who gain equivalent knowledge and skills through a combination of job experience, military training, attending a technical school or attending community college.

Employees Treated More Equitably: The Department proposes to allow deductions from the salary of exempt employees for full-day absences taken for disciplinary reasons, such as sexual harassment or workplace violence. Currently, only hourly workers' wages are subject to such deductions. The proposal retains the "salary basis" rule prohibiting deductions from exempt salary for partial-day absences.

Impact of Proposed Changes

1.3 Million Additional Low-Wage Workers Gain Overtime Protections: Increasing the minimum salary level will automatically guarantee overtime to 1.3 million additional low-wage workers.

Overtime Protections Strengthened for Additional 10.7 Million Hourly Workers: Updating the duties tests will make entitlement to overtime more certain for 10.7 million workers.

Enhance Economic Growth: Reducing regulatory red tape and litigation costs will free up resources and stimulate economic growth.

Rules Easier to Apply and Enforce: Bringing the rules into the 21st century and clarifying the outdated regulatory language will help employees understand their rights and ensure they receive their hard-earned pay. Employers will be better able to understand their obligations and comply with the law. The Labor Department will be equipped to more vigorously enforce the law.

#

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U.S. Department of Labor

U.S. Department of Labor Proposal to Strengthen Overtime Protection

Side-By-Side Comparison

The following charts compare the current requirements for exemption from the Fair Labor Standards Act as an executive, administrative, professional, computer or outside sales employee with the regulations proposed by the Department of Labor.

Executive Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$155 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p>

Customarily and regularly exercises discretionary powers.

Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.

Administrative Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$155 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision.</p> <p>Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to</p>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p>	<p>Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.</p> <p>Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level of skill or training.</p>

exempt work.

Learned Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work.</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.</p>

Creative Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.</p>	Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employees

	Current Long Test	Current Short Test	Section 13(a)(17) Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$27.63 an hour	\$425 per week <i>or</i> \$27.63 an hour
Duties	Primary duty of performing work requiring theoretical and practical application of	Primary duty of performing work requiring theoretical and practical	Primary duty of (A) application of systems analysis techniques and procedures, including	Primary duty of (A) application of systems analysis techniques and procedures, including

<p>highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.</p>	<p>application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p>	<p>consulting with users, to determine hardware, software or system functional applications; or (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>	<p>consulting with users, to determine hardware, software or system functional applications; or (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>
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Outside Sales Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	None required.	None required.	None required.
Duties	<p>Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.</p>	No separate "short" test.	<p>Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Customarily and regularly engaged away from the employer's place or places of business.</p>

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LEXSTAT Alaska Stat. 23.10.055

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*** CURRENT THRU FEBRUARY 13, 2003 ***

TITLE 23. LABOR AND WORKERS' COMPENSATION

CHAPTER 10. EMPLOYMENT PRACTICES AND WORKING CONDITIONS

ARTICLE 3. ALASKA WAGE AND HOUR ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Alaska Stat. § 23.10.055 (2003)

Sec. 23.10.055. Exemptions

The provisions of AS 23.10.050 -- 23.10.150 do not apply to

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

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

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

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

(5) an individual employed by the United States or by the state or political subdivision of the state, except as provided in AS 23.10.065(b), including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the nonprofit activities of a nonprofit religious, charitable, cemetery, or educational organization or other nonprofit organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis and are related only to the organization's nonprofit activities; for purposes of this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

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

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

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

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

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

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

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

(B) \$ 15,000 for a married couple;

(13) an individual who drives a taxicab, is compensated for taxicab services exclusively by customers of the service, whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based upon flat contractual rates and not based on a percentage share of the individual's receipts from customers, and whose written contract with owners of taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that the contract places no restrictions on hours worked by the individual or on areas in which the individual may work except to comply with local ordinances;

(14) a person who holds a license under AS 08.54 and who is employed by a registered guide or master guide licensed under AS 08.54, for the first 60 work days in which the person is employed by the registered guide or master guide during a calendar year;

(15) an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of AS 47.27 (Alaska temporary assistance program); or

(16) an individual who

(A) provides emergency medical services only on a voluntary basis;

(B) serves with a full-time fire department only on a voluntary basis; or

(C) provides ski patrol services on a voluntary basis.

HISTORY: (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982; am § 2 ch 12 SLA 1990; am § 2 ch 13 SLA 1993; am § 10 ch 33 SLA 1996; am § 9 ch 107 SLA 1996; am § 1 ch 23 SLA 1997; am § § 1, 2 ch 19 SLA 1999)

NOTES:

REVISOR'S NOTES. --Paragraph (15) was enacted as (14). Renumbered in 1996.

CROSS REFERENCES. --For legislative purpose in enacting paragraph (13), see § 1, ch. 13, SLA 1993 in the Temporary and Special Acts.

ADMINISTRATIVE CODE. --For exemptions, see 8 AAC 15, art. 3.

EFFECT OF AMENDMENTS. --The 1993 amendment, effective May 8, 1993, added paragraph (13).

The first 1996 amendment, effective May 23, 1996, added paragraph (14).

The second 1996 amendment, effective July 1, 1997, added paragraph (15).

The 1997 amendment, effective May 9, 1997, added paragraph (16).

The 1999 amendment, effective May 12, 1999, in paragraph (6), inserted "nonprofit" near the beginning and "or other nonprofit organization" near the middle, and added "and are related only to the organization's nonprofit activities; for purposes of this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended" at the end; in paragraph (16), added subparagraph designations (A) to (C) and deleted "or an individual who" at the beginning of subparagraph (B), and added subparagraph (C) and made related stylistic changes.

NOTES TO DECISIONS

EMPLOYEES COVERED BY AND EXEMPT FROM FAIR LABOR STANDARDS ACT. --AS 23.10.050 -- 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. § § 201-219, and those who

are, because of insufficient connections to interstate commerce, exempt from the *Fair Labor Standards Act*. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

HELICOPTER PILOT NOT CLASSIFIED AS PROFESSIONAL. --A commercial helicopter pilot is not a professional for purposes of the *Alaska Wage and Hour Act*. *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

PRISONERS EXCLUDED FROM OPERATION OF CHAPTER. --See *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975).

RESTAURANT MANAGERS. --Partial summary judgment for plaintiffs was improper where superior court was obliged to consider district manager's testimony that restaurant managers such as plaintiffs spent less than 10 percent of their time performing tasks otherwise performed by hourly employees; a genuine issue of material fact existed as to whether plaintiffs spent more than 20 percent of their time on duties not directly and closely related to management of the restaurant. *American Restaurant Group v. Clark*, 889 P.2d 595 (Alaska 1995).

RETAIL MANAGER NOT EXEMPT. --Although the retail store manager supervised employees and made more than \$600 per week, he was not exempt from the *Alaska Wage and Hour Act* since he spent more than 20% of his time in retail sales, an activity normally performed by nonmanagerial employees. *Grimes v. Kinney Shoe Corp.*, 902 F. Supp. 1070 (D. Alaska 1995).

EMPLOYEE HELD NOT EXEMPT. Employee was not an exempt administrative employee and was entitled to overtime pay where the undisputed record evidence established that employer failed to pay employee on a salary basis and required him to work under direct supervision. *Whitesides v. U-Haul Co. of Alaska*, 16 P.3d 729 (Alaska 2001).

APPLIED IN *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979); *Era Aviation, Inc. v. Lindfors*, 17 P.3d 40 (Alaska 2000).

QUOTED IN *Alaska Pipeline Serv. Co. v. Shook*, 978 P.2d 86 (Alaska 1999); *Bruns v. Municipality of Anchorage*, 23 P.3d 641 (Alaska 2001).

CITED IN *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

COLLATERAL REFERENCES. --Who is employed in "executive or administrative capacity" within exemptions from minimum wage and maximum hours provisions of *Fair Labor Standards Act*. 40 ALR2d 332; 124 ALR Fed. 1; 131 ALR Fed. 1.

Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of *Fair Labor Standards Act*. 77 ALR Fed. 681.

Employee training time as exempt from minimum wage and overtime requirements of *Fair Labor Standards Act*. 80 ALR Fed. 246.

Who is "employee employed in agriculture" and therefore exempt from overtime provisions of *Fair Labor Standards Act* by § 13 (b)(12) of Act (29 U.S.C.A. § 213(b)(12)). 162 ALR Fed. 575.

Validity and construction of domestic service provisions of *Fair Labor Standards Act* (29 U.S.C. § § 201 et seq.). 165 ALR Fed. 163.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.

LEXSTAT 8 A.A.C. 15.910

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*** THIS SECTION IS CURRENT THROUGH MARCH 5, 2003 ***

TITLE 8. LABOR AND WORKFORCE DEVELOPMENT

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

ARTICLE 6. GENERAL PROVISIONS

8 Alaska Admin. Code 15.910 (2003)

8 AAC 15.910. Definitions

(a) In this chapter and AS 23.10.050 -- 23.10.150, unless the context requires otherwise

(1) "administrative employee" means an employee

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of the employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs work only under general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent, or in the case of an employee of a retail or service establishment who earns at least two and one half times the state minimum wage per hour for the first 40 hours of employment each week and who does not devote more than 40 percent of the employee's weekly hours to activities that are not described in this paragraph or (7) or (11) of this section;

(2) "casual employee," as used in AS 23.10.065(11), means

(A) an employee engaged in an activity that occurs without regularity and is not in the usual course of trade, business, occupation, or profession of the employer; or

(B) an individual employed on a seasonal basis for less than twelve weeks per calendar year at a recreational residential youth camp operated by a nonprofit religious, charitable, or educational organization;

(3) "commissioner" means the commissioner of labor and workforce development;

(4) "department" means the Alaska Department of Labor and Workforce Development;

(5) "director" means the director of the labor standards and safety division of the department, or the director's designee;

(6) "domestic service in or about a private home," as used in AS 23.10.055(4), means an individual employed in or about a private home of a person by whom the individual is employed and who performs services or activities such as

a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a laundress, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee

(A) whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent, or in the case of an employee of a retail or service establishment who earns at least two and one half times the state minimum wage per hour for the first 40 hours of employment each week and who does not devote more than 40 percent of the employee's weekly hours to activities that are not directly and closely related to the work described in this paragraph or (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit," as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors, or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that the time cannot be used effectively for the employee's own purposes, but does not include the time an employee is not required to remain on or near the employer's premises or other place of employment but is merely required to leave word with the employer where the employee may be reached by cellular phone, beeper, or other means;

(10) "outside salesman" means a person

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

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

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

(11) "professional employee" means an employee, except for the classifications of registered nurse and licensed practical nurse

(A) whose primary duty is

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work that can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher; certified or recognized in a school or other educational establishment or institution; or

(iv) to perform computer-related occupations that are exempted from the Fair Labor Standards Act under 29 C.F.R. Part 541.303, which is hereby adopted by reference; and

(B) whose work

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

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

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

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

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

(13) "standby or waiting time" means time that an employee is required to be at or near the place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which the time cannot be used effectively for the employee's own purposes;

(14) "supervisory capacity" means those primary duties performed by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees; and is responsible for results of the work performed; and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; for the purpose of AS 23.10.060, "supervisory capacity" does not apply to an employee required by the employer to perform those activities on an intermittent or substitute basis during the course of employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours that is seven consecutive 24-hour periods; it may begin on any day of the week and need not coincide with the calendar week; an individual employee's workweek is the statutory or contract number of hours that the employee is to regularly work during that period; the workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime; however the workweek may be changed for any other purpose as provided in AS 23.05.160;

(16) "straight commission" means a fixed percentage of each dollar of sales an employee makes;

(17) "workday" means a fixed and regularly recurring period of 24 consecutive hours;

(18) "child care facility," as used in AS 23.10.055(12), includes those treatment programs that require that the children live in facilities provided, under the 24-hour care of program personnel, for a period of at least 30 consecutive days;

(19) "parent of children," as used in AS 23.10.055(12), means those individuals whose duties involve the provision of care, treatment, supervision, and oversight of children residing in the child care facility, and whose duties require that they reside with the children, in the facilities provided by the program, 24 hours a day, for a period of at least 30 consecutive days;

(20) "fee basis" means an agreed sum for a single job regardless of the time required for its completion as specified in 29 C.F.R. Parts 541.313(b), which is hereby adopted by reference;

(21) "regular course of business," as used in AS 23.10.060(d)(1), means those activities that are integral and necessary to any enterprise or activity in which the employer is primarily engaged;

(22) "salary" means, subject to the provisions of 8 AAC 15.908, a fixed and recurring amount of money constituting all or part of an exempt employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(b) Repealed 4 29 99.

(c) For the purposes of AS 23.10.060(d)(12), "hospital" includes a nursing facility as described in 7 AAC 12.250 and licensed in accordance with 7 AAC 12.610.

(d) As used in AS 23.10.430, "personnel file and other personnel information" means all papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine that employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action; "personnel file and other personnel information"

(1) includes

- (A) applications;
- (B) notices of commendation, warning or discipline;
- (C) authorization for withholding or deductions from pay;
- (D) leave records;
- (E) formal and informal employee evaluations;
- (F) reports relating to the employee's character, credit, work habits, compensation, and benefits;
- (G) medical records; and
- (H) letters of reference or recommendations from third parties, including former employers;

(2) does not include

- (A) information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy;
 - (B) information relating to an ongoing investigation of a violation of a criminal or civil statute by an employee;
- or
- (C) an employer's ongoing investigation of employee misconduct.

AUTHORITY: AS 23.05.060; AS 23.10.085

SOURCE: Eff. 12 9 78, Register 68; am 9 28 85, Register 95; am 10 4 90, Register 115; am 2 10 93, Register 125; am 3 18 93, Register 125; am 4 29 99, Register 150

NOTES:

EDITOR'S NOTE: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

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*** CURRENT THRU FEBRUARY 13, 2003 ***

TITLE 23. LABOR AND WORKERS' COMPENSATION

CHAPTER 10. EMPLOYMENT PRACTICES AND WORKING CONDITIONS

ARTICLE 3. ALASKA WAGE AND HOUR ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Alaska Stat. § 23.10.060 (2003)

Sec. 23.10.060. Payment for overtime

(a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an employer finds it necessary to employ an employee for hours in excess of the limits set in this subsection, overtime compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. An employee is entitled to overtime compensation for hours worked in excess of eight hours a day. An employee is also entitled to overtime compensation for hours worked in excess of 40 hours a week; in determining whether an employee has worked more than 40 hours a week, the number of hours worked shall be determined without including hours that are worked in excess of eight hours in a day because the employee has or will be separately awarded overtime compensation based on those hours.

(c) This section is considered included in all contracts of employment.

(d) This section does not apply with respect to

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

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

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

(4) an employee engaged in agriculture;

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

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

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

(8) an employee employed as a seaman;

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

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

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

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

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

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

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

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

(15) an individual employed as a line haul truck driver for a trip that exceeds 100 road miles one way if the compensation system under which the truck driver is paid includes overtime pay for work in excess of 40 hours a week or for more than eight hours a day and the compensation system requires a rate of pay comparable to the rate of pay required by this section;

(16) an individual employed as a community health aide by a local or regional health organization as those terms are defined in AS 18.28.100;

(17) work performed by a mechanic primarily engaged in the servicing of automobiles, light trucks, and motor homes if the mechanic

(A) is employed as a flat-rate mechanic by a nonmanufacturing establishment primarily engaged in the business of selling or servicing motor vehicles;

(B) has signed a written agreement with the employer that specifies the mechanic's flat hourly rate of pay and the automotive manual or manuals on which the flat rate is to be based;

(C) is compensated for all hours worked in any capacity for that employer up to and including eight hours a day and 40 hours a week at an hourly rate that is not less than the greater of

(i) 75 percent of the flat hourly rate of pay agreed upon by the employer and employee under (B) of this paragraph; or

(ii) twice the state minimum wage; and

(D) is compensated for all hours worked in any capacity for that employer in excess of eight hours a day or 40 hours a week at one and one-half times the rate described in (C) of this paragraph;

(18) work performed by an employee under a voluntary written agreement addressing the trading of work shifts among employees if

(A) the employee is employed by an air carrier subject to subchapter II of the Railway Labor Act (45 U.S.C. 181-188), including employment as a customer service representative;

(B) the trading agreement is not a flexible work hour plan entered into under (13) or (14) of this subsection;

(C) the trading agreement is filed with the employee's employer; and

(D) the trading agreement states that the employee is not entitled to receive overtime for any hours worked by the employee when the employee voluntarily works those hours under a shift trading practice under which the employee has the opportunity, in the same or other work weeks, to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(e) The minimum amount due an employee under (d)(17)(C) and (D) of this section shall be figured on a weekly basis.

HISTORY: (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; a. § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983; am § 1 ch 160 SLA 1990; am § 1 ch 103 SLA 1992; am § 5 ch 13 SLA 1993; am § § 1, 2 ch 123 SLA 1998; am § 1 ch 39 SLA 1999; am § 2 ch 43 SLA 1999)

NOTES:

REVISOR'S NOTES. --The paragraphs of (d) of this section were renumbered in 1990 and 1996 to reflect the deletion of repealed paragraphs.

CROSS REFERENCES. --For legislative findings concerning the amendment of subsection (b) by § 2, ch. 43, SLA 1999, see § 1, ch. 43, SLA 1999 in the 1999 Temporary & Special Acts.

ADMINISTRATIVE CODE. --For minimum wages and overtime, see 8 AAC 15, art. 2.

For exemptions, see 8 AAC 15, art. 3.

For reduction of wages, see 8 AAC 15, art. 4.

EFFECT OF AMENDMENTS. --The 1992 amendment, effective September 18, 1992, in subsection (d), added paragraph (16) and made stylistic changes.

The 1993 amendment, effective May 8, 1993 repealed former paragraph (d)(7).

The 1998 amendment, effective September 21, 1998, added paragraph (d)(17) and subsection (e).

The first 1999 amendment, effective June 2, 1999, added paragraph (d)(18).

The second 1999 amendment, effective June 2, 1999, rewrote subsection (b).

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

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

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

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

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

An administrative regulation which would require an employer to include underground travel time as part of the "workweek" for calculating wages and overtime under this section might raise the issue of federal preemption but would survive such a challenge, since Congress did not intend to preclude state regulation and there is no actual conflict between such a regulation and federal law. February 22, 1989 Op. Att'y Gen.

NOTES TO DECISIONS

ARTICLE NOT VOID. --The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. § § 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the *Alaska law void*. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

OR PREEMPTED. --Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently, comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

ARTICLE COMPATIBLE WITH FEDERAL AVIATION ACT. --This article provides for mandatory overtime compensation, not the regulation of maximum hours, and it is therefore neither preempted by, nor in direct conflict with, the *Federal Aviation Act*. *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

PURPOSE OF THE OVERTIME STATUTES are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988).

STATE NOT BOUND TO FEDERAL REGULATORY DEFINITIONS. --See *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1017, 52 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

SALARIED WORKERS. --The Alaska Wage and Hour Act does not define what "regular rate of pay" in subsection (b) of this section means for a worker who receives an annual salary instead of an hourly wage; 8 AAC 15.100(a) addresses this issue. *Piquniq Mgt. Corp. v. Reeves*, 965 P.2d 732 (Alaska 1998).

8 AAC 15.100(a)(2) requires a salaried worker's award for unpaid overtime compensation to be computed by: (1) "Figuring" the worker's salary on a weekly basis; (2) assuming that the week of salary represents pay for a week of straight-time work; (3) using the "regular rate" of hourly pay derived from this assumption as the basis for determining the worker's total compensation for all hours actually worked; and (4) deducting from this amount all amounts of salary actually paid. *Piquniq Mgt. Corp. v. Reeves*, 965 P.2d 732 (Alaska 1998).

A court converting annual salary to a regular rate of hourly pay under 8 AAC 15.100(a)(2) must use the regular rate as a basis for computing total earnings for all hours actually worked; all salary actually paid must be deducted from these total earnings, and the difference will reflect the award necessary to ensure that straight-time, overtime, and total compensation are all based on the applicable rate of regular pay. *Piquniq Mgt. Corp. v. Reeves*, 965 P.2d 732 (Alaska 1998).

DEFINITION OF "SUPERVISORY" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's workweek, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979).

BOOKKEEPER IN SEPARATE COMPANY HELD TO BE EMPLOYEE. --An employee of a real estate company who handled the bookkeeping for a storage company was considered to be an employee of the storage company since the relationship was of a permanent nature, the bookkeeper received a flat management fee regardless of profits, and since bookkeeping is an integral part of a business. *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

PARTNER CONSIDERED AS EMPLOYEE. --Where a partnership agreement provides regular compensation, untied to profits, for a partner's services, such a compensated partner shall be considered to be both an owner and an employee. To do otherwise would permit employers to defeat the Alaska Wage and Hour Act's remedial purposes by simply calling paid employees "partners." *Bobich v. Stewart*, 843 P.2d 1232 (Alaska 1992).

EXEMPTIONS. --An employees' work schedule established under collective bargaining agreements that the employees work 14 consecutive 12-hour days, followed by 14 days off, was exempt from the overtime requirements of this section. *Ganz v. Alaska Airlines, Inc.*, 963 P.2d 1015 (Alaska 1998).

EMPLOYEE HELD NOT EXEMPT. Employee was not an exempt administrative employee and was entitled to overtime pay where the undisputed record evidence established that employer failed to pay employee on a salary basis and required him to work under direct supervision. *Whitesides v. U-Haul Co. of Alaska*, 16 P.3d 729 (Alaska 2001).

PROCEDURAL ISSUES. --In an action by long haul truck drivers claiming overtime compensation, where there was a genuine issue of fact as to whether driving times relied upon by the employer in calculating compensation were inaccurate, and whether the employer knew this to be the case despite driver logs to the contrary, grant of summary judgment against the drivers was error. *Schorr v. Frontier Transp. Co.*, 942 P.2d 418 (Alaska 1997).

SEVERANCE PAYMENT WHICH EXCEEDS MAXIMUM RECOVERY --Release given by employee in exchange for large severance payment, which substantially exceeded the maximum he could have recovered under the Alaska Wage and Hour Act, encompassed any subsequent AWA violation claims by the employee, and the severance payment fully satisfied any potential AWA award. *Alyeska Pipeline Serv. Co. v. Shook*, 978 P.2d 86 (Alaska 1999).

CONSTRUCTIVE DISCHARGE EVIDENCE STANDARD. --Summary judgment was improperly granted to employer in constructive discharge dispute about overtime pay and pension plan payments, where the employee offered evidence that might lead a reasonable person to find the working conditions created at the employer's business so intolerable as to cause a reasonable person to resign. *Finch v. Greatland Foods, Inc.*, 21 P.3d 1282 (Alaska 2001).

COLLATERAL REFERENCES. --Who is "employee employed in agriculture" and therefore exempt from overtime provisions of Fair Labor Standards Act by § 13 (b)(12) of Act (29 U.S.C.A. § 213(b)(12)). 162 ALR Fed. 575.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.

LEXSTAT 8 A.A.C. 15.102.

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*** THIS SECTION IS CURRENT THROUGH MARCH 5, 2003 ***

TITLE 8. LABOR AND WORKFORCE DEVELOPMENT

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

ARTICLE 2. MINIMUM WAGES AND OVERTIME

8 Alaska Admin. Code 15.102 (2003)

8 AAC 15.102. Voluntary flexible work hour plans

(a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(d)(14) must be filed by the employer with a wage and hour administration office of the department. The request must be in writing, and must include

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

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

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

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

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(d)(14). An approved plan constitutes the certificate required in AS 23.10.060(d)(14)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for the denial.

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

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

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

this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time.

AUTHORITY: AS 23.05.060; AS 23.10.060; AS 23.10.085; AS 23.10.100

SOURCE: Eff. 9 28 85, Register 95

LEXSTAT Alaska Stat. 23.10.055

ALASKA STATUTES
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*** CURRENT THRU FEBRUARY 13, 2003 ***

TITLE 23. LABOR AND WORKERS' COMPENSATION

CHAPTER 10. EMPLOYMENT PRACTICES AND WORKING CONDITIONS

ARTICLE 3. ALASKA WAGE AND HOUR ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Alaska Stat. § 23.10.070 (2003)

Sec. 23.10.070. Exemptions from minimum wage

To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 -- 23.10.150 of

- (1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time that are fixed by the commissioner; and
- (2) an apprentice at the wages that are approved by the commissioner; or
- (3) a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the commissioner.

HISTORY: (§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962)

NOTES:

ADMINISTRATIVE CODE. --For exemptions, see 8 AAC 15, art. 3.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.



February 5, 2004

Esteemed Members of the Finance Committee
Industry Participants
And Other Attendees

Good Afternoon

My name is Susan Motter. I am the General Manager of the SpringHill Suites by Marriott in Fairbanks, Alaska. Our team is comprised of 40 dedicated hospitality associates. I am a Board Member of the Alaska Hotel and Lodging Association.

Thank you for the opportunity to address the committee and participants today on HB 255. I speak in support of this bill. The hospitality industry is an industry of the heart. We serve our guests, our community, and our peers with warmth and genuine concern for each other's well being. Success in this industry mandates that each one of us take on duties that may range outside of the job description we hired into. Personal career growth comes from learning every task and taking ownership of those tasks regardless of what position we fill. At our hotel we promote from within all associates who understand and live by this premise. Our hotel has been honored by the former Governor for its' efforts and success in the "welfare to work" program. It is a great satisfaction to see lives change by providing a job and stability for every associate.

In this industry one can be promoted quickly to a management position if the associate "works from the heart". It is unfortunate therefore, that we hesitate to promote to exempt positions at this time, as the current law mandates that we invoke the 80/20 clause. This essentially can affect a very negative financial picture for the hotel profitability. Even more important is the effect it has on career growth for dedicated associates.

In addition, we believe that our associates and their families will benefit from the ability to allow flexible work hours upon agreement of employer and associate.

I ask you to give consideration to HB255 and the positive effect it can have on the associate, his career, and the hospitality business that provides the opportunity for our citizens to live productively.

Thank you for the opportunity to express my views.


Susan Motter

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Flexible work schedules refer to a variety of arrangements in which fixed times of arrival and departure are replaced by a working day composed of two different types of work time: *core time and flexible time bands*. Core time is the designated period during which all employees must be present. Typical core hours are between 9:30 am and 3:00 pm. flexible time bands are the part of the daily work schedule within which employees may choose their time of arrival and departure within limits consistent with the duties and requirements of their positions. The employee must always account for the basic work requirements. This means the number of hours, excluding overtime hours, which an employee is required to work, or otherwise to account for by an appropriate form of leave (80 hours biweekly in the case of a full time employee), remains constant.

In some FWS programs, employees may also earn "credit hours" for any hour over the basic work requirement they choose to work -- in order to vary the length of the work days or weeks which follow: employees do not receive overtime pay for these extra credit hours. A maximum of 24 such credit hours may be carried over from one pay period to the next. Some flexible work schedules also allow employees to choose to structure their work schedules to enable them to take off a day or two during the pay period (see Maxiflex below).

The different types of flexible work schedules are:

- **Flexitour**
The employee, with supervisory approval, preselects the starting time.
- **Gliding Schedule**
Employees may vary starting times within flexible time bands, without prior approval.
- **Variable Day**
Within parameters, an employee may vary the length of the workday, if present during the core hours, provided a full forty-hour work week is completed.
-

Variable Week

This is similar to the variable workday, except that the employee alters the whole work week -- 80 hours biweekly, or multiples thereof, must continue to be worked.

- **Multiflex**

The length of both the workday and workweek may vary. Core hours may be designated for less than 10 workdays per biweekly period, and the 80-hour biweekly workweek or multiples thereof (e.g., 160 hours in four weeks) must be completed.

Compressed Schedules

Compressed work schedules may also take a variety of forms, but are fixed alternative work schedules. The most common is the four-day week, referred to as the 4/10 schedule, in which the employee works four 10-hour days and has a three day weekend. An alternative is for the employee to work 9 hours for 8 workdays and 8 hours for one workday during a biweekly pay period and receive one day off biweekly.

CWS arrangements enable the full-time employee to complete the basic work requirements of 80 hours in fewer than 10 work days in each biweekly pay period. There are no flexible times in a compressed schedule. Employee's times of arrival and departure from work are set, as are the days on which they are to complete the basic work requirement. For employees working under compressed schedules, overtime pay will continue to be paid for work over and above the compressed schedule. Credit hours are not permitted under CWS.

The types of compressed work schedules are:

- **4-10**

Employees work 10 hours a day, four days a week. Daily, weekly, and biweekly basic work requirements apply.

- **5-4/9**

Employees work nine hours for eight workdays and eight hours for one workday during a biweekly pay period, and receive one day off biweekly; all basic work requirements apply. This is the most common form of CWS.

- **Other**

Employees may be on a variation of the above schedules, provided the schedule they adopt is a fixed regular schedule.

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From *The Ultimate Field Guide to the U.S. Economy*, www.fguide.org

Econ-Atrocity Bulletin:

Flexible Work Schedules for Mothers? (6/5/02)

By Elaine McCrate, CPE Staff Economist

Who gets more flexible schedules at work? Is it mothers, trying to cope with the dual demands of family care and jobs? Or is it professionals, managers, and other high status workers? (The latter, of course, are disproportionately men.)

If you're not an economist, you probably thought for a minute about all those bankers and executives on the golf course at 3:00, and answered high status workers. But most economists have assumed that mothers have more flexible schedules, with greater control over their starting and stopping times, and more opportunity to take days off, in order to handle the demands of sick children, snow days, no-show babysitters, and the other myriad contingencies of family care. Furthermore, most economists assume that people with flexible schedules get paid less than workers of similar skill who have more rigid schedules. In this view, since women are more likely to get the cushy jobs with more control over their work hours, and consequently lower pay, women's choices to take flexible jobs help explain a big part of the gender wage gap.

It's time for a little reality check on these issues. Since women still have primary responsibility for childcare and eldercare, they do need more flexible jobs. But according to several data sources, they don't get these jobs more often than other workers. In 1998, the General Social Survey asked how people's working hours were decided. Respondents could answer that they decided their starting and stopping times themselves, that they decided themselves within limits, and that their employer decided.

Among workers aged 18-65 who were not self-employed, single mothers had the most rigid schedules of all, compared to all men with and without children, and all other women with and without children. 61.5% of single mothers said that their employers decided; 37.2% said that they could decide themselves within limits; and 1.3% said that they could decide themselves. Compare this to men without kids: 54.5% said their employer decided, 40.1% said that they decided themselves within limits, and 5.4% decided entirely on their own. Also compare single mothers to women without children, for whom the equivalent figures were 51.3%, 45.6%, and 3.1%. There were generally similar results from similar questions asked in the 1997 Current Population Survey, and from the 1991 Comparative Project in Class Analysis (CPCA).

Do workers with more flexible schedules get paid less? The data say no. The 1991 CPCA data shows that workers who decided their arrival and departure times on their own made 8.3% more than those whose employers decided for them. Workers who could decide on their own to take a day off, without losing wages or needing to take comp time, made 7.7% more than those whose employers decided their days off. It sounds like the market pays workers in flexible jobs more for the discomfort of all those afternoons on the golf course, and it pays workers in rigid jobs less for the inconvenience.

Finally, black workers have much more rigid schedules than white workers. In 1998, 59.2% of black workers said that their employers decided their starting and stopping times, vs. 51.4% for whites. In contrast, 36.9% of black workers vs. 44.8% of white workers said that they could their starting and stopping times within limits (and 3.9% of each group said that they decided completely on their own).

Lorie Morris
1600 O'Malley
Anchorage, AK 99507

April 22, 2004

Representative Williams
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

RE: HB 255

Dear Representative Williams,

I am writing you on behalf of Alaska Baptist Family Services, a non-profit organization dedicated to providing quality care and treatment for children, to seek your support for HB 255. I recently learned of HB 255, which would, among other things, amend current definitions for the "administrative," "executive," and "professional" exemptions in Alaska overtime law.

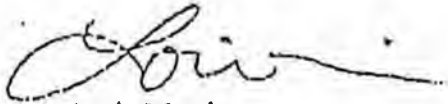
Currently, the Alaska state law pertaining to the exempt level definitions is burdensome and unfair to Alaskan employers. For instance, using the current definitions the burden of proof lies with the employer to ensure their exempt employees are actually performing the exempt level duties that they are assigned for at least 80% (60% in the service and retail industries) of their workweek every week. This is costly and difficult to monitor when there is only general supervision of the exempt employee. It is the exempt employee's duty to assign tasks appropriately. When the employee fails to perform the essential duty of task assignment (either intentionally or unintentionally), the employer is at risk. Given the significant costs and penalties of defending overtime claims, employers are often forced to settle regardless of the claim's merits.

A better and more reasonable approach is that set out in HB 255. Under HB 255, the focus is not on the impossible task of measuring the amount of time supervisors, executives, and administrative personnel perform certain duties. Instead, the focus is, as it should be, on the primary duties of the job as a whole.

With regard to the interpretation of these definitions, the proposed modifications would finally bring Alaska in line with the federal definitions and the majority of the other states. HB 255 is a fair and reasonable solution to the current definitions, which are antiquated and do not reflective the business world as it pertains to exempt administrative and executive employees.

I urge you and your colleagues to support HB 255.

Sincerely,



Lorie Morris,
Executive Director,
Alaska Baptist Family Services