

HB

182

HFIN

FILE

adopted to P version

24-LS0507X.1
Craver
4/11/05

AMENDMENT /

OFFERED IN THE HOUSE

BY REPRESENTATIVE

Rokeberg

TO: CSHB 182()

1 Page 1, line 6, following "occupations;":

2 Insert "directing retrospective application of the provisions of this Act to work
3 performed before the effective date of this Act for purposes of claims filed on or after
4 the effective date of this Act, and disallowing retrospective application for purposes of
5 claims for that work that are filed before the effective date of this Act;"

6

7 Page 5, following line 30:

8 Insert a new bill section to read:

9 "* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE
12 OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective
13 date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150
14 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

15 (b) This Act does not apply to work performed before the effective date of this Act for
16 purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before
17 the effective date of this Act."

18

19 Renumber the following bill section accordingly.

*adopted
4-13-05*

24-LS0507AP
Craver
4/6/05

CS FOR HOUSE BILL NO. 182()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH 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 the employment of a
 2 person acting in a supervisory capacity or in an administrative, executive, or
 3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and
 4 providing definitions for persons employed in administrative, executive, and
 5 professional capacities, for persons working in the capacity of an outside salesman, for
 6 persons working in the capacity of a salesman employed on a straight commission basis,
 7 and for persons that perform computer-related occupations; and providing for an
 8 effective date."

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

10 * Section 1. AS 23.10.055 is amended to read:

11 Sec. 23.10.055. Exemptions; compensation of executives, administrators,
 12 and professionals. The provisions of AS 23.10.050 - 23.10.150 do not apply to

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

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

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

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

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

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

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

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

29 (9) an individual employed

30 (A) in a bona fide executive, administrative, or professional
31 capacity;

- 1 (16) an individual who
- 2 (A) provides emergency medical services only on a voluntary
- 3 basis;
- 4 (B) serves with a full-time fire department only on a voluntary
- 5 basis; or
- 6 (C) provides ski patrol services on a voluntary basis; or
- 7 (17) a student participating in a University of Alaska practicum
- 8 described under AS 14.40.065.

9 * Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

10 (b) Notwithstanding (c) of this section, an individual employed in a bona fide
11 executive, administrative, or professional capacity shall be compensated on a salary or
12 fee basis at a rate of not less than two times the state minimum wage for the first 40
13 hours of employment each week, exclusive of board or lodging that is furnished by the
14 individual's employer.

15 (c) In (a)(9) of this section,

16 (1) "bona fide executive, administrative, or professional capacity" has
17 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair
18 Labor Standards Act of 1938), as amended, or the regulations adopted under those
19 sections;

20 (2) "computer systems analyst, computer programmer, software
21 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in
22 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,
23 or the regulations adopted under those sections;

24 (3) "outside salesman" means an employee

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

27 (B) whose primary duty is making sales or contracts for sales,
28 consignments, or shipment, or obtaining orders for service or for use of
29 facilities for which consideration will be paid by the client or customer;

30 (4) "salesman who is employed on a straight commission basis" means
31 an employee

1 (B) [OR] in the capacity of an outside salesman or a salesman
2 who is employed on a straight commission basis; or

3 (C) as a computer systems analyst, computer programmer,
4 software engineer, or other similarly skilled worker;

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

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

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

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

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

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

23 (14) a person who holds a license under AS 08.54 and who is
24 employed by a registered guide or master guide licensed under AS 08.54, for the first
25 60 workdays [WORK DAYS] in which the person is employed by the registered
26 guide or master guide during a calendar year;

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

1 (A) who is customarily and regularly employed on the business
2 premises of the employer;

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

7 (C) whose primary duty is making sales or contracts for sales,
8 consignments, shipments, or obtaining orders for service or the use of facilities
9 for which a consideration will be paid by the client or customer.

10 * Sec. 3. AS 23.10.060(a) is amended to read:

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

16 * Sec. 4. AS 23.10.085(b) is amended to read:

17 (b) The regulations may, without limiting the generality of (a) of this section,
18 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
19 homework or other acts or practices that the director finds appropriate to carry out the
20 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
21 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL
22 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
23 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
24 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
25 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
26 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

27 * Sec. 5. AS 23.10.145 is amended to read:

28 Sec. 23.10.145. Definitions. If not defined in this title or in regulations
29 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as
30 they are defined in 29 U.S.C. 201 - 219 ([THE FEDERAL] Fair Labor Standards Act
31 of 1938), as amended, or the regulations adopted under those sections [IT].

1 * Sec. 6. This Act takes effect July 1, 2005.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

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LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

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Representative Norman Rokeberg

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SPONSOR STATEMENT FOR CSIB 182 (L&C)

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

Alaska's Wage and Hour Act (AS 23.10.050-23.10.150) establishes the provisions for overtime compensation. AS 23.10.055 sets forth exemptions to the Wage and Hour Act. One of these exemptions is "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."

As currently defined in our administrative code, the definitions of "executive capacity," "administrative capacity," and "professional capacity" are confusing and difficult to interpret. In order to determine if someone is an executive, administrative or professional employee, you have to use what is known as the "long test." In addition to numerous other factors, the long test includes a calculation of the employee's time spent on "non-exempt work" (i.e. work that is not executive, administrative or professional). If an employee spends more than 20 percent (40 percent in retail or service establishments) of their time on non-exempt work, they become subject to the Wage and Hour Act and can qualify for overtime. The ambiguity within the definitions, including the implementation of the 80/20 test, has led to numerous wage and hour lawsuits, causing great expense to employers and employees.

HB 182 deletes the 80/20 test and sets forth definitions which are much more understandable. The simplicity provided by the new definitions will lead to greater compliance with the statutes. It is in the best interests of both the employer and employee that the statutes are straightforward, practical and easy to follow.

HB 182 also clarifies another area of confusion in the Wage and Hour provisions. Currently, a person acting in a "supervisory capacity" is exempt from payment of overtime, but not exempt from the full Wage and Hour Act. The definition of "supervisory capacity" in the regulations is also ambiguous and difficult to interpret. HB 182 removes this exemption from the statute. There are two reasons for deletion of the provision. The first reason is that due to the uncertainty in interpretation of the definition, the statute is currently unworkable. Secondly, the new definitions of "executive capacity" and "administrative capacity" would subsume a person working in a supervisory capacity. Therefore, there is no need to have a separate provision.

Enacting this bill will eliminate ambiguities, align Alaska more closely with other states and reduce the number of frivolous lawsuits, while protecting workers rights to receive overtime.

I urge your support of this legislation.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

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LEGISLATIVE COUNCIL, MEMBER
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Representative Norman Rokeberg

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SECTIONAL ANALYSIS FOR CSHB 182(L&C)

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

- Section 1:** Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 3 of the bill.
- Section 2:** Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).
- Section 3:** Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

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

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SECTIONAL ANALYSIS FOR CS HB 182()

24-LS0507\R

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive or professional capacity; relating to definitions under the Alaska Wage and Hour act and providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; directing retrospective application of the provisions of this Act to work performed before the effective date of this Act for purposes of claims filed on or after the effective date of this Act, and disallowing retrospective application for purposes of claims for that work that are filed before the effective date of this Act; and providing for an effective date.

CHANGES FROM THE "Y" VERSION ARE NOTED IN BOLD

Section 1: Adds "computer systems analyst, computer programmer, software engineer or other similarly skilled workers" to the list of exemptions from the Wage & Hour Act.

The previous CS had "computer related occupations" within the definition of "professional capacity". We have now broken them out as a separate exemption.

Section 2: AS 23.10.055(b)
Requires individuals employed as executive, administrative and professionals be compensated on a salary of not less than two times the minimum wage for the first 40 hours of employment.

The CS has not changed this provision, but it has been moved within the statutes.

AS 23.10.055(c)(1)
Provides that "bona fide executive, administrative or professional capacity" be defined in accordance with the Fair Labor Standards Act.

The definitions for these terms in the previous CS mirrored the federal definitions, but were spelled out within the statute. Because there were questions as to the terms used within the definitions, we have reverted to the federal definitions for the above terms, as provisions have been made for each word used within the federal definitions.

AS 23.10.055(c)(2)

Provides that "computer systems analyst, computer programmer, software engineer or other similarly skilled worker" be defined in accordance with the Fair Labor Standards Act.

This section provides the definition for this exemption found in Section 1 of the bill. Currently, Alaska's regulations defer to the Fair Labor Standards Act when defining computer related occupations. 8 AAC 15.910(a)(11)(iv).

AS 23.10.055(c)(3)

Provides a definition for "outside salesman."

This definition has not changed from the previous CS, but it has been moved within the statutes.

AS 23.10.055(c)(4)

Provides a definition for "salesman who is employed on a straight commission basis."

This definition has not changed from the previous CS, but it has been moved within the statutes.

Section 3: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime.

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 4: Deletes the minimum salary requirement when defining these terms in regulation. This salary requirement has been moved to AS 23.10.055(b) (see Section 2).

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 5: Inserts the United States code reference to the Fair Labor Standards Act of 1938.

This section is new. Where any reference to a federal law is found within our statutes, our drafters would like the correct United States Code references inserted.

Section 6: Provides that the provisions found in this bill will be applied to any litigation that is filed on or after the effective date of this bill. This requirement does not apply, however, to any claims or proceedings filed before the effective date.

This section is new.

Section 7: Provides for an effective date of July 1, 2005.

This CS has included an effective date.

THE
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DOCUMENT(S)
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★ STATE ★
CHAMBER
OF COMMERCE

April 12, 2005

Representative Kevin Myer, Co-Chair
Representative Mike Chenault, Co-Chair
House Finance Committee
State Capitol, Room 519
Juneau, AK 99801-1182

The Honorable Co-Chairs and Members of the House Finance Committee,

The Alaska State Chamber of Commerce supports the passage of Committee Substitute for House Bill 182. Keeping track of a salaried employee's hourly activities is a cumbersome if not impossible task. CSHB 182 is an important bill for business, both small and large, as it simplifies the rules related to Wage and Hour definitions for business.

Employers in Alaska must follow both the Federal Fair Labor Standards Act and the State Wage and Hour Act in setting employee wages. Federal and State law exempt administrative and professional employees from overtime requirements of the Wage and Hour Act. To determine if an employee is exempt, Alaska is one of a few states that continue to apply the "long test" which includes a calculation of the employees' time spent on non-exempt work. Most states use the overtime exemption definitions found in the FLSA relieving businesses of the burden of applying two systems.

The State Chamber believes that simplifying Alaska's wage and hour laws to more closely align with federal requirements cuts the costs of having to comply with two systems. Passage of CSHB 182 will help business clarify rules as they relate to overtime and supervisors.

Your careful attention and thoughtful consideration of this request for support is genuinely appreciated.

Yours in economic prosperity,

Wayne A. Stevens
President/CEO

Current Definitions vs. New Definitions

By: Representative Norman Rokeberg

Employees exempt from Wage and Hour Act	Current Definition	House Bill 182
Administrative	<ul style="list-style-type: none"> • Primary duties are management, supervising • Uses discretion and independent judgment • Performs work under only general supervision • Regularly and directly assists a proprietor or an exempt executive employee of the employer • Performs work along specialized or technical lines requiring special training • Salary at least 2.0 times minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is performance of office or nonmanual work directly related to management or general business operations • Uses discretion and independent judgment • Salary is at least 2.0 times the minimum wage in first forty hours a week
Executive	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Customarily and regularly exercises discretionary authority • Salary at least 2.0 times the minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Salary at least 2.0 times the minimum wage in first forty hours a week
Professional	<ul style="list-style-type: none"> • Primary duty requires an advanced degree • Or, is creative in nature, teacher or computer-related • Uses discretion and independent judgment • Work is predominately intellectual and varied in character • Salary at least 2.0 times the minimum wage in first forty hours a week 	<ul style="list-style-type: none"> • Primary duty requires knowledge from prolonged course of specialized intellectual instruction • Or invention, imagination, originality or talent in artistic or creative endeavor • Salary at least 2.0 times the minimum wage in first forty hours a week

State by State Overtime Comparision

Completed Spring, 2004

By: John M. Sedor

Single Definitional Standard – 32 Jurisdictions

(These jurisdictions either do not have applicable wage/hour regulations or directly reference the overtime exemption definitions found in the Fair Labor Standards Act to define their own exemption from overtime requirements. In these jurisdictions, employers will only need to comply with one definitional standard – the federal standard – regarding overtime exemption issues.)

Alabama	Arizona	Delaware	District of Columbia
Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Louisiana	Maine
Massachusetts	Michigan	Mississippi	Missouri
Nebraska	Nevada	New Hampshire	New Mexico
New York	North Carolina	Ohio	Oklahoma
South Carolina	South Dakota	Tennessee	Texas
Utah	Vermont	Virginia	Wyoming

“Old” Short Test – 8 Jurisdictions

(The “old” short test is similar to the new federal regulations with regard to the “time performing exempt functions” factor)

Connecticut	Illinois	Kentucky	Maryland
Montana	North Dakota ¹	Rhode Island ¹	West Virginia

¹ Definitional language contains minor variations from old federal test.

Unique Standards – 4 Jurisdictions

(Four states have a unique standard for determining overtime exemption definitions)

California	Colorado	Hawaii	Oregon	
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“Old” Long Test – 7 Jurisdictions

Alaska	Arkansas	Minnesota	New Jersey	Pennsylvania
Washington	Wisconsin ²			

² Definitional language contains minor variations from old federal test

EMPLOYERS BEWARE:

NEW WAGE AND HOUR REQUIREMENTS MAY SIGNIFICANTLY IMPACT ALASKA EMPLOYERS



Article by Bill Evans, partner,
Dorsey and Whitney LLP,
vice-chair, Anchorage Chamber
of Commerce

Both the federal and state wage and hour laws recently underwent significant revisions. It is very important

that Alaska employers understand these new requirements and ensure that their exempt employees are still in compliance with the new regulations and statutes. Even inadvertent departure from the new requirements can result in substantial liability.

Major Federal Revisions. On April 23, 2004, the United States Department of Labor published its long-anticipated revisions concerning the so-called white-collar exemptions (i.e., executive, administrative, professional, computer professional and outside salesperson). A key change to the federal system is that all employees who now earn less than \$455 per week—or \$23,660 per year—must receive overtime. Previously, employees had to earn only \$155 per week in order to qualify as exempt. The U.S. government estimates that more than 1.3 million workers nationwide will benefit from this mandated salary increase. A much fewer number of employees, estimated to be approximately 107,000 nationwide, may lose their current entitlement to overtime due to other changes.

By wholly eliminating the antiquated "long test" for determining exemptions, the Department of Labor did away with the last vestiges of the beleaguered 80/20 requirement that mandated that exempt employees could spend no more than 20 percent of their time engaged in nonexempt duties. The difficulty in objectively documenting compliance with this requirement made it a particularly vexing issue for many employers.

The Department of Labor also significantly revised the test used for determining whether an employee qualifies for an exemption based on his or her job duties. For example, administrative employees, who have always been required to exercise discretion and independent judgment in performing their duties, must now exercise such discretion and independent judgment with respect to "matters of significance." See 29 C.F.R. § 541.260.

Another notable change involves the definition of an "executive" employee. In addition to managing a

department or customarily recognized subdivision of the employer and regularly directing the work of at least two other employees, the new definition of an "executive" employee requires:

"The employee must have authority to hire or fire other employees or his/her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."

29 C.F.R. § 541.100.

Alaska Fails to Adopt Similar Changes. Choosing not to follow the lead of the federal government, the Alaska Legislature maintained its historic definitions for the white-collar exemptions. Accordingly, Alaska employers now must ensure that their exemptions comply with two significantly different systems. For instance, the problematic 80/20 requirement is still very much alive under Alaska law. It is, therefore, increasingly possible that many employees may be exempt under one system but not under the other.

Alaska Establishes Minimum Salary for Exempt Employees. Although the Alaska Legislature did not adopt any changes to the existing definitions for exempt employees, it did substantially increase the minimum salary that an exempt employee must earn. Moreover, it tied this minimum salary to the state's minimum wage, thereby guaranteeing that future increases in the minimum wage will also increase the minimum salary for exempt employees.

House Bill 255, which was submitted for Gov. Murkowski's signature on June 10, 2004, requires that any employee falling under the "administrative," "executive" or "professional" exemptions must earn a minimum salary of at least two times the state minimum wage for the first 40 hours of employment each week.

The current Alaska minimum wage is \$7.25 per hour. Accordingly, this new law will require that any exempt employee be paid a salary of \$580 per week—or \$30,160 per year. There is no evidence of any study being conducted to determine how many employees or employers in Alaska this new requirement will affect. This law will automatically go into effect 90 days after it is signed by the governor.



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March 16, 2005

Representative Norm Rokeberg
House Labor & Commerce Committee
465-2040

Dear Representative Rokeberg

Re HB 182

Thank you for sponsoring this important legislation. This is a request for your committee to approve HB 182. This bill recognizes the cumbersome, if not impossible, task of tracking an employee's time hour by hour. As you know, the Federal FSLA has relieved employers of that burden and most states have done so also.

It is unrealistic to require additional paperwork hour by hour for tracking professional or supervisory employees. As I am sure you are aware, a supervisor or professional may start a task but demands of the job may require a change in task before completion. To have an employee at that level be required to write down each task beginning to end to see if it meets the "80/20" rule would create an additional burden on jobs that are often by their nature "burdensome."

The reason for the higher compensation for employees at the professional, administrative or supervisory level is the understanding that they have a job that needs to be accomplished and have the ability to decide the means for accomplishing that job.

Please approve this important legislation.

Sincerely,
COASTAL HELICOPTERS, INC.

Dorothy S. Wilson, Vice President



March 16, 2005

Rep Norm Rokeberg
State Capital Building
Juneau, AK 99801
Sent via fax: (907) 465-2040

Dear Representative Rokeberg,

On behalf of the Alaska Hotel & Lodging Association and the Alaska Restaurant & Beverage Association I convey full support of HB 182. This is an important bill for our industry and for every employee of exempt workers because it provides for exempt status language that employers are easily able to understand and comply with. Currently, exempt status language requires that employers track and log how exempt workers spend their time by the hour to ensure appropriate compliance with the 80/20 or 60/40 provisions.

The definition of exempt status eligibility being based on primary job duty rather than the amount of time a worker spends on exempt vs. non exempt work mirrors the real life work roles of executive and professional salaried workers. The Federal definition of exempt worker was recently changed for the very same reason; it is burdensome to comply with and makes employers vulnerable to costly lawsuits.

A focus on primary job duties provides a clear definition of who is eligible to be exempt and who is not. Without this clear definition, many employers chose to make all employees hourly wage earners, denying the executive and professional management staff access to benefits that could otherwise be offered to them.

The provisions of HB 182 benefit both the employer and the employee. Thank you for your sponsorship of this bill.

My best regards,

Karen R. Rogina
President & CEO

adn.com

Anchorage Daily News

Print Page

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Labor costs kill downtown La Mex**RESTAURANT: Owner took over chain from parents in 1990; other two stay open.**By SARANA SCHELL
Anchorage Daily News*(Published: February 9, 2005)*

Anchorage's downtown La Mex restaurant, home of Grande Ronde and the Jalapeno Eating Contest during Fur Rendezvous, not to mention a major annual Cinco de Mayo party, is closed.

Owner Trina Johnson said she closed the location last week, after 30 years in business, because of rising labor costs.

La Mex's two other locations in Anchorage, in Spenard and on King Street in South Anchorage, remain open. They absorbed some of the downtown restaurant's 35 to 40 employees. Johnson laid off 26. She already had cut 12 positions after Christmas, she said.

"I feel bad," Johnson said, "but you have to start cutting your highest cost items."

Labor costs at La Mex went up \$200,000 in 2003, the year the state increased its minimum wage from \$5.65 to \$7.15 an hour, Johnson said.

The cost of workers' compensation insurance is tied to a company's payroll, she said, and that went from \$22,000 to \$80,000 per year over the past two years.

A higher alcohol tax, a lowered legal breath-alcohol content limit and a smoking ban didn't help, Johnson said.

"People are drinking less," she said, and "your profit's in your alcohol."

La Mex raised prices by 5 percent two weeks ago, Johnson said, to offset rising food costs. She said she was reluctant to change menu prices.

"People are only going to pay so much for a taco," Johnson said.

To cut costs, the restaurants quit serving sizzle-making lemons with their fajitas, saving \$500 a month, Johnson said, and started outsourcing kitchen prep work.

Tourist seasons were busy, Johnson said, but not enough to keep the largest of the three locations open.

"That's bad," said Jeramie Ford when he heard the restaurant on Sixth Avenue and I Street was closed. Ford, 28, said he started eating there as a 5-year-old, when he used to have to wait for a table. That hasn't been the case for years, he said, but Ford kept coming for the chicken fajitas.

"It's kind of sad to see it go," he said.

Johnson said her parents started La Mex in 1969 in a Mountain View log cabin that seated 12. There, she said, her mother made guacamole from scratch at customers' tables.

Johnson took over the business in 1990 and opened the South Anchorage location in 1999.

That location will take on the American fare that only the downtown restaurant carried, such as prime rib.

The Grande Ronde will be held at La Mex in Spenard this year, Johnson said, while the King Street restaurant will host Fur Rondy events and the Cinco de Mayo party.

Daily News reporter Sarana Schell can be reached at sschell@adn.com.

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ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

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SECTIONAL ANALYSIS FOR CSIB 182()

24-LS0507\P

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive or professional capacity; relating to definitions under the Alaska Wage and Hour act and providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; and providing for an effective date.

CHANGES FROM THE "Y" VERSION ARE NOTED IN BOLD

Section 1: Adds "computer systems analyst, computer programmer, software engineer or other similarly skilled workers" to the list of exemptions from the Wage & Hour Act.

The previous CS had "computer related occupations" within the definition of "professional capacity". We have now broken them out as a separate exemption.

Section 2: AS 23.10.055(b)
Requires individuals employed as executive, administrative and professionals be compensated on a salary of not less than two times the minimum wage for the first 40 hours of employment.

The CS has not changed this provision, but it has been moved within the statutes.

AS 23.10.055(c)(1)
Provides that "bona fide executive, administrative or professional capacity" be defined in accordance with the Fair Labor Standards Act.

The definitions for these terms in the previous CS mirrored the federal definitions, but were spelled out within the statute. Because there were questions as to the terms used within the definitions, we have reverted

to the federal definitions for the above terms, as provisions have been made for each word used within the federal definitions.

AS 23.10.055(c)(2)

Provides that "computer systems analyst, computer programmer, software engineer or other similarly skilled worker" be defined in accordance with the Fair Labor Standards Act.

This section provides the definition for this exemption found in Section 1 of the bill. Currently, Alaska's regulations defer to the Fair Labor Standards Act when defining computer related occupations. 8 AAC 15.910(a)(11)(iv).

AS 23.10.055(c)(3)

Provides a definition for "outside salesman."

This definition has not changed from the previous CS, but it has been moved within the statutes.

AS 23.10.055(c)(4)

Provides a definition for "salesman who is employed on a straight commission basis."

This definition has not changed from the previous CS, but it has been moved within the statutes.

Section 3: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime.

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 4: Deletes the minimum salary requirement when defining these terms in regulation. This salary requirement has been moved to AS 23.10.055(b) (see Section 2).

This provision has not changed from the previous CS, but it has moved to a different section within the bill.

Section 5: Inserts the United States code reference to the Fair Labor Standards Act of 1938.

This section is new. Where any reference to a federal law is found within our statutes, our drafters would like the correct United States Code references inserted.

Section 6: Provides for an effective date of July 1, 2005.

This CS has included an effective date.

24-LS0507P
Craver
4/6/05

CS FOR HOUSE BILL NO. 182()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH 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 the employment of a
2 person acting in a supervisory capacity or in an administrative, executive, or
3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and
4 providing definitions for persons employed in administrative, executive, and
5 professional capacities, for persons working in the capacity of an outside salesman, for
6 persons working in the capacity of a salesman employed on a straight commission basis,
7 and for persons that perform computer-related occupations; and providing for an
8 effective date."

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

10 * Section 1. AS 23.10.055 is amended to read:

11 Sec. 23.10.055. Exemptions; compensation of executives, administrators,
12 and professionals. The provisions of AS 23.10.050 - 27 10.150 do not apply to

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

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

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

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

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

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

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

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

29 (9) an individual employed

30 (A) in a bona fide executive, administrative, or professional
31 capacity;

- 1 (16) an individual who
2 (A) provides emergency medical services only on a voluntary
3 basis;
4 (B) serves with a full-time fire department only on a voluntary
5 basis; or
6 (C) provides ski patrol services on a voluntary basis; or
7 (17) a student participating in a University of Alaska practicum
8 described under AS 14.40.065.

9 * Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

10 (b) Notwithstanding (c) of this section, an individual employed in a bona fide
11 executive, administrative, or professional capacity shall be compensated on a salary or
12 fee basis at a rate of not less than two times the state minimum wage for the first 40
13 hours of employment each week, exclusive of board or lodging that is furnished by the
14 individual's employer.

15 (c) In (a)(9) of this section,

16 (1) "bona fide executive, administrative, or professional capacity" has
17 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair
18 Labor Standards Act of 1938), as amended, or the regulations adopted under those
19 sections;

20 (2) "computer systems analyst, computer programmer, software
21 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in
22 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,
23 or the regulations adopted under those sections;

24 (3) "outside salesman" means an employee

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

27 (B) whose primary duty is making sales or contracts for sales,
28 consignments, or shipment, or obtaining orders for service or for use of
29 facilities for which consideration will be paid by the client or customer;

30 (4) "salesman who is employed on a straight commission basis" means
31 an employee

1 (B) [OR] in the capacity of an outside salesman or a salesman
2 who is employed on a straight commission basis; or

3 (C) as a computer systems analyst, computer programmer,
4 software engineer, or other similarly skilled worker;

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

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

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

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

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

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

23 (14) a person who holds a license under AS 08.54 and who is
24 employed by a registered guide or master guide licensed under AS 08.54, for the first
25 60 workdays [WORK DAYS] in which the person is employed by the registered
26 guide or master guide during a calendar year;

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

1 (A) who is customarily and regularly employed on the business
2 premises of the employer;

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

7 (C) whose primary duty is making sales or contracts for sales,
8 consignments, shipments, or obtaining orders for service or the use of facilities
9 for which a consideration will be paid by the client or customer.

10 * Sec. 3. AS 23.10.060(a) is amended to read:

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

16 * Sec. 4. AS 23.10.085(b) is amended to read:

17 (b) The regulations may, without limiting the generality of (a) of this section,
18 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
19 homework or other acts or practices that the director finds appropriate to carry out the
20 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
21 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL
22 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
23 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
24 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
25 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
26 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

27 * Sec. 5. AS 23.10.145 is amended to read:

28 Sec. 23.10.145. Definitions. If not defined in this title or in regulations
29 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as
30 they are defined in 29 U.S.C. 201 - 219 ([THE FEDERAL] Fair Labor Standards Act
31 of 1938), as amended, or the regulations adopted under those sections [IT].

1 * Sec. 6. This Act takes effect July 1, 2005.

STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

P. O. Box 21149
Juneau, AK 99802-1149
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OFFICE OF THE COMMISSIONER

April 14, 2005

The Honorable Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 214
Juneau, Alaska 99801

Dear Representative Rokeberg:

I AM PLEASED TO INFORM YOU . . .


The Alaska Department of Labor and Workforce Development is in support of CSHB 182(FIN).

This bill will help to streamline the cumbersome process of determining whether an employee is exempt from Alaska's overtime pay requirements, while minimizing the potential for employee abuse by expanding the minimum salary provision. The minimum annual salary of \$29,744 will help to ensure that line workers are not artificially categorized in overtime exempt positions. I applaud your efforts to carefully balance industry needs for clearer overtime pay guidelines with the needs of Alaska's workforce.

We do not expect the proposed changes to have a significant impact on the department's operations. Less than five percent of wage claims filed with the department in FY 2004 involved issues associated with the overtime pay exemptions affected by this proposed legislation. Although the changes may initially produce more questions, the new standards are expected to be easier to explain.

If you need any additional assistance with this bill, please let me know.

Sincerely,


Greg O'Claray
Commissioner

cc: Grey Mitchell, Director LS&S