

SB

54

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/31/03

FURTHER: Labor and Commerce

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Transportation Committee considered SENATE BILL NO. 54

SB 54 OVERTIME PAY FOR AIRLINE EMPLOYEES

"An Act exempting flight crew members of certain air carriers from overtime pay requirements."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
01-				

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i> dson	✓			
<i>[Signature]</i> thewriault	✓			
<i>[Signature]</i> Wagner	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i> John J. Coudery Coudery	✓			



Sen. John J. Cowdery, Chair

Senate Transportation Committee

Call: 465-4921 Fax: 465-2063

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- E Background flow chart:**
- F Some statutes**

- Sen. Pres. THERRIault
- Sen. WAGONER
- Sen. LINCOLN
- Sen. OLSON

A BILL

FOR AN ACT ENTITLED

“An act relating to an exemption from the requirement for payment for overtime for certain employees in the airline industry; and providing for an effective date.”

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

Section 1. AS 23.10.060(d) is amended by adding a new paragraph to read:

(19) work performed by a flight crew member employed by an interstate air carrier subject to subchapter II of the Railway Labor Act (45 U.S.C. 181-188); for purposes of this exemption, flight crew is defined as the pilot, co-pilot, flight engineer and flight attendant.

Section 2. This Act takes effect immediately under AS 01.10.070(c).

Attachment 1

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 54
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Overtime Pay for Airline Employees BRU: Labor Standards & Safety
Sponsor: Senator Olson Component: Wage and Hour
Requester: Senate TRA Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill codifies existing department policy based on the Attorney General's 1980 interpretation of the exempt status of flight crews employed by air carriers subject to 45 USC 181 - 188.

The State of Alaska overtime laws are pre-empted by the federal Railway Labor Act. Since the early 1980's the department has held that flight crews on subject airlines are not under the state's jurisdiction with regard to state overtime laws. However, the department's opinion has not stopped former employees from bringing private lawsuits. By placing this into the law, the likelihood of such private causes of action will be greatly reduced and air carriers will be saved the considerable expense of having to defend themselves in court.

Prepared by: Hall Denton, Acting Director Phone: 465-4855
Division: Labor Standards & Safety Date/Time: 2/14/03 3:04 PM
Approved by: Greg O'Claray, Commissioner Date: 02/14/03
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 54
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Overtime Pay for Airline Employees BRU: Labor Standards & Safety
Sponsor: Senator Olson Component: Wage and Hour
Requester: Senate TRA Component Number: 345

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Land & Structures						
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CAPITAL EXPENDITURES						
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Prepared by: Hali Denton, Acting Director Phone: 465-4855
Division: Labor Standards & Safety Date/Time: 2/14/03 3:04 PM
Approved by: Greg O'Clary, Commissioner Date: 02/14/03
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 94
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Overtime Pay for Airline Employees BRU: Labor Standards & Safety
 Sponsor: House Transportation by Request Component: Wage and Hour
 Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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CAPITAL EXPENDITURES						
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Prepared by: Hall Denton, Acting Director Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 2/14/03 3:05 PM
 Approved by: Greg O'Clary, Commissioner Date: 02/14/03
 Agency: Department of Labor and Workforce Development

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Juneau, Alaska 99801-1182
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SENATOR DONALD C. OLSON

DISTRICT S

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Nunam Iqua
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Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

SB 54 SPONSOR STATEMENT

By Senator Olson

I introduced SB 54 to bring certainty to the interpretation of existing federal and state wage and hour statutes as they pertain to payment of overtime in the air transportation industry. Because of the uniqueness of their working conditions, flight crews have been considered professionals that are exempt from the standard 8 hour work day, 40 hour week and associated overtime pay requirements [AS 23.10.055(9)]. In conjunction with the maximum flight hour requirements set by the Federal Aviation Administration, these exemptions at both the state and federal level have allowed the industry to structure wage and hour schedules best suited to the work requirements of their flight crew personnel.

Several Alaska court decisions have raised a question about the correct application of state wage and hour laws and the application of overtime exemptions. Indeed, the confusion has stimulated other court challenges.

SB 54 explicitly adds flight crews to the list of occupations and employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites the provisions of the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of the exemption.

THE
FOLLOWING
DOCUMENT(S)
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ALASKA AIR CARRIERS ASSOCIATION

929 E. 81st, Suite 108
Anchorage, Alaska 99518
(907) 277-0071 Fax (907) 277-0072

February 18, 2003

The Honorable John Cowdery
Chairman
Alaska Senate Transportation Committee
State Capitol
Juneau AK 99801-1182

Dear Senator Cowdery:

The Alaska Air Carriers Association considers the passage of SB 54 a priority.

Current practice among the majority of our members is to accept the Alaska Department of Labor, Wage and Hour Administration's interpretation of flight crew as exempt from overtime rules. This approach to calculating payroll is an industry standard used in all other states.

During an informal poll of members, it was found that flight crew from the various Alaska-based companies prefer their exempt status primarily due to their employers' abilities to create flexible work schedules.

SB 54 brings stability to Alaska law as applied to flight crews of air carriers governed by the Railway Labor Act. Passage will ensure that the State's executive branch interpretation of the Alaska's wage and hour overtime law is the same as that applied by Alaska courts. SB 54 will also harmonize Alaska with industry practices nationwide.

The bill applies to the flight crews of any air carrier in the state engaged in interstate work, foreign work, or carriage of United States Post Office mail. The only flight crews unaffected are those who perform work for air carriers who operate only in-state charter/air taxi work.

Please consider the AACGA as a resource during the debate of SB 54.

Sincerely,

Karen E. Casanovas
Executive Director

- AKA MADRA
- ALASKA AIRWAYS
- ALASKA BARGE CLASH
- ALASKA AVIATION TOURS
- ALASKA BUSH CARRIERS
- ALASKA CARDO SERVICES
- ALASKA CENTRAL EXPRESS
- ALASKA FLYERS
- ALASKA REPAIR AND SERVICES
- ALASKAN ADVENTURES
- ARCTIC ALASKA
- ARCTIC CIRCLE AIR
- ARCTIC TRANSPORTATION SERVICES
- BARREN AVIATION
- BEAR AIR
- BEARING AIR
- BRAN AIR
- BRANCH RIVER AIR SERVICE
- BOATON DAY AIR SERVICE
- C-AIR
- COASTAL HELICOPTERS
- CRA AIR SERVICE
- CAPP AIRWAYS AIR SERVICE
- CLEARWATER AIR
- CRANE AIR
- CRUISE AIRWAYS
- ERA AVIATION
- EVERGREEN HELICOPTERS
- F.S. AIR SERVICE
- FIDELITY & PLUMB
- FLY GIRL
- FOUR E AIR
- FRESHWATER ADVENTURES
- FRONTIER PLUMB SERVICE
- GAUCHER FLYER AIR
- GRANT AVIATION
- HARBOR AVIATION
- HAWK AIRWAYS
- HIGH ADVENTURE AIR SERVICE
- HULLAY AIR BUS
- HUMMER AIR
- HUMMER AIR SERVICE
- ILUMNA AIR TAXI
- INLET AIR
- JAPAN AIRLINES
- JULIA AIR
- KACOMAR AIR SERVICE
- KATMAI AIR
- LAKE & PENINSULA AIRLINES
- LARK CRAB AIR
- LARRY FLYING SERVICE
- LEADERS EDGE AVIATION
- LINDEN AIR CARDO
- MENIABY AIR SERVICE
- MOOSE AIR
- NEB SEARCH & RESCUE
- NORTHERN AIR CARDO
- NORTHERN AIR FUEL
- NORTHERN FRONTIER HELICOPTERS
- ONION AIR SERVICE
- PENINSULA AIRWAYS
- POLAR EXPRESS
- POLARIS AIR
- RUSTY PLUMB SERVICE
- SEASIDE AVIATION
- SEANAW AIR
- SEAWAY AIR SERVICE
- SEY TRAVELERS ALASKA
- SOUTHCENTRAL AIR
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- STARBUCK AVIATION
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- TACHAN AIR SERVICE
- TALON FLYING SERVICE
- TUCKER AVIATION
- ULTIMATE ADVENTURES
- UMAT ENTERPRISES
- WILLAG AVIATION
- WINDLIPS ADVENTURES
- WARD AIR
- WINGS
- WINGS OF ALASKA
- WILSON MOUNTAIN AIR
- WYOMING AIR SERVICE





Era Aviation, Inc.

6160 Carl Brady Drive
Anchorage, Alaska
99502

FEB 07 2003

February 3, 2003

The Honorable Con Bunde
The Honorable Donny Olson
State Capitol
Juneau AK 99801-1182

RE: Proposed Overtime Exemption Bill for Interstate Air Carriers

Dear Senators Bunde and Olson:

Thank you for agreeing to sponsor the attached proposed legislation regarding the exemption of flight crew personnel employed by Interstate Air Carriers from the state's overtime exemption laws. The Alaska Air Carriers Association (AACCA) has made this legislative amendment a priority and fully supports its passage.

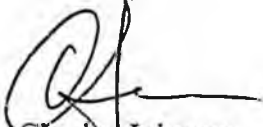
Era has become increasingly concerned with the uncertainty associated with the appropriate wage and hour treatment of its flight crews under Alaska wage and hour laws. The Alaska Department of Labor, Wage and Hour Section has assisted the Alaska based interstate air carrier industry by providing a chart that outlines the treatment of air carriers under the Alaska Wage and Hour Act. (See Attachment 2). Era is paying its flight crew employees in a manner consistent with this directive. However, the Alaska state courts have clouded this approach. In Dayhoff v. Temsco Helicopters, Inc., 848 P2d 1367 (Alaska 1993), the Alaska Supreme Court concluded that a helicopter pilot was owed overtime, while in a later Era case, an Alaska Superior Court judge denied overtime to a fixed wing co-pilot. (See Attachments 3 and 4). The non-Alaska based interstate air carriers, such as Alaska Airlines, Delta Airlines, and various air cargo carriers, do not really have a stake in this issue because the pay of their flight crews is governed by collective bargaining agreements, which preempt the state's overtime laws. Era, like most of the Alaska based interstate air carriers, is non-unionized. Thus, there are no labor agreements that take us outside the state's wage and hour laws. Even though we adhere to the Alaska Department of Labor's pay policy guidance, there is no guarantee that a court will not choose to interpret the state's overtime laws differently in the future, thereby exposing us to liability for two years of back wage recalculations.

We believe that the proposed exemption would remove this uncertainty by codifying the existing position of the Alaska Department of Labor, Wage and Hour Section administrators. The proposed exemption would not change the way the law is currently being administered. The codified exemption would however, provide a clear, consistent rule for the interstate air carrier industry and remove any uncertainty as to how a court would address overtime issues in the future.

Letter to The Honorable Con Bunde and
The Honorable Donny Olsen
February 3, 2003
Page 2 of 2

Thank you for your assistance in this matter. If you have any questions about this letter or its attachments, please feel free to give me a call at 907-266-8361.

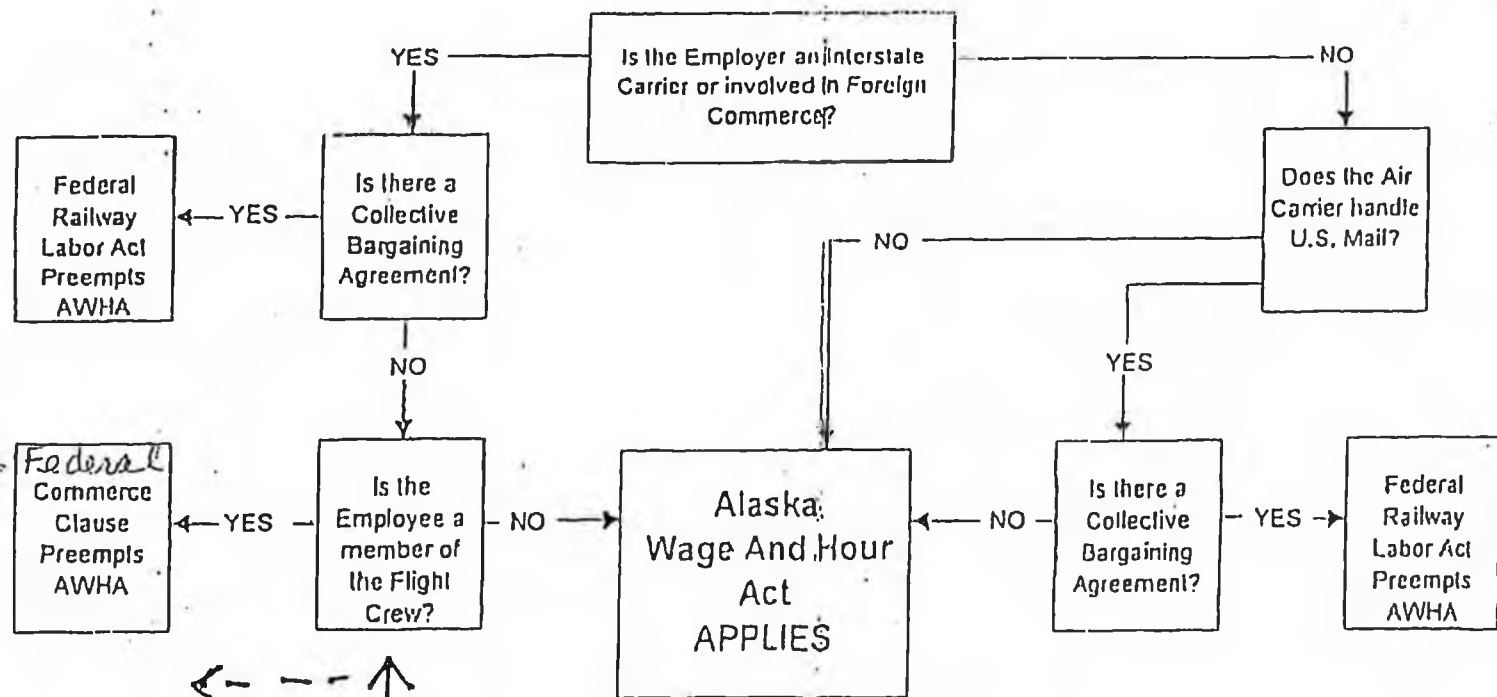
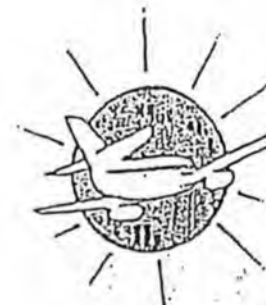
Sincerely,



Charles Johnson
President

Cc: Karen Casanovas, Executive Director AACA
Paul Landis, Senior Vice President, Era
Kip Knudson, Manager of Government Affairs, Era
Marcia Davis, General Counsel, Era
David Parish

AIR CARRIERS & The Alaska Wage And Hour Act (AWHA)



← - - - ↑
 proposed
 (19) captures
 this exemption
 from AWHA

DAYHOFF VS. TEMSCO HELICOPTERS, INC.

1372 Alaska

848 PACIFIC REPORTER, 2d SERIES (1993)

burden to prove the exemption is applicable. *Reeves v. International Tel. & Tel. Corp.*, 357 F.Supp. 295, 298 (W.D.La.1973), *aff'd*, 616 F.2d 1342 (5th Cir.1980), *cert denied*, 449 U.S. 1077, 101 S.Ct. 857, 66 L.Ed.2d 800 (1981). "Exemptions are to be narrowly construed against the employer." *Id.* at 297. "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled non-exempt." *Adam v. United States*, 26 Cl.Ct. 782, 786 (Cl.Ct.1992). All four elements must be met before an employee is found exempt. *Id.*

The parties agree that Dayhoff was a salaried employee, compensated on a *fac* basis. The parties dispute the level of education required of Dayhoff, what Dayhoff's primary duty was, how to characterize the discretion exercised by Dayhoff, and if the character of work was intellectual or physical.

Dayhoff claims the knowledge required to become a commercial pilot is not the type of advanced learning needed to qualify as a professional. Dayhoff also claims his primary duty was not professional because approximately 62% of his time was spent performing non-aviation duties. Even while flying, Dayhoff had no discretion as his actions were controlled by superiors. The only discretion and judgment exercised was in the physical operation of the aircraft.

Temasco argues that Dayhoff's primary duty was to be a pilot. He was hired as a pilot and his time was spent flying or waiting to fly. Temasco contends that being a commercial helicopter pilot requires knowledge of an advanced type. Further, Temasco argues that a commercial helicopter pilot is required to consistently exercise discretion and judgment.

[12, 13] The applicability of exemptions are questions of fact to be determined considering the individual's duties and other qualifications, and not upon how the employer classified the employee. *Reeves*, 357 F.Supp. at 302-03. A trial court must make a finding of fact in determining an employee's status. *Dalheim v. KDFW-TV*, 918 F.2d 1220, 1225, 1228 (5th Cir.

1990). While both parties moved for summary judgment on this issue, we first review the grant of summary judgment in favor of Temasco. We must view the facts in a light most favorable to Dayhoff. Dayhoff was primarily self-educated. He claims that for approximately 62% of his time he performed non-aviation duties. Dayhoff had no significant authority to control decisions regarding flight assignments or routes. The only discretion Dayhoff exercised was in the physical operation of his aircraft. Viewing the facts in the light most favorable to Dayhoff, Temasco does not meet the burden of showing that the exemption is applicable. Dayhoff can, at most, be classified as a highly trained technician and not as a professional.

Next we review the denial of Dayhoff's motion for summary judgment. For this purpose we view the facts in the light most favorable to Temasco. It is undisputed that Dayhoff obtained his commercial helicopter license through self study and obtained his flight instructor certificate after only ten hours of formal instruction. This is not the type of advanced study required to classify an employee as a professional. Further, the discretion exercised by Dayhoff in flying a helicopter is not the type of discretion which characterizes a person as a professional for purposes of this exemption.

On the basis of the foregoing we conclude that the FAA does not preempt the AWhA, that the AWhA is not violative of the commerce clause, and that Dayhoff is not a professional for purposes of the AWhA exemption.

B. DAYHOFF DOES NOT HAVE A CAUSE OF ACTION UNDER THE ALASKA LITTLE DAVIS-BACON ACT (ALDBA).

1. ALDBA provides a private cause of action.

ALDBA was modeled after the Davis-Bacon Act, 40 U.S.C. § 276 (1988). ALDBA stipulates that a contractor or subcontractor on a public construction contract must pay its employees the prevailing

defendant's witnesses not credible does not mean that the defendant acted in bad faith.

2. The plaintiff's motion for JNOV regarding her overtime claim is DENIED. The evidence, considered in a light most favorable to the defendant, supports a jury finding that Ms. Lindfors was an exempt professional employee under AS 23.10.055(9). A

Ms. Lindfors participated in hundreds of hours of specialized training prior to obtaining her co-pilot position. That training included intellectual disciplines such as mathematics, aerodynamics, weather, navigation and similar studies. 8 AAC 15.910(a)(11)(A). From this evidence the jury could reasonably conclude that Ms. Lindfors was not a technician, but a highly trained professional charged with exercising substantial judgment and discretion to protect the lives and safety of ERA's commercial airline passengers. *Id.*; 8 AAC 15.910(a)(11)(B)(i).²

3. The defendant's motion for JNOV, new trial or remittitur is DENIED.

ERA's motion for JNOV restates legal arguments raised and decided during trial. Those arguments are rejected for the reasons stated at trial and as follows. Ms. Lindfors' complaint, amended complaint and other pretrial pleadings provided notice to ERA that Lindfors was seeking recovery for disparate treatment in promotions, retaliation for filing a Human Rights Commission complaint and constructive discharge for intolerable working conditions. Although Lindfors' proposed jury instructions combined these claims, the court had discretion and the responsibility to instruct the jury regarding each separate claim, if doing

²The court's 9/28/98 order denying Lindfors' motion for summary judgment addresses the other issues germane to the professional employee exemption.