

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

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HJ

HB 223

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Department's notices before and after the regulation. The only correspondence discovered was a short hearing notice published in the Anchorage Daily News on August 30, 31 and September 1 of 1978. It is also incredible that the words fluctuating work week were not mentioned in the small print common to public hearing notices.

This entire matter did not come to Dresser's attention until the Department of Labor filed a \$4,000 suit against Dresser Swaco in 1979 for an employee who was paid under the fluctuating work week plan. Dresser chose to challenge the Department of Labor's suit regarding the validity of the regulation. When losing in the State Supreme Court, Dresser immediately had no choice but to bow down and submit to the Alaska Department of Labor's regulation prohibiting the use of the fluctuating work week pay plan. We changed pay plans seven weeks after the State Supreme Court ruling. Within one month after changing pay plans, we were served a summons in the form of a class action lawsuit. Within a very few months, four other companies were served class action suits for past use of the fluctuating work week plan. These suits are all being handled by one law firm. Two of these suits alone called for judgements in excess of thirty five (35) million dollars!

An Alaska Department of Labor spokesman has estimated that there may be up to 90 companies affected with an excess of 100 million dollars in liability.

H.B. 223 would prohibit retroactive recovery by employees who were paid under the fluctuating work week system during the period the regulatory prohibition was being appealed in the courts.

I encourage you to strongly consider the possible consequences if H.B. 223 does not pass. It would create a definite windfall profit for many past and present employees. Definite windfall, because facts prove these employees were paid fair and equitable wages, which were fully agreed upon and expected by our employees. Who else may profit? One law firm! What is 33.3% of 100 million dollars?

I cannot say I enjoy being here today. I have a business to run as you do a state government. Please keep in mind that my firm and many others have a lot to lose on this issue and the opposition has only to gain. To conclude, I must add that it is totally ironic that in the State of Alaska under the fluctuating work week plan, Dresser had the lowest turnover rate of operators in all of the United States. But yet it is the only state where this fair and just pay plan has been banned and consequently our business stands in financial jeopardy.

I feel your fair and moral judgement will lead you to support H.B. 223.

Thank you for this opportunity to testify.

3
480 Hayes asks the name of the law firm.

Martin - The Banfield, Logan, Bates. they are in Juneau.

490 Wendte - Comments on when the regulations took effect, Dec. 9, 1978. the bill is asking that we forfeit liability from the date of effect.

Martin - my statement was to distinguish the liability from the test case. Many companies sat back and watched what happened with us. When they saw that the case was lost they then changed their pay systems.

Wendte - you did not changed your pay system at that time, why?

Martin - we thought that we had a good case and a fair chance of winning. We did not want to take away the employees security of knowing what their salary was going to be. The pay system was changed on Nov. 6, 1981. States that the company became aware of the regulations at the time of the Woody case being filed. About six months after the regulations came into effect.

525 Wendte - speaks of the time of the firm knowing of the regulations and the time the firm switched the pay plan. It was actually only from Dec. 1978 to the summer of 1979, which was the time the Woody case was filed.

Martin - states that they did pay their employees fair and square. The majority of them earned over \$60,000 a year. Their firm had the least amount of turn overs in the states. States that changing a complete pay plan is a very complicated operation. It took weeks. There had to be time for the employees to make adjustments in their personal lives. They did not have a guaranteed salary.

575 Hayes asks if the salary for an operator under the new pay plan will exceed the pervious \$60,000 plan, if not is the 100 million dollar liability a result of the overtime interruption.

Martin states it was difficult to change since there was many ways of paying. When the changed was made they did not intend to pay them any more than before. Some are making a little more, some a little less so it is averag,ng out.

They converse.

620 Hayes asks if the new way is more cost effective.

Martin replies that in some insistences it is in other not. Because now the employee does not get any compensation when they are off work.

633 Bussell asks is there any work done by the firm concerning cost plus work for the oil industry.

Martin replies no.

644 Hayes follows up on comments of Rep. Wendte on concerning the pay. Would the employees make the same amount of money on either plan.

4
Martin answers that the cost would be about the same and the company would not have had to pay out any more money.

(turn of tape)

027 Liska how many hours do your employees average.

Martin that is easy to answer now. Before it was any where up to 16 hours a day, they were guaranteed that much. But they are now averaging about 12 to 13 hours a day.

060 Wendte asks if the pay is about the same they must have more employees at this time and asks about the relation of it to the oil and gas companies.

Martin comments on the reason for the stable amount of pay due to the fact of the overtime that was paid. Talks of the way it is now easier and more beneficial for the people to live out of state. Does not believe that it has much to do with the oil company.

Hayes comments.

144 Theodore T. Fleischer gives testimony. (a basic outline is attached, it was briefly revised before the reading of it, some of which are not included)

TESTIMONY OF THEODORE E. FLEISCHER

My name is Theodore E. Fleischer. I am a partner in the law firm of Ely, Guess & Rudd. I have been retained by Petroleum Equipment Suppliers Association, which I will refer to as PESA, to provide a legal opinion on the constitutionality of legislation under consideration by the Committee. I will get to that in a moment, but first I will briefly describe PESA.

PESA is a trade association with approximately 340 members in the petroleum equipment, service and supply industry. Depending on industry demand, which can be seasonal in nature, several dozen or more of PESA's members are typically active in Alaska. PESA does not of course represent its members in litigation, and therefore is not a party to the lawsuits filed ^{by employees} against various of its members which seek overtime compensation and liquidated damages.

You have heard testimony from witnesses describing events since December 8, 1978, ^{to the present} on which date the Department of Labor adopted the regulation prohibiting FWW plans. A lawsuit was filed in 1979 by an employee seeking damages, based on the Department of Labor regulation. In September of 1981, after the Supreme Court upheld the Department's authority to

promulgate the regulation, various companies in the petroleum support industry, which had become defendants in ~~similar~~ *these* lawsuits, decided to seek a legislative remedy. A bill was introduced near the end of the 1982 session of the Legislature, but was not enacted.

During this period PESA became increasingly aware of the potential economic impact of class action lawsuits on its members with Alaska operations. Since then the association has coordinated the efforts of its Alaska members in seeking a legislative solution to what is now seen as an industry-wide problem in the state.

I have been retained as special counsel to PESA to review the proposed legislation, which was drafted last year, and to provide a legal opinion on whether such legislation would be constitutional. PESA desired an opinion from an independent firm not otherwise involved in the litigation; my firm does not represent any party which is a defendant in the lawsuits filed by employees. I have now completed my research and submitted my opinion to PESA. At its request I have provided copies of that opinion to the Committee. After briefly summarizing the opinion I will make several recommendations for revisions in the present version of HB 223.

My analysis focuses on the section of the bill which extinguishes the claims of employees who worked under FWW plans since December 8, 1978. Other witnesses have addressed the question of whether it is wise, fair or necessary to do so. I will address only the issue of whether the legislation, if enacted by the Legislature, would be constitutionally valid.

In connection with preparing my opinion, I have reviewed a letter from Thomas A. Sofo of the Legislative Counsel to ^{Rep. Walt Furnace} ~~Chairman Russell~~ dated March 2, 1983. Mr. Sofo briefly notes several possible challenges to the constitutionality of the bill, and concludes, without citing any case law or authority, that he is "not convinced that the Alaska Supreme Court would be persuaded" to uphold the legislation. I have also been provided a copy of a letter from counsel for the Alaska Wage Security Association, whose members apparently include employees who have sued to collect overtime compensation. The letter asserts that the legislation violates the constitution, but it provides no argument or authority in support of that statement. In any event, I have examined the legislation to determine whether it could be upheld, if challenged on any of the grounds typically asserted by a plaintiff in challenging legislation which has retroactive effect.

I should first report that I have found no case decided by any court which presents exactly the same scenario as present here. I would have been surprised if I had found such a case. On the other hand, there is a considerable body of case law in which courts have ruled on the constitutionality of legislation which retroactively changes the rights and obligations of private individuals who have entered into contracts. And there are cases involving legislative action to extinguish past claims of employees for overtime compensation and damages in which the fact situations are quite similar to those presented here.

In many of these cases, though certainly not all, courts have upheld the legislature's constitutional power, under certain circumstances, to reach backwards in time and to change and even abrogate the rights of private individuals. For example, courts have upheld the legislature's power to impose taxes retroactively, to modify the rights of mortgage holders, and to limit the right of depositors to make withdrawals^{SAVINGS} from building and loan associations. Obviously, then, the legislature is not precluded as a matter of constitutional law from enacting a law which retroactively affects the rights of individuals.

The question, therefore, is not whether the legislature can enact retroactively effective laws. Clearly the legislature can do so. The pertinent question is whether the proposed legislation, which abrogates the claims of employees to overtime compensation and liquidated damages, would withstand a challenge on the grounds of constitutionality.

A legal challenge to a retroactive law is ordinarily brought under the Contract Impairment Clause of the United States Constitution or the equivalent provision in a state constitution. The Federal Constitution provides that "no state shall . . . pass any law impairing the obligation of contracts." Often a plaintiff will also assert a Fifth Amendment Due Process claim, arguing that the state has, by retroactively affecting his rights, taken his property without due process of law. For practical purposes, the analysis under the Contract Clause and the Due Process Clause are substantially the same, *and the court deals with them in the same fashion* and I will not attempt to distinguish them in my discussion.

On its face, the Contract Clause appears to be an absolute prohibition against any impairment of a contract. However, the Contracts Clause has not been interpreted *by the Supreme Court of the US* to prevent use of legislative power to carry out legislative purposes which, on balance, are believed to be reasonable. The

Supreme Court has often upheld statutes which impair the obligation of contracts, where the legislature has reasonably exercised its legislative power in order to achieve a legitimate policy goal.

In reviewing the cases it becomes quickly apparent that courts have not developed a formula or test to which the facts in our case can be applied, which will mechanically produce a result. Courts look at many factors when considering challenges to retroactive laws, but arrange them in various combinations depending on the circumstances. For the sake of convenience, in my opinion I have grouped my review of the factors considered by courts into two categories: one is "public interest" and the other is "fairness to the affected individuals". I want to discuss each of these areas briefly.

When considering a challenge to a retroactive law, a court looks to see what state policy was served by enactment of the law. To the extent that there is any legislative history available reflecting legislative intent, the court will review this. In effect, courts look for answers to these questions: ^{kind of} does the law affect the state, its economy, and one or more industries operating in the state, or merely one company or individual or a small group? Did the legislature act reasonably in tailoring the law to remedy the problem? Did the

legislature know who would be affected by the law when it adopted it? The answers to these questions will help a court to determine whether the legislature acted reasonably to implement a significant state policy, rather than acting in ignorance of the individuals who would be impacted by the law. Following are examples of some state policies which courts have held could be implemented by retroactively effective legislation: promotion of the integrity of land titles, protection of the financial health of savings institutions, and relieving commercial enterprises of potential adverse impact of lawsuits by employees.

In addition to probing the public policy behind retroactive legislation, courts will look closely at what the contracting parties actually expected when they entered into a contract, which is later modified by legislative action. There have been situations where the parties to a contract have entered into the contract in violation of, or in ignorance of, a legal requirement, and as a result the contract is illegal and unenforceable according to the terms agreed to by the parties. In such cases legislatures have on occasion changed the law, and made the change retroactive, in order to validate the contract as agreed to by the parties. Courts have routinely upheld this type of exercise of legislative power. The result is that the party's reliance on their agreement, and

their reasonable expectations, are confirmed. For example, courts have upheld legislation which validated retroactively a usurious loan, a defective power of attorney, and an invalid pledge of security by a bank.

It is also important to determine the nature of the right which is extinguished by retroactive legislation. Certain types of rights, such as property rights, are ranked as more deserving of protection, although even these are subject to modification and even destruction by a legislative enactment. One particular species of rights is peculiarly subject to revision by the legislature. These are rights created, in statutes, by the legislature itself. Rights given by the legislature can later be taken away by the legislature. Alaska's Supreme Court ruled that a defense to a lawsuit, set out in a statute, could be repealed by the legislature. Other examples include a retroactive change in usury laws, which make a loan contract legal, which was illegal when originally entered into. The point is that the legislature is free to deprive individuals of rights which the legislature itself originally granted, if it acts reasonably in doing this.

A series of cases decided by courts in the late 1940's are particularly relevant, and bring together the factors considered above (the public interest and the reliance of the

parties). After the Second World War the United States Supreme Court decided a case in which it interpreted the Fair Labor Standards Act to require payment, including time and one-half for overtime, for certain activities which previously had not been considered compensable work. For example, changing into work clothing on the employer's premises. This interpretation of the law created a potential liability to employers numbering in the billions of dollars. Congress responded with the Portal-to-Portal Act of 1947 which provided that no employer would be subject to liability for failure to pay wages for such incidental activities, unless there was an express contract provision providing for such payment or it was the custom at the establishment where the employee worked to pay wages for these activities.

Workers attacked the constitutionality of the act as violating the Due Process Clause. In ^{over} ~~literally~~ hundreds of cases, courts universally held that the Act was constitutional. They held that where the right to recover on claims is of purely statutory origin, as in the case of claims for overtime compensation, the legislature may later change the law to take away the claim originally granted by law, if it concludes this would produce a fair and equitable result. After looking at the legislative history of the Portal-to-Portal Act, the courts determined that Congress was

justified in preventing a serious adverse economic impact on industry by extinguishing the rights of employees to receive "windfall" payments for activities that they did not expect to be compensated for when they were performing them.

In a somewhat similar situation several years later Congress enacted what became known as the Overtime-on-Overtime ~~Act~~ ^{LAW}. This law retroactively extinguished employer liability for overtime claims and liquidated damages which would otherwise clearly have been due to employees. That case has a fact situation even closer to the facts presented to the Legislature here. ^{than Portal to Portal} There employees had asserted claims, and filed lawsuits against employers, pursuant to an interpretation of the statute in their favor issued by a wage and hour administrator. Unlike the Portal-to-Portal cases, only several millions of dollars were involved, and only a small segment of industry exposed to liability. Nevertheless, the Ninth Circuit Court of Appeals followed the holdings in the Portal-to-Portal cases. The court held that the statute was constitutional for substantially the same reasons as expressed by numerous courts in the Portal-to-Portal cases. It should be noted that the court followed the ruling in the Portal-to-Portal cases despite the fact that millions of dollars, rather than billions, were at stake, and the impact was on only one industry in California, rather than nationwide in scope.

State Supreme courts also apply the above principles. For example, the California ~~Supreme~~ Court in 1982 upheld a statute which retroactively invalidated claims against lenders for damages for charging unlawful interest rates. In 1978 the high court in Massachusetts held constitutional a statute by which the Massachusetts Legislature retroactively re-wrote clauses in insurance contracts, since the Legislature concluded that it would be unfair to enforce the clauses which had been agreed to by customers with insurance companies. Thus the principles of law discussed above are not merely of ancient origin and application, but have continued vitality in courts today.

It is against the above legal backdrop that the legislature must act on the proposed legislation. In my opinion, the legislature can retroactively extinguish employees claims for compensation and liquidated damages, if it makes certain findings based on testimony and facts available to it. I suggest that the findings should be along the following lines:

First, the Legislature could determine that payment by employers of pending and potential claims of employees for overtime and damages would pose adverse economic consequences on an industry important to the state's economy, and ^{perhaps} to the state itself;

Second, it could find that from December 8, 1978 to the present employees and employers voluntarily entered into employment contracts by which employees would be compensated under FWW plans; both unaware of the Department of Labor regulation because there was no widespread publicity directed at informing employers or employees of the drastic change in that law; ^{finally} and employees expected to be paid pursuant to the terms of their agreement and not on some other basis.

In my opinion, if the Legislature makes findings such as these, then the Legislature is free to balance the claims of employees for strict enforcement of the Department of Labor regulation against the adverse economic impact on, and unfairness to, the industry, and possibly the state itself. If in the Legislature's opinion the balance weighs in favor of the industry's position, as opposed to permitting a limited class of employees to collect "windfall" compensation and penalties, then the Legislature can constitutionally extinguish those claims.

The attached opinion is more detailed than the testimony I have presented here. ^{It comes to the same conclusion} ~~In summary I have concluded~~ ^{that I have stated here,}
~~that the legislature can, if it makes certain findings,~~
~~retroactively extinguish employees' claims for overtime~~
~~compensation and unpaid damages.~~ If the legislature
legislature

decides to do so, I recommend that it, through its committee reports, clearly state its intent and the policy reasons for adopting the legislation. In the event of a legal challenge, I believe this will materially assist the court to determine that the Legislature acted reasonably to implement a legitimate public purpose in adopting the legislation.

I have recommended several revisions to HB 223 to PESA and have prepared a committee substitute incorporating these:

1. Section 1, which prohibits FWW, has been deleted. This deletion has been explained in earlier testimony. *it has no practical effect. because of the* ~~As noted, the~~ Department of Labor regulation presently accomplishes the same purpose in any event.
2. Section 2, which was inadvertently made retroactively effective, is to be effective for the future only.
3. The title has been amended to give notice of the bill's purpose of extinguishing the existing claims of employees for overtime compensation and liquidated damages.
4. The immediate effective date clause has been removed.

5. There are other minor language clarifications, which do not change the substance of the original bill.

Thank you for the opportunity to appear today.

450 Wendte comments that since there was some conflicting statements made by Fleischer in relation to Mr. Sofo comments perhaps it would be a good idea to hear from Mr. Sofo at this time. Mr. Sofo is the legal counsel that drafted the bill.

Bussell states that there is only ten minutes are left and we will be able to talk Mr. Sofo at a later time. The committee will again be meeting at 7:00p.m. this evening.

Bussell comments on the responsibility of the Dept. of Labor to notify the individuals which are involved. Asks what he feels is the obligation of the Dept. of Labor.

505 Fleischer states that during the court cases the thought of whether the regulation was properly litigated was never brought up.

They discuss this point.

530 Wendte asks about the advertising of bids by large companies for work and relates it to this in the area of the person complaining to the firm.

Fleischer I believe that a person that feels he was dealt with unfairly would go to the company. And on the other had the obligation of the government to notify is totally different than a private firm's obligation.

548 Wendte asks concerning if there is any state statutes that cover the area of notification.

Fleischer there is a law that states that the affected individuals have to be contacted.

Bussell comments on the people trusting the Dept. to notify them of such things.

They discuss the notifying of the Dept. of Labor.

590 The Committee discusses the recess of the Committee and reconvening.

612 The meeting is recessed till 7:00. The time is 2:56.

6
The meeting is called back to order by Chairman Bussell at 7:00p.m. Members present: Bussell, Liska, Wendte, Malone. Speaker Hayes entered shortly after the meeting begun.

Tape #52

004 Roli, welcome, etc.

033 Jim Robison, Dept. of Labor. States he will be brief to allow to have to two attorneys to testify one for each point of view. Refers to the package of materials that the Dept. delivered to the Committee. Believes that all the proceedings started with a law suit with Dowell back in 1976 having to do with the FWW. That action was put in limbo to decide on the action to take in relations to the regulations. States that there was letters sent to Dowell, Dresser in relation to this matter as soon as the issue was set into place.

100 Bussell asks if he has copies of the those letters. He states he does not but there are people to testify to the fact under oath that they were sent thus the companies were notified.

110 Wendte asks on the time frame of the letters. He states that it was after regulations were enacted, late 1979 early 1980.

117 Robison states that they have no problem with the deletion of section 1, as already mentioned they do have those regulations. There are some problems with the other sections. They had Gary Amendola research. He will testify. Asks where everyone is coming up with the 100 million dollar figure. The dept. has not been able to come with any figures at this time.

150 Wendte comments on the legal aspect of the Department's notice of the regulation. Relates it to the case of Dresser in the stipulation of the regulation.

Bussell comments on this and states that it is not the issue before us.

182 Gary Amendola, Dept. of Law representing the Dept. of Labor. Will restrict the comments to sections 3 & 4. There are 3 serious conflicts with the constitutional provisions. (1) Is the impairment of contract Article 1 Section 15. There has been some cases upheld in this area. Some states do uphold FWW ours do not. Refers to AS 23.10.060 which refers to the overtime provisions. This states that it is part of all contracts within the state. (2) Article 2 Section 19 is probably the most important with deal with Special Legislation. Does the legislation deals with general public interests and public purpose? This is a question to put to the test to see if they apply. The Committee has determine if this is a state wide concern and not just an specific area. He feels there are equal protection problem. Because those that used the FWW during the period in question would be exempt from liability those that did not used it would be liable for the overtime payment. Also the employees will have a reason to file due to the fact whether he worked for an employer that had FWW or not. Those with the FWW could recover funds. (3) there is conflict with AS 23.10.050 which is the public policy statement by the legislature. Also 23.10.130 is that statute of limitations.

- 370 Bussell refers to 23.10.055 states that it covers a broad range of people and firms. Comment on the impairment of contract cause. The employees had contracts with their employers and so when the regulation was issued it then violated those contracts, so wouldn't those be impaired. Should this work both ways.
- 395 Amendola refers to the point of the legislature passing regulations and they override the contracts.
- 420 Ron Laursen, Deputy Attorney General with the Dept. of Law. Worked for the Dept. of Labor at the time the regulations were adopted. Believes the wage claim was in 1976 in part of Dowell Corp. The firm and Dept. of Labor had disagreement as to the FWW. Dowell thought FWW was right. Dowell and Dept. of Labor came to agreement to submit a brief of their standpoint on the FWW. They reviewed the arguments. He issued an opinion in February of 1978 that Dowell was right because the Dept. of Labor at the time did not have regulation about FWW. The Dept. of Labor could state that FWW was not in the best interest of the state but would have to do it threw regulations. The first publication of the regulation was in August, 1978. Talks of the notice to be given to interested parties were complied with as in AS 44.62.190. States that that is when the suit against Dresser was brought up.
- 530 Talks of Section 3 dealing with the retroactive provisions. HB 223 deals with four issues really. One should or should not continue FWW. Second whether or not modify liquefy damages or penalties in reference to pay. Section 2 provides lead way for the employer that did not mean to take advantage of the employee but did due to lack of knowledge of the regulation. Section 3 says that any one that did not comply with the regulation from Dec. 9, 1978 is off the hook. section 4 goes about getting people off the hook for the FWW and violation of the wage and hour act. If this is past the constitutionality will be brought before the court until the Supreme decides on it. Comments on the thought of the constitutionality of this. States the courts will be faced with this question. States that there is far greater likelihood that where you are taking away or changing a penalty that previously existed that that will be held constitutional. It is less than a contract right that has been established as employee right against their employer. States that the people will not stand for being told that they can not collect funds for their past overtime.
- 615 Wendte directs question to all. Did the legislature have the power to repeal the regulation in 1978.
- Lauren state that the legislature has the power to repeal any regulations.
- 630 Wendte asks if there is a date as to when the Dresser case was filed. No I do not.
- 635 Lauren comments on the people who abide by the law and those who did not abide by the law

- 003 Bussell comments on his personal experience in business.. States that he knows more about the regulations now than he has during his twenty years of doing business. Reminds the meeting that the cost factor of the pay did not change. The employer treated them the same. The only thing different was the way of contracting. States it did not affect him. He does a lot of cost plus contracts. The change over would have had ruined him in that issue. He is displeased with the effort by the Dept. of Labor and the Dept. of Law to notify people and firm before and after the fact.
- 082 Malone comments that the dates of publication was given.
They talk of the notification.
- 150 The committee talks of the equal amount of pay under both plans.
- 210 Bussell states that the reference to the oil companies is out of place due to the fact that there is not one oil company present here today and probably will not be.
- 230 Marlene Neve' represents AFL-CIO. Against the Bill. States HB 223 purposes two alternations to the present wage and hour act. First section 2 allows employers to avoid liability because lack of knowledge of the wage and hour laws. Secondly the bill retroactively distinguish thousands of claims of employees now filed. This is the second try to do this. FWW would help the employees that have different hours per week, a little higher or a little lower than 40 hours. But usually the FWW is used to lower the pay of the employees. It is used in areas where the employees work well over 40-hours per week. Request teleconference for the employees that can not afford to fly to Juneau. Hopes the Committee is as concerned about the employees as the employers.
- 296 Wendte asks about the part that the Superior Court, state and US. They basically had four chances to change over during the process.
- 310 Liska asks about the number of employees that are involved.
She states that there are a great number that can not afford to file the claims.
- 340 They talk of a teleconference. Bussell states that the POM's are basically from Anchorage. States that he called several of them and they all said that they did not know what they said and that their foreman told them to do so. Neve' states that the foreman's job is to protect the employees.
- 410 Michael Barcott, lawyer for the employees for the claims on the FWW. States that this bill if actual for FWW, but is just asking to be forgiven for past sins. Claims Dresse' knew the impact of this regulation at the beginning. They had the best lawyers went all the way to the US Supreme Court. States that they could have changed their system as easily in 1979 as they did in 1981. Refers to the Woody case. The company just sat back to see what would happen. If Dresser Industries and others had changed their pay system in 1979, all claims would have been void due to the statute of limitations. States they knowingly violated the laws of the state. The only windfall with be for the firms. Dresser is one of the seven largest firms in the world.

Does not believe that this bill is constitutional. If this bill passes the ground will be shakey. States this committee has great responsibilities in this state. If this passes, many people will see if they can violate the laws of the state and try to see if the legislature will bail them out. This is exactly what the companies are doing now. A stable state in which to do business is that the business know what are and abide by the laws of the state. He wishes the claim of 100 million dollars was true. It only has potential amount of this from the time of the regulation coming into effect. Half of the claims have been dismissed due to the fact of the statute of limitations. States that the claims from Dresser employees are 75-80, from Slumberjack, 75-80 and a few from other firms, maybe totaling two hundred in all. The amount of the claims actually are only about 10-20 million dollars. States that if the Committee wants to give the future businesses an impression of lawlessness, then pass this bill because that is what it does.

550 Wendte comments on the number of employees and amount of claims. They discuss.

560 They talk of cases filed and the dates thereof.

580 Barcott comment on the difference of the hours and the wage then and now. If the employees worked the same amount of hours they would be making more money. The companies cut back the time that the employees put in now. That is why they claim that it is the same.

The Committee discusses the cost now and then.

646 Bussell comments on the notification by the Dept. of Labor.

658 Change of tape.

Tape #53.

003 Barcott states he had nothing to do with the notification. But firmly believes that it was done properly.

The Committee talks of the knowledge of the firms of the regulation.

155 Wendte ask if these are union. Barcott state they are not, that they are individual contracts. Most are just verbal contracts. Wendte asks if the employees filing claims are still working for the companies. It is noted that some are and some are not.

186 Liska asks if he was familiar with the first bill dealing with this.

Barcott was familiar. It is noted that none of the 3 attempts were passed from the first committee of referral.

- 210 John Eshleman, opposes the bill. Member of the Alaska Wage and Security. Former employee of Dresser. He describes his former position, feels that he was a skilled laborer. States that when he went to work he did not know the exact amount of his pay. He was told it was very complicated. It would average about \$50,000 a year. He did file a claim against the firm. He feels he was discriminated against and they tried to get him to terminate. Relates the story of why he filed. At the time of the pay change, John Martin told them that the firm did not feel that they owed the employees no additional money and if they thought otherwise they should go see a lawyer. He proceed to go to Mr. Barcott. Passes out a example of how they were paid.
- 300 He describes the pay system. Gives examples that the people on the new plan do indeed make more money, he did. Urges them not to pass HB 223.
- 367 Wendte asks if he had a written contract.
- J. Eshleman no I didn't. It was just estimated at \$50,000 year.
- 375 Wendte comments then all that needed to be done is to state that there was going to be a pay charge. Eshleman agrees. States that most like the new system
- 394 Hayes confirms that he worked under the new and old system for Dresser. Comments on the wage he received. They talk of the hours that are worked. His wage was \$12.94 when he left. There is bonus paid and then additional on the bonus.
- 440 Bussell was this the first time you worked in this system. Yes, states that he changed because of the better time scheduled. At the previous job he knew exactly how much he was paid. Bussell talks of why he took the job that he did not know how much he was being paid. States that all the electricians know exactly how much he will be paid and can figure it out.
- 477 Robert Eshleman former Dresser employee. Representing himself. Is a plaintiff with Dresser. Opposes HB 223. He was not paid on FWW he was paid as a salary exempt employee. It was a verbal contract. At the beginning had no question to pay. States the overtime was figured on the Huston base. He was asked to represent all the salary exempt employees from the North Slope. They wanted to go to a week to week schedule, they wanted their overtime changed and they wanted an eye care package. The firm felt 2 and 1 was fair. They stated the employees did have a valid claim as to the overtime. It was stated that it would checked into. States Dresser was not union. They did change the pay plan. Their pay almost doubled. The discrimination followed. He was terminated due to poor job performance. States he made the same in less that 10 months working less time than in a year of working almost twice as much. He believes that he dealt fairly with Dresser in his claim because he did not file at the first possible moment. He tried to negotiate with them. He feels that Dresser knowingly disobeyed the law. His statute of limitations is almost up. He urges the Committee not to pass the legislation.

580 Liska comments on the fact that many of the people are lower 48 individuals. Asks what percentage of Alaskans are affected by this.

Eshleman feels that most of the are Alaskans affected and those that are from out state decided to stay.

The point that the employees are mostly Alaskans is clarified by Mr. Barcott. And that the companies are primarily outside companies.

600 Bussell asks if he feels he is a professional. He feels that he is a semi-professional.

607 Bussell asks what is a salary exempted employee.

Eshleman there are several. Some are on hours some get salary and are allowed overtimed. Bussell reads the statute concerning this.

The Committee and Eshleman discuss the term professional employees. And they talk of the terms fair and equitable. Eshleman does not feel that he was dealt with in that manner.

654 turn of tape.

015 Malone asks to be excused to check on his constituent teleconference.

050 Jerry Sheelon, Alaska Division Manager of Gearhart, Industries. He feels that all that he has wanted to say has been said. States he was never informed of the changed of the regulation till the claims. He supports the bill. He talks of his system of pay. That their employees always knew their pay. Relates some examples. States that Arco and Sohio now will not allow the employees to stay on the job more than 12 hours a day. He does not feel that the legislature should be held responsible for this. Hopes that the Dept of Labor will keep people informed from now on. His company's pay expenses have stayed the same.

170 End of testimony. There is short comments on the 12 hours of legislature.

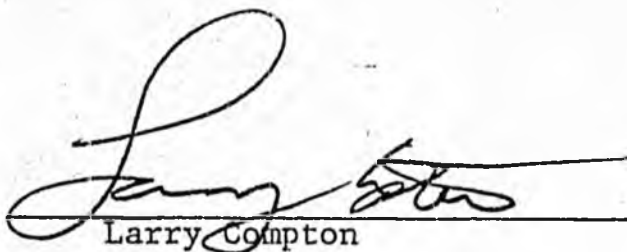
181 Bussell asks how many employees in Alaska. 50. How long in business. Since 1969. Were you ever notified of the change. Never.

They discuss the pay system and notification.

240 Mr. Becker reads a statement written by Larry Compton. Mr. Compton had to fly back to Seattle. (Attached.)

TESTIMONY ON HB 223

Mr. Chairman, Members of the Committee, my name is Larry Compton, President and Owner of Time Saver Grocery INC., I have lived in Alaska since 1954 and may I add have no connections with the Gas and Oil Industry. I regret that I was unable to stay and testify in person. I have nothing to gain by this passage of HB 223. However, I do feel I have some thing to lose if it fails. I will lose faith in a system that has been fair and equitable in my eyes for 30 years. A system that is supposed to deal fairly with Employee and Employer alike. I only ask that you continue to apply that same fairness in the future by passing HB 223.



Larry Compton

259 Richard Crull is Regional Operations Manager for Alaska. Has been in position for seven months. Can not add much more than what has been said. He does support the bill.

282 Wendte asks if he is a member of the Alliance. Yes. When was it formed. 1979. Are you a member of PESA. Yes.

307 Wendte is Dowell part of the lawsuit. Not that I am aware of.

310 Bussell asks if the Committee asked for information from their company in relation to this matter. Mr. Crull would assume yes.

They discuss the possible information that may be obtained in relation to Dept of Labor notification and the FWW.

387 Paul Preston, Halliburton Services, Supports HB 223. Everything has been said we add our support.

394 Hayes if Halliburton Services part of the lawsuit. No Sir.

400 Thomas Sofo (transcribed testimony attached.)

Testimony of Thomas Sofo
April 7, 1983

My name is Tom Sofo, I am employed by the Legislative Affairs Agency, as a legislative counsel in the Legal Services Division across the street. We drafted the subject bill. There really is no need at this point I think, in my opinion, to go into any complicated legal analysis. The office would basically agree with everything Mr. Laursen has said. I think that there has been some misimpressions created as to certain ways that we might be able to address this and improve on the bill.

First of all, it is of course not in the policy of us to comment on the position of the bill. We do not comment on whether there should be a FWW or not we have no opinion on the issue, neither do we have an opinion whether the people on the slope are being overpaid or underpaid under either of the two plans. Neither do we have any legal analysis that we have done regarding section two of the bill which involves the penal provisions although we would add that. In our view that provision is less likely than a toss up to withstand a court challenge. I believe Mr. Laursen said that that would be 50/50 on a constitution matter. We would probably give it an one chance out of three if those things can be quantified.

As you know I am the attorney for each of you at this table. And the function we have is to protect the work of the Legislature. I would just reiterate what Mr. Laursen has said, this is a loser. You are at least buying a law suit by passing it and you are probably, most every attorney that would review this bill across the street, would predict, which all we can do is predict, maybe the thing to do is pass it and give it its day in court. but if we were advising clients this is the kind of case that we would consider almost a certain loser.

Now there have been a couple of impressions created by testimony that I think that did not directly state these facts but these are the impressions that I came away with. One was that if we could include the proper amount of findings or purpose as an addendum to this bill on the front end of it, that we could somehow cure the unconstitutionality if it is indeed unconstitutional. And I will try to remember to say "if" because we do not have any statement to that effect.

Now by the judicial form that we are bound by and I do agree with Mr. Fleischer statement earlier when he submitted a summary of his brief that there are no cases directly on point. So in one sense this is a issue that the court could look at anew. But if they follow the authority that seems to be in the field they will probably strike it down as unconstitutional. And we who deal in these areas as to legislative findings and intent and purpose are aware of a long line of cases which shows on various subjects, that it is seldom if ever the case that you can cure the unconstitutionality of a bill by merely stating that the legislature finds X and X to be the case. Not when the flaw in it is of a constitutional magnitude.

There is another impression that I am not sure as to where I came by this information. It was in the course of drafting and listening to testimony today I have heard the Cee's case referred to several times as one of the primary cases that is most likely to be used in an argument to support the bill and I agree that it would be used in support. It is one of the strongest cases in support of this kind of legislation. Although I do not have a full copy of the case as a matter of fact I do not believe that I even have a summary of the case with me. I have read the case and although no one has misstated statements in the case, they have neglected to tell you that the Portal to Portal which was sustained in that case did not allow for the withdrawal of the remedy if there was a written contract governing that right under question. No one has stated that it did, but everyone has failed to state that that was one of the exception. That if there was a written contract which protected that right even the Portal to Portal Act did not preport to revoke that right.

And the other thing that I think I would like to focus the Committee's attention on is that the constitutionality of this bill does not depend at all on the amount of money that is involved. Does not matter what any one is getting paid and it doesn't matter whether the damages are \$10 or 10 million dollars. The court in question to which this may end up going would decide if there are indeed damages. It may be unconstitutional even if there is no recovery. And I think a lot of the discussion has involved what the amount is and although that is of some interest, for instance on a public policy purposes it might be relevant. Really for the kinds of defects in the bill that we see, the impairment of contracts, probably an equal protection argument and special legislative, which I believe have been discussed fully before. Almost all of those arguments will not be effected if the recovery is \$1 or 1 million dollars.

The office has not really responded to any requests to research this choroughly. We have nothing like a thirty page memorandum. I did not know that we were going to be asked to testify here till 4:30 yesterday. So we are prepared to answer questions or do the appropriate research if any one cares to pose a question that we can not answer at this time. That is the only statement that we were prepared to make at this time.

13.
467 Wendte states that there has been interest shown that this is special interest legislature.

Sofo states it may be considered as such. He did not know the names of the defendants involved until testimony was given. He does not know whose special interest it would served.

490 Bussell asks him who had requested him to come and testify.

Mr. Clocksin.

496 Liska asks if he had drafted the bill.

The version that you are using now, yes.

506 Liska asks how much research actually went into this.

Sofo states that is usually brief unless that someone asks for a special brief and the red flags that they point out.

527 Tom Cashen, lobbyist for the electricians. The union does not think that this is good legislation and hopes that it dies in Committee.

538 Bussell asks if he ever took a job that he did not know what he was being paid. Never.

546 James Wakefield, Lobbyist for Local 942. Most has been said. They are against the bill. Feel it is bad legislation and would set a poor example.

563 Bussell states that there will be a teleconference set up.

569 Adjourns the meeting. The time is 9:50.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
2/4/83
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

February 3, 1983

SUBJECT: Retroactivity of overtime pay provisions
(Work Order No. 13-0714)

TO: Representative Charlie Bussell

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

The subject work order includes a request for a retroactive clause to the attached draft bill concerning methods of overtime payment. A retroactive clause may make the bill subject to legal challenge.

I do not know enough about the facts surrounding the proposal contained in the draft bill to advise you in precise terms, but would caution you that the retroactive portion of the bill may be challenged on constitutional grounds. One basis for challenge would be the prohibition against impairment of contracts, found in both the United States and the Alaska Constitutions (U.S. Constitution, Article I, section 10; Alaska Constitution, Article I, section 15). Another basis would be the due process guarantees in the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 7 of the Alaska Constitution.

If challenged on these grounds, the court would likely examine the rights and expectations affected by the bill, whether those rights and expectations were substantial and whether those rights or expectations were unfairly defeated by the bill. Some vested rights are immune from legislative interference, but, as indicated above, we are not able to ascertain whether such rights are involved here since we do not have sufficient factual information.

If you wish to discuss this facet of the bill further, please give me a call at your convenience.

TAS:ljb

Michael Field
3/7/83

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2720

April 5, 1983



Honorable Charlie Bussell
Chairman, Committee on Judiciary
House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Bussell:

In response to your letter dated March 30, 1983, enclosed are copies of the following documents pertaining to the December 9, 1978 amendments to the Department's wage and hour regulations in 8 AAC 15.

- Enclosure #1: Regulations as proposed on 8/21/78 including the notice of proposed changes.
- Enclosure #2: Affidavit of notice of adoption of proposed regulation.
- Enclosure #3: Affidavits of Publication from the Anchorage Daily News, Southeast Alaska Empire, and Fairbanks Daily News Miner.
- Enclosure #4: Affidavit of oral hearing, and the hearing attendance roster indicating that no one appeared to testify.
- Enclosure #5: Proposed regulations as submitted to the Department of Law on 10/9/78 for final review and filing by the Lt. Governor's office.
- Enclosure #6: Regulations as filed by the Lt. Governor and the signed order of adoption.
- Enclosure #7: Regulations in effect prior to the December 9, 1978 amendments.

Honorable Charlie Bussell
April 5, 1983
Page 2

These enclosures include copies of the correspondence between the Department of Labor and Department of Law on these regulations.

If you have further questions concerning the promulgation of these regulations, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Robison".

Jim Robison
Commissioner

Enclosures

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lake Hood) Anchorage, Alaska 99502 at 1:30 p.m. o'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P. O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date 8/21/78

W. E. Spear

William E. Spear
Deputy Commissioner
Department of Labor

Register ,

LABOR

8 AAC 15.010

8 AAC 15.070

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

Section

10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT.
Repealed / / .

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR
HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO
ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR
PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES.
Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD
KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED
IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum wages and overtime
2. Exemptions
3. Deductions from wages
4. Procedures relating to violations, investigations or
hearings
5. General provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section

100. Payment for overtime

105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employees hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then these hours need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime under the provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414;

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.085

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section

- 120. Minimum wage exemption for handicapped persons
- 125. Minimum wage exemption for student learners
- 130. Exemption for searching for placer or hard rock minerals
- 135. Exemption for individuals under 18 who are part time employees
- 140. Determining the number of employees for purposes of AS 23.10.060(1)
- 145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will in the exercise of his discretion, approve a wage rate lower than established under AS 23.10.065 based on that information. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS.

(a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and Chapter 5 of this Title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

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LABOR

8 AAC 15.130

8 AAC 15.145

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section

160. Deductions from an employees wages

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

(a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board or lodging. However, a written agreement for deductions is not valid if it would have the effect of reducing an employee's wage below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

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

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Written agreements for deductions from wages are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(c) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

(1) employee's rate of pay;

(2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;

(3) federal income tax deductions;

Register ,

LABOR

8 AAC 15.160

8 AAC 15.180

- (4) federal insurance contribution act deductions;
- (5) Alaska income tax deduction;
- (6) Alaska school tax deduction;
- (7) Alaska employment security act contributions;
- (8) board and lodging costs;
- (9) advances; and
- (10). other authorized deductions. (Eff. / / ,
Register)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section

175. Assignment of claims

180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of \$5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFIRENCES AND PERSUASION.
(a) The wage and hour division will investigate potential violations of AS 23.10.050-150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

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

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

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090

ARTICLE 5.

GENERAL PROVISIONS

Section

195. Place of employment for purposes of recordkeeping
200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

(1) "administrative" means an employee;

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

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

(C) who performs his work under only 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 of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section.

(2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(3) "commissioner" means the commissioner of labor.

(4) "department" means the Alaska Department of Labor.

(5) "director" means the director of the wage and hour division of the department or his designee.

(6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom or a chauffeur of automobiles for family use.

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he 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 is given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (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 the status of the enterprise 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 so close to them that he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises but is merely required to leave word at his home or with the employer where he may be reached.

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek.

(11) "professional" 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 process; or

(ii) to perform work that is original and creative in character in a recognized field or artistic endeavor (as opposed to work which 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 as such in a school or other educational establishment or institution; and

(B) whose work:

(i) requires the consistent exercise of discretion and judgement 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 who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) 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 his post or place of employment and is required to wait for work or an assignment or because of shutdown or repair and during which he cannot use the time effectively for his own purposes.

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, 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, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment.

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. 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 he 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 in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

STATE OF ALASKA)
) SS.
 FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION OF REGULATION

I, E.T. "Lee" Leland, W/H Investigator III, of the Department of Labor, being sworn, depose and state the following:

As required by AS 44.62.190, notice of the proposed adoption of 8 AAC 15.100-200 has been given by

- (1) being published in a newspaper or trade publication
- (2) being mailed to interested persons,
- (3) being mailed or delivered to appropriate state officials,
- (4) being furnished to the Department of Law,
- (5) being furnished to incumbent state legislators.

Date: 10-3-78
 Juneau, Alaska

E.T. "Lee" Leland
 E.T. "Lee" Leland

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 1978.

James D. Brown
 Notary Public in and for Alaska
 My Commission Expires: Oct 30, 78

U
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Anchorage Daily News
P.O. Box 40
Anchorage, Alaska 99501

ADVERTISER NO
ADN 501

DATE OF A.O.
August 21, 1978

DATES ADVERTISEMENT REQUIRED
August 30, 31 and September 1, 1978

P
R
O
M

Department of Labor
Wage and Hour Division
P.O. Box 630
Juneau, Alaska 99811

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN

*Alaska Department of Lab or
Administrative Services
Fiscal Section
P.O. Box 1149
Juneau, Alaska 99811

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA

STATE OF Alaska

Third DIVISION.

ss

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY

PERSONALLY APPEARED Nathalia M. Chevalier WHO,

BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT

HE/SHE IS THE Legal Clerk OF THE ANCHORAGE NEWS

PUBLISHED AT Anchorage IN SAID DIVISION

Third AND STATE OF Alaska AND THAT THE

ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY,

WAS PUBLISHED IN SAID PUBLICATION ON THE 30 DAY OF

August 19 78, AND THEREAFTER FOR 3

CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON

THE 1 DAY OF Sept. 19 78, AND THAT THE

RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE

CHARGED PRIVATE INDIVIDUALS.

Nathalia M. Chevalier

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1 DAY OF Sept 19 78.

Patricia Lundsay

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES 5/1/82

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.025, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050 - AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 616 through 670 in their entirety and adopting and replacing with new sections as follows:

ARTICLE 1.

Article 1 stipulates minimum wages, maximum hours and compensation of overtime applicable to employment in Alaska.

ARTICLE 2.

Article 2 provides certain exemptions from the payment of minimum wages or overtime.

ARTICLE 3.

Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.

ARTICLE 4.

Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.

ARTICLE 5.

Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, (next to Lass Hood) Anchorage, Alaska 99502 at 1:30 p.m. a'clock on September 15, 1978.

Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Date: 8/21/78

/s/ William E. Spear
Deputy Commissioner
Department of Labor

Pub. Aug. 30, 31, Sept. 1, 1978

L79168

REMINDER -

ATTACH INVOICES AND PROOF OF PUBLICATION.

ADVERTISING ORDER

DEPT NO	AD NO
A0-07	2595

PUBLISHER	Southeast Alaska Empire 235 2nd Street Juneau, Alaska 99801	VENDOR NO SAE 734	DATE OF A.O. August 21, 1978
		DATES ADVERTISEMENT REQUIRED August 30, 31 and September 1, 1978	
FROM	Department of Labor Wage and Hour Division P.O. Box 630 Juneau, Alaska 99811	THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN	
		*Alaska Department of Labor Administrative Services Fiscal Section P.O. Box 1149 Juneau, Alaska 99811	

AFFIDAVIT-OF-PUBLICATION

UNITED STATES OF AMERICA
STATE OF Alaska } ss
DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE IS THE Gen. Manager OF S.E. Alaska Empire PUBLISHED AT Juneau IN SAID DIVISION AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 30th DAY OF August 1978, AND THEREAFTER FOR 2 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE 1st DAY OF September 1978, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LABOR

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.05, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.10, as follows:
 1) 8 AAC 15 is amended by repealing sections 15.01 through 15.09 in their entirety and adopting and replacing with new sections as follows:
ARTICLE 1.
 Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.
ARTICLE 2.
 Article 2 provides certain exemptions from the payment of minimum wages or overtime.
ARTICLE 3.
 Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.
ARTICLE 4.
 Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.
ARTICLE 5.
 Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.
 Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE, next to Lake Hood Anchorage, Alaska 99502 at 1:30 p.m. on September 15, 1978.

Copies of the regulations may be obtained by writing to Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person, may after September 20, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action on them.
 Date: 8/21/78

William E. Spear
Deputy Commissioner
Department of Labor

Printed Aug 21, 1978
MWS:2

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF September 1978
 NOTARY PUBLIC FOR STATE OF _____
 MY COMMISSION EXPIRES _____

REMINDER -
ATTACH INVOICES AND PROOF OF PUBLICATION

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
 STATE OF ALASKA
 FOURTH DISTRICT

} SS.

Legal 13.544
**NOTICE OF PROPOSED
 CHANGES IN THE
 REGULATIONS OF THE
 DEPARTMENT OF LABOR**

Notice is hereby given that the Alaska Department of Labor, under the authority vested by AS 23.10.085, proposes to repeal and adopt regulations in Title 8 of the Alaska Administrative Code to implement AS 23.10.050-AS 23.10.150, as follows:

(1) 8 AAC 15 is amended by repealing sections 010 through 070 in their entirety and adopting and replacing with their new sections as follows:

- ARTICLE 1**
 Article 1 stipulates minimum wages, maximum hours and computation of overtime applicable to employment in Alaska.
- ARTICLE 2**
 Article 2 provides certain exemptions from the payment of minimum wages or overtime.
- ARTICLE 3**
 Article 3 stipulates those deductions from an employee's wages that are permissible and those deductions that are prohibited.
- ARTICLE 4**
 Article 4 establishes the procedures for assignment of claims and/or the conduct of investigative hearings and conferences.
- ARTICLE 5**
 Article 5 defines miscellaneous terms as used in this chapter and AS 23.10.

Notice is also given that any interested party may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the DIVISION OF AVIATION BUILDING CONFERENCE ROOM, 4111 AVIATION AVENUE (next to Lake Hood) Anchorage, Alaska 99507 at 1:30 p.m. o'clock on September 15, 1978. Copies of the regulations may be obtained by writing to: Wage and Hour Division, Alaska Department of Labor, P.O. Box 630, Juneau, Alaska 99811.

The Department of Labor upon its own motion or at the instance of any interested person may after September 30, 1978 adopt the proposals substantially as described above without further notice or may decide to take no action thereon.
 Date 8/21/78

William E. Spear
 Deputy Commissioner
 Department of Labor

PUBLISH August 21 11:30 AM
 October 1 1978

Before me, the undersigned, a notary public, this day personally appeared FRANCOIS PEEFFER, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

<u>8/26/78</u>	<u>8/31/78</u>
<u>9/01/78</u>	

, and that the rate charged thereon is not in excess of the rate charged private individuals, with the usual discounts.

Francis Peffer
 0/10

Subscribed and sworn to before me this 30 day of

SEPTEMBER, 1978

John J. Phillips
 Notary Public in and for the State of Alaska.

My commission expires SEPTEMBER 1981

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF ORAL HEARING

I, Don Wilson, W/H Investigator II of the Department of Labor, being sworn depose and state the following:

On September 15, 1978 at 1:30 p.m., in the Division of Aviation Conference Room, 4111 Aviation Avenue, Anchorage, Alaska, I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of 8 AAC 15.100-200.

Date: September 15, 1978
 Anchorage, Alaska

Donald R. Wilson

SUBSCRIBED AND SWORN TO before me this 15th day of September, 1978.

Shirley A. Dehaas
 NOTARY PUBLIC IN AND FOR ALASKA

My Commission Expires: 4-5-81

TITLE 23

HEARING - PROPOSED REGULATIONS

FRIDAY, SEPTEMBER 15, 1978

PLEASE PRINT

WILL YOU BE OFFERING TESTIMONY ORAL WRITTEN BOTH

NAME

ADDRESS

ORGANIZATION REPRESENTED

- 1.
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1:30 pm opened

2:15 pm closed

No attendance

October 9, 1978

Arthur H. Peterson
Assistant Attorney General
and Regulation Attorney
Department of Law

THRU: William E. Spear,
Deputy Commissioner

Dale W. Cheek *Dale W Cheek*
Director
Wage and Hour/Mechanical
Engineering Division
Department of Labor

8 AAC 15. as adopted by
the Department of Labor

Please find enclosed, original and 3 copies of 12 pages of regulations adopted by the Department of Labor concerning Wages and Hours under TITLE 23. Alaska Wage and Hour Act with related affidavits and documents as required under the provisions of AS 44.62.

We respectfully request your final review and transmittal of the regulations and documents to the office of the Lieutenant Governor for filing.

Thank you.

DWC/rh

Enclosure

ORDER REPEALING AND ADOPTING, REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15. Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.085 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: _____

13 October 1978

W. E. Spear

William E. Spear
Deputy Commissioner

I, _____, Lieutenant Governor for the State of Alaska, certify that on _____, 197____, at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective _____.)
Register _____.)

Register ,

LABOR

8 AAC 15.010

8 AAC 15.070

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

Section

10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT.
Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR
HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO
ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR
PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES.
Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD
KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED
IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime
2. Exemptions
3. Deductions from Wages
4. Procedures Relating to Violations, Investigations or Hearings
5. General Provisions

ARTICLE 1.

MINIMUM WAGES AND OVERTIME

Section

- 100. Payment for overtime
- 105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in lieu of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.035

Register ,

LABOR

8 AAC 15.105

8 AAC 15.120

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS

Section

- 120. Minimum wage exemption for handicapped persons
- 125. Minimum wage exemption for student learners
- 130. Exemption for searching for placer or hard rock minerals
- 135. Exemption for individuals under 18 who are part time employees
- 140. Determining the number of employees for purposes of AS 23.10.060(1)
- 145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines from the information provided in the application that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS.

(a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-370 and chapter 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

Register ,

LABOR

8 AAC 15.130

8 AAC 15.145

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked.

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES

Section

160. Deductions from an employee's wages

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

(a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

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

(2) non-payment for goods or services as a result of customers walk-out or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

Register ,

LABOR

8 AAC 15.160

8 AAC 15.180

- (1) employee's rate of pay;
- (2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (3) federal income tax deductions;
- (4) federal insurance contribution act deductions;
- (5) Alaska income tax deduction;
- (6) Alaska school tax deduction;
- (7) Alaska employment security act contributions;
- (8) board and lodging costs;
- (9) advances; and
- (10) other authorized deductions. (Eff. / / , Register.)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS OR HEARINGS

Section

175. Assignment of claims

180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of \$5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

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

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

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedures Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

ARTICLE 5.

GENERAL PROVISIONS

Section

- 195. Place of employment for purposes of recordkeeping
- 200. Definitions

8 AAC 15.195. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.200. DEFINITIONS. In this chapter and in AS 23.10.050 - 23.10.150, unless the context requires otherwise:

- (1) "administrative" means an employee;
 - (A) whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer;
 - (B) who customarily and regularly exercises discretion and independent judgment;
 - (C) who performs his work under only 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 of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;
- (2) "casual employee" as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;
- (3) "commissioner" means the commissioner of labor;
- (4) "department" means the Alaska Department of Labor;
- (5) "director" means the director of the wage and hour division of the department or his designee;
- (6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a launderess, a caretaker, a handyman, a gardener, a footman, a groom or a chauffeur of automobiles for family use;

(7) "executive" means an employee:

(A) whose primary duty consists of the management of the enterprise in which he 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 of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (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 he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek;

(11) "professional" 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 which 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 as such in a school or other educational establishment or institution; 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 who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) 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 his post or place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which he cannot use the time effectively for his own purposes;

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, 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, it does not apply to any employee required by the employer to perform such activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. 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 he 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 in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

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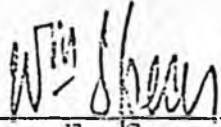
OFFICE OF THE COMMISSIONER

ORDER REPEALING AND ADOPTING REGULATIONS
OF THE DEPARTMENT OF LABOR

The attached twelve (12) pages of regulations, dealing with 8 AAC 15, Alaska Wages and Hours, are hereby adopted and certified to be correct copies of the regulations which the Department of Labor repeals and adopts, under authority vested by AS 23.10.08 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

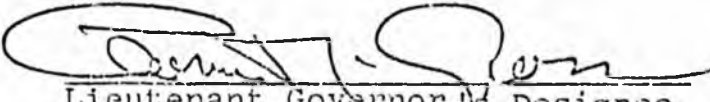
This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 13 October 1978



William E. Spear
Deputy Commissioner

Designee to
I, Avrum M. Gross, Lieutenant Governor for the State of Alaska, certify that on November 9, 1978, at 10:20 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor's Designee

Effective December 9, 1978 .)
Register 68, January 1979 .)

STATE
OF ALASKA

MEMORANDUM

60 *

TO: William E. Spear
Deputy Commissioner
Alaska Department of Labor

DATE: November 8, 1978

FILE NO:

cc: VJH

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Regulations re Alaska
wages & hours (8 AAC 15)
Our File: J-99-095-78

By: *AHP*
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

We have reviewed these regulations in accordance with AS 44.-62.060, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with your regulations and related documents.

Under AS 44.62.125(b)(6), a few, very minor corrections have been made in this material, as shown on the attached copy.

AHP:md

cc: Ronald W. Lorensen
Assistant Attorney General

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OFFICE OF THE COMMISSIONER

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8 AAC 15.010

8 AAC 15.070

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE.

CHAPTER 15. ALASKA WAGES AND HOURS.

Section

10-70. Repealed

8 AAC 15.010 SUMMARY: ALASKA WAGE AND HOUR ACT.
Repealed 11/ 4/74.

8 AAC 15.015 EXEMPTIONS FOR SEARCHING FOR PLACER OR
HARD ROCK MINERALS. Repealed / / .

8 AAC 15.020 EXEMPTIONS FOR INDIVIDUALS UNDER 18 WHO
ARE PART TIME EMPLOYEES. Repealed / / .

8 AAC 15.030 DETERMINING THE NUMBER OF EMPLOYEES FOR
PURPOSES OF AS 23.10.060(1). Repealed / / .

8 AAC 15.040 SMALL MINING OPERATIONS. Repealed / / .

8 AAC 15.050 DEDUCTIONS FROM AN EMPLOYEE'S WAGES.
Repealed / / .

8 AAC 15.060 PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD
KEEPING. Repealed / / .

8 AAC 15.070 DEFINITIONS OF MISCELLANEOUS TERMS USED
IN AS 23.10.050 - 23.10.150. Repealed / / .

Article

1. Minimum Wages and Overtime (8 AAC 15.100 - 8 AAC 15.105)
2. Exemptions (8 AAC 15.120 - 8 AAC 15.145)
3. Deductions from Wages (8 AAC 15.160)
4. Procedures Relating to Violations, Investigations or
Hearings (8 AAC 15.175 - 8 AAC 15.180)
5. General Provisions (8 AAC 15.900 - 8 AAC 15.910)

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ARTICLE 1.

MINIMUM WAGES AND OVERTIME.

Section

- 100. Payment for overtime
- 105. Minimum wage

8 AAC 15.100 PAYMENT FOR OVERTIME. (a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a work week.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29U.S.C. 207(f) as implemented in 29 C.F.R. 778-402-778.414);

(2) compensatory time off in ^{place} ~~lieu~~ of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a work-week. (Eff. / / , Register)

Authority: AS 23.10.060
AS 23.10.085

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8 AAC 15.105

8 AAC 15.120

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. / / , Register)

Authority: AS 23.10.065
AS 23.10.085

ARTICLE 2.

EXEMPTIONS .

Section

- 120. Minimum wage exemption for handicapped persons
- 125. Minimum wage exemption for student learners
- 130. Exemption for searching for placer or hard rock minerals
- 135. Exemption for individuals under 18 w are part time employees
- 140. Determining the number of employees for purposes of AS 23.10.060(1)
- 145. Small mining operations

8 AAC 10.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS. (a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an application for a special certificate to employ a handicapped person (29.C.F.R. Part 525) with the Regional Director of the Wage and Hour Division, U.S. Department of Labor, 909 First Avenue, Seattle, Washington, 98104.

(b) An application filed with the department must set out the facts showing that the person's productive capacity to do the work he is to perform is impaired by physical or mental deficiency, age, or injury. A medical certificate will be required in all cases in which the handicap is not clearly obvious. The information in the application must be complete and must be certified by a responsible person who has knowledge of the facts.

(c) If the commissioner determines, from the information provided in the application, that the person would otherwise be deprived of employment opportunity, he will, in the exercise of his discretion, approve a wage rate lower than that established under AS 23.10.065. With the exception of very extreme cases where the person is so seriously impaired that he is unable to engage in competitive employment, that rate will not be less than 50 percent of the minimum wage established under AS 23.10.065.

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8 AAC 15.120

8 AAC 15.125

(d) If an approval is issued under (c) of this section, it will specify the approved wage rate and the period for which it is effective. An application for renewal of an exemption must be made in the same manner as the original but must also include an evaluation of that person's productivity, comparing the degree of productivity between the initial application and the renewal.

(e) As a general rule, approval for payment of a wage lower than that established under AS 23.10.065 to persons with a temporary handicap will not be granted.

(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section. (Eff. / / , Register)

Authority: AS 23.10.070(1)
AS 23.10.085

8 AAC 15.125 MINIMUM WAGE EXEMPTION FOR STUDENT LEARNERS.

(a) An exemption for student learners from the minimum wage requirement of AS 23.10.065 is available when the student learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) An application for an exemption under (a) of this section must be made on a form provided by the department. The information required must be complete and must be signed by the employer and the student learner's school coordinator or principal. To qualify for the exemption, the employment must meet all the requirements set out in AS 23.10.325-23.10.370 and ~~chapter~~ 5 of this title relating to the employment of children.

(c) A wage rate authorized under this section will not be less than 75 percent of the minimum wage established under AS 23.10.065.

(d) The exemption from minimum wages for full-time students established by Sec. 14(b) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 214(b)) as implemented in 29 C.F.R. 519.1 - 519.2 does not apply to employment subject to the provisions of AS 23.10.065. (Eff. / / , Register)

Authority: AS 23.10.070(3)
AS 23.10.085

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8 AAC 15.130

8 AAC 15.145

8 AAC 15.130 EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has ~~been~~ begun. (Eff. / / , Register)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.135 EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES. The exemption from AS 23.10.050-23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. / / , Register)

Authority: AS 23.10.055(11)
AS 23.10.085

8 AAC 15.140 DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part time employees will be counted regardless of the number of days or hours worked. (Eff. / / , Register)

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.145 SMALL MINING OPERATIONS. (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirements of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. / / , Register)

Authority: AS 23.10.060(5)
AS 23.10.085

ARTICLE 3.

DEDUCTIONS FROM WAGES.

Section

160. Deductions from an employee's wages.

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

(a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee other than the cost of board and lodging. However, a written agreement for other deductions payable to the employer or person acting in the employer's behalf or interest, other than the cost of board or lodging, is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or requiring an employee to reimburse the employer for any of the following:

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

(2) non-payment for goods or services as a result of customers walk^{out} but or defaulting on credit;

(3) cash or cash register shortages for which the employee does not acknowledge responsibility;

(4) lost or stolen property or alleged theft by the employee for which the employee does not acknowledge responsibility;

(5) damage or breakage costs unless they are clearly due to willful conduct on the part of the employee, the responsibility for which has been acknowledged by the employee.

(b) Nothing in (a) ^{of this section} prohibits deductions from earnings based on a written agreement whereby the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party and neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(c) Written agreements for deductions from earnings are not required for any lawful deduction otherwise authorized or required by state or federal law or by order of a court of competent jurisdiction.

(d) An employer subject to AS 23.10.050-23.10.150 shall furnish each person employed by him who is not exempted from the coverage of those sections by AS 23.10.055 a statement of earnings and deductions for each pay period. The statement of earnings and deductions ~~shall~~ ^{must} contain the following information:

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8 AAC 15.160

8 AAC 15.180

- (1) employee's rate of pay;
- (2) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (3) federal income tax deductions;
- (4) federal insurance contribution act deductions;
- (5) Alaska income tax deduction;
- (6) Alaska school tax deduction;
- (7) Alaska employment security act contributions;
- (8) board and lodging costs;
- (9) advances; and
- (10) other authorized deductions. (Eff. / / , Register)

Authority: AS 23.10.085

ARTICLE 4.

PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section

175. Assignment of claims

180. Investigations, conference and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. (a) A person who believes that he has not been paid wages due him under AS 23.10.050 - 23.10.150 may assign his claim to the department for collection.

(b) The department will not accept an assignment of a claim under AS 23.10.050 - 23.10.150 in excess of \$5,000, excluding liquidated damages. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.110(b)

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The wage and hour division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion or on the assignment to it of a claim under sec. 175 of this chapter.

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

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8 AAC 15.180
8 AAC 15.1~~95~~
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(1) the division will provide the employer believed to have violated AS 23.10.050 - 23.10.150 with a copy of the assignment or a description of the alleged violation and inform him of the results of its investigation; and

(2) the division will schedule an informal conference with the employer to discuss the matter and attempt to eliminate the alleged violations.

(c) If the informal conference succeeds in correcting the alleged violation, no further action will be taken by the division against the employer.

(d) If an alleged violation is not rectified by the informal conference or if the employer fails to attend the conference without good cause shown, the director may, at his discretion;

(1) conduct a further investigation into the matter;

(2) enforce the claim through initiation of an adjudicative hearing under provisions of the Administrative Procedure~~s~~ Act (AS 44.62);

(3) enforce the claim through filing of an action in a court of competent jurisdiction.

(e) If the director determines under (d)(1) of this section that a further investigation into the matter should be conducted, he may provide that it be carried out by initiation of an investigative proceeding conducted in accordance with secs. 10 through 30 of chapter 25 of this title. (Eff. / / , Register)

Authority: AS 23.10.080
AS 23.10.085
AS 23.10.090
AS 23.10.110

ARTICLE 5.

GENERAL PROVISIONS

Section
900~~195~~. Place of employment for purposes of recordkeeping
910~~205~~. Definitions

8 AAC 15.1~~95~~⁹⁰⁰. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORDKEEPING. For purposes of AS 23.10.100, "the place where an employee is employed" means a central office of the employer located within the state. However, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. / / , Register)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15. ⁹¹⁰~~700~~. DEFINITIONS. In this chapter and in 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 his employer;
- (B) who customarily and regularly exercises discretion and independent judgment;
- (C) who performs his work under only 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 of his weekly hours to activities which are not described in this paragraph or paragraphs (7) or (11) of this section;
- (2) "casual employee," as used in AS 23.10.065(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer;
- (3) "commissioner" means the commissioner of labor;
- (4) "department" means the Alaska Department of Labor;
- (5) "director" means the director of the wage and hour division of the department, or his designee;
- (6) "domestic service in or about a private home" as used in AS 23.10.055(4), means a person employed in or about a private home of a person by whom he is employed and who performs such services or activities 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 he 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 of his weekly hours to activities which are not directly and closely related to the work described in this paragraph or paragraphs (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 he cannot use the time effectively for his own purposes, but does not include the time an employee is not required to remain on or near his employer's premises or other place of employment but is merely required to leave word at his home or with the employer where he may be reached;

(10) "outside salesman" means a person who is employed for the purpose of making sales, contracts for sales, consignments, or shipments for sale or obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (12) do not exceed 20 percent of the hours worked in the workweek; → of this section

(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 which 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 as such in a school or other educational establishment or institution; 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 who is regularly employed on the business premise of his employer and is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or in obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer and whose hours of work of a nature other than that described in this paragraph or paragraph (10) do not exceed 20 percent of the hours worked in the workweek; ^{→ of this section}

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

(14) "supervisory capacity" means those primary duties performed, except for the classifications of registered nurse and licensed practical nurse, 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~~ for the purpose of AS 23.10.060, it does not apply to any employee required by the employer to perform ~~such~~ activities on an intermittent or substitute basis during the course of his employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours, i.e. seven consecutive 24 hour periods. It may begin on any day of the week and need not coincide with the calendar week; ~~An~~ an individual employee's workweek is the statutory or contract number of hours that he is to regularly work during that period; ~~The~~ 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 in the manner provided in AS 23.05.160. (Eff. / / . Register)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085

employees with the skills or qualifications possessed by the individual;

(14) "temporary employment" means employment for less than 90 calendar days. (Eff. 6/23/74, Reg. 50; am 4/29/77, Reg. 62)

Authority: AS 23.15.380 AS 23.15.500
AS 23.15.450 AS 23.15.520

8 AAC 15.030. DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1). In determining the number of employees that an employer employs for purposes of AS 23.10.060(1), all officers of a corporation who actively engage in the business and all part-time employees will be counted regardless of the number of days or hours worked. (Eff. 11/4/74, Reg. 52)

CHAPTER 15.
ALASKA WAGES AND HOURS

Section

- 10. (Repealed)
- 15. Exemption for searching for placer or hard rock minerals
- 20. Exemption for individuals under 18 who are part-time employees
- 30. Determining the number of employees for purposes of AS 23.10.060(1)
- 40. Small mining operations
- 50. Deductions from an employee's wages
- 60. Place of employment for purposes of record keeping
- 70. Definitions of miscellaneous terms used in AS 23.10.050-23.10.150

8 AAC 15.010. SUMMARY: ALASKA WAGE AND HOUR ACT. Repealed. (Eff. 11/4/74, Reg. 52)

8 AAC 15.015. EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS. The exemption from AS 23.10.050 - 23.10.150 provided by AS 23.10.055(10) applies to those activities commonly referred to as "prospecting" and does not apply once development of and production from a known mineral source has been begun. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(10)
AS 23.10.085

8 AAC 15.020. EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART-TIME EMPLOYEES. The exemption from AS 23.10.050 - 23.10.150 provided by AS 23.10.055(11) does not apply during any work week in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055(11)
AS 23.10.085 -

Authority: AS 23.10.060(1)
AS 23.10.085

8 AAC 15.040. **SMALL MINING OPERATIONS.** (a) A mining season, for purposes of AS 23.10.060(5), means the cumulative period of time during which mining operations are carried on during a calendar year, but not exceeding 20 weeks.

(b) The exemption from the payment for overtime requirement of AS 23.10.060 for employers engaged in small mining operations provided by AS 23.10.060(5) is available to the employer for a maximum of 14 consecutive weeks, commencing on the first day the mine begins active operations in a calendar year. In determining the available period of exemption, periods during which the mine is not actively engaged in mining operations for such reasons as, but not limited to, assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) During the exemption period described in (b), an employer engaged in small mining operations remains responsible for payment of overtime at the rates established by AS 23.10.060 for work performed by an employee in excess of 12 hours a day or 56 hours a week. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.060(5)
AS 23.10.085

8 AAC 15.050. **DEDUCTIONS FROM AN EMPLOYEE'S WAGES.** AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of other monetary obligations of an employee; however, no deduction is permitted except those expressed in the written agreement.

(b) An employer subject to AS 23.10.050 - 23.10.150 shall furnish each person employed by him, who is not exempted from the coverage of those sections by AS 23.10.055, a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall contain the following information:

- (1) employee's rate of pay;
- (2) daily and weekly hours worked;

(3) federal withholding tax;

(4) federal insurance contribution act;

(5) Alaska withholding tax;

(6) employment security deduction;

(7) school tax;

(8) board and lodging;

(9) advances;

(10) other.

(Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085

8 AAC 15.060. **PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING.** For purposes of AS 23.10.100, the place where an employee is employed means a central office of the employer located within the State; however, the employer may keep duplicate records at the sites or premises where the work is performed. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.085
AS 23.10.100

8 AAC 15.070. **DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150.** (a) "Administrative," as used in AS 23.10.055(9), means an employee whose primary duty consists of work directly related to management policies or supervising the general business operations of his employer and who customarily and regularly exercises discretion and independent judgment and who performs his work under only general supervision and who does not devote more than 39 percent of his workweek to general or routine tasks performed by other employees of his employer.

(b) "Casual employee," as used in AS 23.10.060(15), means an employee engaged in an activity which occurs without regularity and is not in the usual course of trade, business, occupation or profession of his employer.

(c) "Domestic service in or about a private home," as used in AS 23.10.055(4), means a person employed in or about a private home of the person by whom he is employed and who

performs such services or activities 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.

(d) "Executive," as used in AS 23.10.055(9), means an employee

(1) whose primary duty consists of management of the enterprise in which he is employed and whose hours worked in a workweek do not exceed 20 percent in activities not essential to the management of the business operations of his employer; or

(2) who customarily and regularly exercises discretionary power and regularly directs the work of other employees of the enterprise or a recognized department or division of the enterprise and who has the authority to hire or fire, or accomplish any other change of status, including advancement or promotion of other employees or whose recommendations regarding change of status are given particular weight.

(e) "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.

(f) "Outside salesman," as used in AS 23.10.055(9), means a person who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place of business in making sales, contracts for sale, consignments or shipments for sale or in obtaining orders for services or for use of facilities for which a consideration will be paid by the client or customer and whose hours worked in a workweek do not exceed 20 percent in activities performed by nonexempt employees.

(g) "Professional," as used in AS 23.10.055(9), means an employee, except for the classifications of registered nurse and licensed practical nurse, whose primary duty consists of

(1) work requiring knowledge acquired through prolonged study of an advanced or specialized nature and neither routine in process

or gained through general academic education or apprenticeship training; or

(2) work which is inventive or creative and dependent upon the talent of the employee and which does not require more than 20 percent of the hours in a workweek of the employee to be devoted to activities which are not an essential part of, or a necessary incident to the employee's specialized work.

(h) "Supervisory," as used in AS 23.10.060, means a person, except for the classifications of registered nurse and licensed practical nurse, 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 8 hours in the supervisor's workweek. (Eff. 11/4/74, Reg. 52)

Authority: AS 23.10.055
AS 23.10.060
AS 23.10.085