

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9272 HOUSE LABOR & COMMERCE

In addition to referral to the BBB, we advise consumers (where appropriate) that they have a private right of action under Alaska law and can receive their actual damages trebled in cases of willful violations. Alaska Statute 45.50.531(a). Consumers may even be able to bring an action in small claims court if their potential damages are valued at \$5,000 or less. Persons need not hire an attorney in small claims cases in Alaska.

Recent Successful Enforcement Actions

Although the State is forced to turn away many cases of consumer fraud because of the small size of our consumer protection staff, we have, nevertheless, been able to recover substantial amounts of money for consumers, and we have obtained a number of injunctions against deceptive and unfair practices. Working hand-in-hand with the BBB, we have had some recent successes in the areas of telemarketing fraud, used car sales, "bait and switch" bulk retail meat sales, deceptive home business opportunity seminars, and other areas. I have summarized some of these cases for you below; information on these and other cases is included regularly in the department's Monthly Report, which is distributed to all legislators.

Telemarketing Fraud. The Federal Trade Commission estimates that, nationwide, consumers and others lose approximately \$40 billion a year in telemarketing fraud. We have made illegal telemarketing a priority since September 1993, when the Legislature passed laws requiring telemarketer and charitable solicitors to register annually with the Attorney General's Office as a condition of operating in Alaska. In 1995 alone, the Department of Law recovered approximately \$30,000 in restitution to consumers who had fallen victim to illegal telemarketing operations. We have issued over 100 "Cease and Desist" letters to "Lower 48" based illegal telemarketing operations and have put them out of business in Alaska. We also obtained a permanent injunction, in March 1995, against a San Diego, California, telemarketer called Distributel, which illegally telemarketed advertising specialty promotional items to Alaska without registering as a telemarketer with the State. We recovered \$10,000 in attorney's fees and costs in that case and prevailed on appeal to the Alaska Supreme Court.

Anchorage Nissan Consumer Protection Case. In early 1995 the department won a three-week jury trial against Anchorage Nissan for engaging in unfair and deceptive practices arising from the sale of eight used cars. Anchorage Nissan was found to have accepted in trade several used cars that had been in major accidents causing structural damage. After making repairs that were mostly cosmetic, Anchorage Nissan sold the cars to consumers without notifying them that the cars had been in major accidents. Some of

the cars were unsafe to drive but sold anyway. The jury found that Anchorage Nissan had violated its duty to disclose to the purchasers the fact that the cars had previously been in accidents. On April 14, 1995, the court issued a permanent injunction against the illegal conduct, assessed Anchorage Nissan civil penalties of \$64,000, ordered that restitution be paid to the injured consumers, and awarded the state over \$70,000 in attorney's fees and costs. That case is also on appeal in the Alaska Supreme Court.

Additionally, my department settled a claim in February 1996 that Johnson/Nissan/Jeep/Eagle violated the terms of the court's April 1995 injunction. Johnson Nissan admitted that it had not complied with the injunction to the extent that it had continued to induce customers to sign an "As Is" disclaimer on the purchase order in those cases where a customer had purchased a used vehicle and paid for a service contract for that vehicle. Under the recent settlement, Johnson Nissan sent a letter on February 20, 1996, to the approximately 500 customers who had purchased a used car with a service contract since the April 1995 injunction. Each customer was advised that if the car they purchased had a material defect at the time of sale, the dealership would repair the defect free of charge. Customers were also advised that the "As Is" disclaimer on the sale is ineffective and that the customers have warranty coverage on the cars. Johnson Nissan also paid the State of Alaska \$2,000 to cover its attorney's fees in connection with the State's investigation and settlement of the injunction violation.

Thirty-three purchasers of used vehicles contacted Anchorage Nissan in response to the warranty coverage notices the company sent pursuant to the settlement. Anchorage Nissan submitted documentation indicating it provided to these consumers diagnostic checks, repairs, and rental car transportation totaling in excess of \$20,000.

Block & Cleaver Meats; Robert Brueggemeyer. In October 1995, with the help of the BBB, we scored a victory against a Texas-based nationally notorious "bait and switch" meat seller, Bob Brueggemeyer, doing business in Anchorage as Block & Cleaver Meats. Brueggemeyer -- who was profiled nationally on ABC Television's 20/20 program in 1983 by ABC consumer correspondent John Stossel -- had operated a similar "bait and switch" operation in Alaska from 1987 through 1989. This time around, with the help of the BBB, Assistant Attorney General Daveed Schwartz obtained a preliminary injunction against Brueggemeyer and his company, essentially running them out of Alaska in just two months after they opened. The State won most of this case on summary judgment in February, and a short trial on the remaining issues is scheduled for May.

Home Business Opportunity Seminar Companies. With BBB help, the department enforced Alaska's five-business-day cooling off period in obtaining a court-approved Assurance of Voluntary Compliance with Financial Freedom Report, a Utah-based home

business opportunity seminar company that visits Alaska twice a year. We also obtained over \$20,000 in consumer refunds last Fall for 44 Alaskans who purchased products from a California based home business opportunities seminar company that violated the same five-business-day cooling off law.

Discount Airline Ticket Operations. The Anchorage Police Department recently concluded an investigation of Ronald Downey's and Lucretia Dilena's involvement in an alleged airline discount ticket brokering scam. The Civil Division worked closely with the Office of Special Prosecutions and Appeals ("OSPA") on this issue, with the result being that OSPA filed criminal contempt of court charges against Downey and Dilena for their alleged violations of a 1993 superior court injunction against unfair and deceptive practices.

Pyramid Schemes. The Civil Division worked hand-in-hand with OSPA during a November 1994 criminal prosecution of persons involved in an illegal "gifting" chain distributor and pyramid scheme. In particular, the consumer protection attorneys made public announcements in the news media warning consumers that the "gifting" scheme was illegal and could result in criminal penalties. These announcements were actually heard by the defendants in the criminal cases and provided strong circumstantial evidence of the defendants' criminal intent, which is often difficult to prove in these types of cases.

Stereo Speakers Sold by Van Drivers. On August 14, 1996, the department and the BBB issued an alert warning consumers in Anchorage and the Mat-Su Valley about a Fresno, California, based company called United Audio Imaging ("UAI") that sells so-called high-quality stereo speakers supposedly at bargain prices from vans. These sales, occurring in Anchorage and Wasilla, were apparently been made in violation of Alaska's consumer protection laws requiring companies selling merchandise at a place other than their regular place of business to provide purchasers, at the time of sale, with a written notice of their right to revoke the purchase agreement within five (5) business days of the date of purchase. The van drivers misrepresenting the speakers as being valued at \$1,500 a pair when in fact the speakers appear, at best, to be worth \$150 a pair. The state filed a consumer protection suit against the company in October and obtained a \$75,000 default judgment and injunction in February.

Conclusion

We have worked hard to maximize the impact of the limited resources we have for consumer protection by working closely with the BBB, as well as with the Federal

The Honorable Eric Croft
Re: Consumer Protection

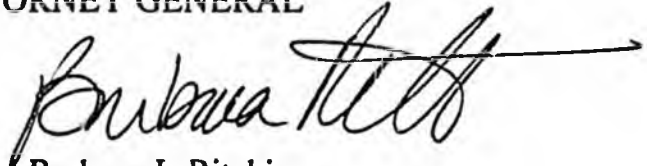
April 13, 1997
Page 8

Trade Commission, state and federal criminal enforcement agencies, and consumer protection enforcement programs in other states.

Thank you again for expressing your concerns on consumer protection staffing and enforcement issues.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Barbara J. Ritchie', with a long horizontal flourish extending to the right.

BY: Barbara J. Ritchie
Deputy Attorney General

BJR:css

cc: Daveed Schwartz
Pat Pourchot
Chrystal Smith
Deb Behr

REPRESENTATIVE ERIC CROFT

-03-08P05-10 RCVD

MEMORANDUM

To: Rep. Norm Rokeberg, Chair, House Labor & Commerce
From: Rep. Eric Croft
Date: February 3, 1998
Re: SSHB49

Please schedule a hearing for SSHB49 at your earliest convenience.

This bill is a very high priority for the American Association of Retired Persons and the Older Persons' Action Group.

Please find attached to my April 1997 request:

- Sponsor Statement
- Fiscal Note
- Letters of support
- Sectional Analysis
- Research report, including budget chart
- Attorney General's description of current consumer protection program

We would like for the committee to hear teleconferenced testimony. Potential witnesses include: The Dept. of Law; American Association of Retired Persons; Older Persons' Action Group; Alaska Public Interest Research Group; Alaska Peace Officers Association; consumers who have been defrauded.

If you have any questions, please don't hesitate to call Tom Atkinson of my staff at 465-2116.



APR 09 1997

REPRESENTATIVE ERIC CROFT

MEMORANDUM

To: Rep. Norm Rokeberg, Chair, House Labor & Commerce
From: Rep. Eric Croft *Eric Croft*
Date: April 9, 1997
Re: SSHB49

Please schedule a hearing for SSHB49 at your earliest convenience.

Ideally, the Labor & Commerce Committee could hear SSHB49 and HB203 during the same meeting, as they both address the same problem, but with differing approaches.

Please find attached:

- Sponsor Statement
- Fiscal Note
- Letters of support

I will submit the following to you before a hearing:

- Sectional Analysis
- Research report, including budget chart
- Attorney General's description of current consumer protection program

We would like for the committee to hear teleconferenced testimony. Potential witnesses include: The Dept. of Law; the Better Business Bureau; consumers who have been defrauded.

If you have any questions, please don't hesitate to call Tom Atkinson of my staff at 465-2116.





ALASKA STATE LEGISLATIVE COMMITTEE

TELEMARKETING FRAUD
POSITION PAPER
1998

AARP POSITION:

Promote adequate funding for the enforcement of consumer protection laws against telemarketing fraud.

DISCUSSION:

Although Alaska law does impose criminal penalties for telemarketing fraud, it is not adequately enforced for lack of funding. Alaska has a responsibility to protect its citizens from fraudulent activity. Additional staffing in the Attorney General's office is needed to receive and act on complaints from the public. Also, Alaskans need to be regularly warned of fraudulent activity taking place in the state.

Current statistics indicate that telemarketing fraud costs the people of Alaska approximately ten million dollars a year, and appears to be increasing.

The law should be amended to:

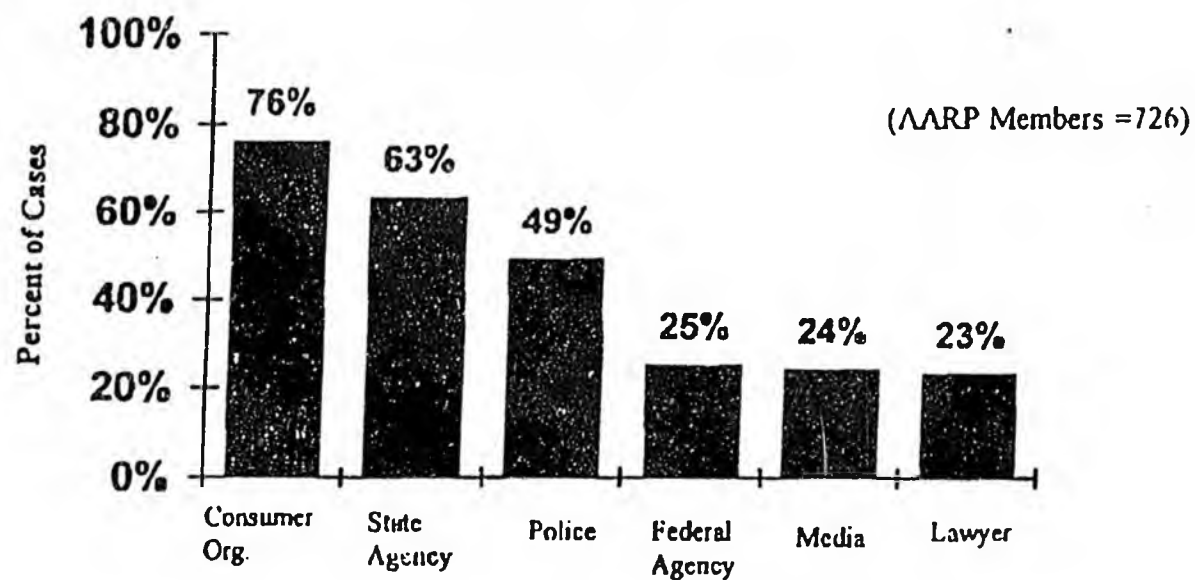
1. Require that telemarketers file a bond to compensate consumers who may be defrauded by the seller's acts;
2. Ban all courier pick-ups associated with telemarketing sales, unless the consumer has the opportunity to inspect the goods before any payment is collected;
3. Prohibit telemarketers from directly accessing any consumer's bank, savings, trust, stock, or bond account as a method of collecting payment for goods and services; and
4. Include a more substantial list of deceptive practices.

Peggy Mulligan
CCTF Coordinator
PO Box 240335
Douglas, AK 99824-0335
(907) 364-3144

Question 2: Telemarketing Fraud

If you thought that you were a victim of a fraud, scam, or swindle, who would you turn to for help in getting your complaint resolved?

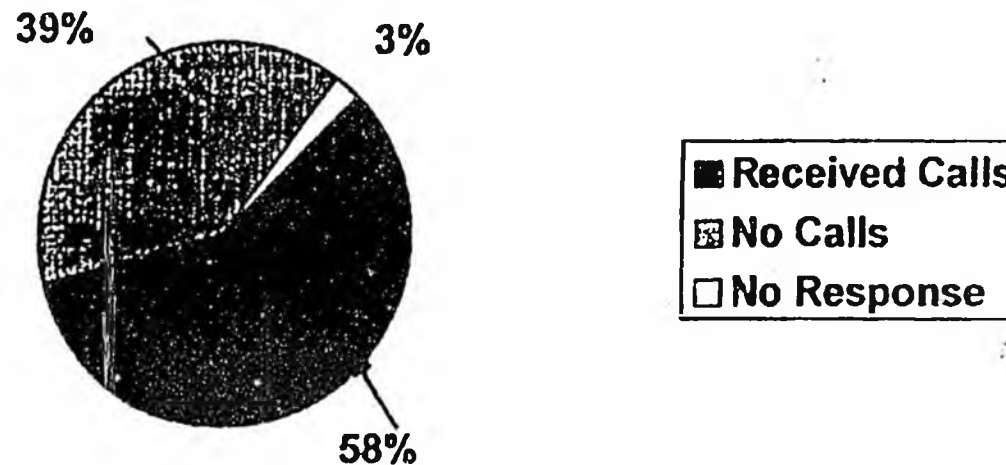
(Multiple responses included)



Question 1: Telemarketing Fraud

Percentage of respondents saying they received telephone calls in the last six months from unfamiliar organizations where the caller tried to sell them something or asked for a contribution.

(AARP Members =726)



HB

67

Revision Date: _____ Dept. Affected: Revenue
 Title: Longevity Bonus Sabbatical PFD Eligibility BRU: Permanent Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: Representative Ryan
 Requestor: (H) STA COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Permanent Fund	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This bill would make the unpaid sabbatical under AS 47.45.035 an allowable absence for PFD eligibility purposes. There will be no fiscal impact on PFD's operating budget.

Prepared by: Nanci A. Jones, Director Phone: 465-2323
 Division: Permanent Fund Dividend Date: February 25, 1997
 Approved by Commissioner: Wilson L. Condon Date: February 25, 1997
 Agency: Revenue

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 1, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/10/97

The LABOR AND COMMERCE Committee considered:

HB 67

HOUSE BILL NO. 67

LONGEVITY BONUS SABB'TCL: PFD ELIGIBILITY

"An Act relating, for purposes of eligibility for a permanent fund dividend, to an absence from the state while on an unpaid sabbatical under the longevity bonus program; and providing for an effective date."

recommends it be replaced with the following committee substitute recommends HB 67 original the same title a new title

additional referral to _____ Committee
 attached amendment(s)

*Version
be adopted by the House*

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) PFD

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John Coedene</i>	<input checked="" type="checkbox"/>			
<i>Jim Ryan</i>	<input checked="" type="checkbox"/>			
<i>Bill Hulse</i>			<input checked="" type="checkbox"/>	
<i>Ann Kately</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE

Ann Kately 4/10/97

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**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

*(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101*

*130 Seward Street, Suite 400
Juneau, Alaska 99801-2105*

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House State Affairs Committee
March 27, 1997
8:04 a.m.

House State Affairs Committee
February 25, 1997
8:05 a.m.

Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE
MILITARY & VETERANS AFFAIRS
COMMUNITY & REGIONAL AFFAIRS
OIL & GAS



Representative Joe Ryan

1 800-922-3875

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ANCHORAGE, AK 99501
PHONE (907) 258-8161

SESSION:

STATE CAPITOL
ROOM 420
JUNEAU, AK 99801-1182
PHONE (907) 465-3875

Sponsor Statement: HB 67 Sabbatical to Permanent Fund Eligibility

Many of Alaska's elderly residents often find themselves wanting to or needing to escape to warmer climates during the harshest of winter months. The same residents find themselves needing to leave to care for family members or attend to business concerns. Unfortunately, an elderly resident who leaves the state for more than 3 months loses eligibility for the Permanent Fund Dividend. While this seems practical at first blush, our senior citizens, rely heavily on their dividends for their very financial survival, and are often on legitimate sabbaticals created by the Legislature for Longevity Bonus purposes.

HB 67 would conform eligibility requirements for the Permanent Fund Dividend with those of the unpaid sabbatical provisions in A.S. 47.45.035 governing the Longevity Bonus Program.

The recipient of the Longevity Bonus may take an unpaid sabbatical for a period of up to 12 months. A recipient having properly notified the Department of Administration 30 days before leaving the State of Alaska may make application upon return to the state to again receive the bonus. Moreover, an unpaid sabbatical recipient may only take one such sabbatical every five years.

Put simply, HB 67 would allow a senior citizen to take a sabbatical from the State of Alaska no more than once every 5 years without losing eligibility for the Permanent Fund Dividend. This bill does not constitute a loosening of the eligibility process for receipt of the Permanent Fund. It is tailored specifically to allow those who are on a justifiable sabbatical as recognized by §47.45.035 to remain eligible for the Permanent Fund Dividend.

From a policy perspective, HB 67 would be a great achievement as it encourages senior citizens to maintain residence in the State of Alaska by not punishing them financially for leaving on a justifiable sabbatical as recognized by the Longevity Bonus Program. Further, HB 67 encourages Alaska's seniors citizens to travel and conduct business for themselves and others which in these tight budgetary times will force savings out of payments made under the Longevity Bonus program.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 25, 1997

SUBJECT: Absences and eligibility for PFDs (HB 67)

TO: Representative Jeannette James, Chair
House State Affairs Committee
Attn: Barbara Cotting

FROM: Tamara Brandt Cook *TBC*
Director of Legal Services

You have asked whether HB 67 poses constitutional problems. The bill establishes unpaid sabbaticals taken under the longevity bonus program as allowable absences in residency determinations under the permanent fund dividend program.

It is possible that this bill if enacted would be susceptible to challenge under the equal protection clause of the state constitution. Under the state equal protection clause, a statute is evaluated on a sliding scale under which the goal of the legislation and the importance of the individual rights affected are considered. (State v. Anthony, 810 P.2d 155 (Alaska 1991)) As the importance of the individual rights affected increases, the burden increases on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal.

An individual's interest in receiving a permanent fund dividend is accorded a low level of protection under the state equal protection clause because only an economic interest is implicated and that interest is not based on the need of the applicant. (Underwood v. State, 881 P.2d 322 (Alaska 1994)) It is possible that, in applying this test, the court would find that a sufficiently rational basis exists for treating these seniors differently from other residents who have good reasons for leaving the state, but that basis is not immediately apparent to me.

Bear in mind that a distinction will be drawn not only between seniors and non-seniors but also between seniors who are part of the longevity program and other seniors (possibly of the same ages and absent for the same purposes) who are not part of the longevity bonus program because of its recently enacted phase-out provision.

TBC:glc
97-116.glc



Senior Voice/Jim Prevost

Anchorage Pioneers' Home, now under the control of the newly-created Division of Alaska Longevity Programs of the Department of Administration.

State officials say the restructuring will enable the programs to run more efficiently and allow the Division of Senior Services to focus on its expanding role in home and community-based care.

"It was done primarily to recognize that at [the Division of] Senior Services, the home and community-based side of the operation has grown," said Alison Elgee. Elgee is deputy commissioner of the Department of Ad-

ministration, saying the move is aimed at growing elderly population to remain at home with their families.

Elgee noted that the creation of the Division of Senior Services three years ago combined the Older Alaskans Commission (now called the Alaska Commission on Aging) and the Division of Pioneer Benefits under one roof. Since then, however, "the operations at DSS have expanded tremendously beyond just what those two things were."

page 28 please

Bonus sabbatical jeopardizes dividend eligibility

New bill would change rules for Permanent Fund

by David Washburn

Senior Voice reporter

If you're planning a lengthier absence from Alaska this year as a result of the Longevity Bonus program's new "unpaid sabbatical" rule, be warned that it could cost you your Permanent Fund check.

"We don't recognize [the sabbatical] as an allowable absence," said Permanent Fund division director Nanci Jones. "If you're gone more than 180 days in the year, unless you are specifically allowed by law, you will not be eligible for the dividend."

The sabbatical rule went into effect in January and allows people in the Longevity Bonus program to be out of the state for up to a full year and not lose permanent eligibility for the program. Although they won't get a Bonus check while they

are gone, by following proper notification procedures they can resume receiving the monthly \$100 to \$250 payments when they return to the state.

However, Permanent Fund dividend rules require that they lose eligibility for a dividend check for the year they are gone, and that they re-qualify by remaining in the state and meeting the other program guidelines before getting another dividend check.

A bill introduced this session seeks to change that rule and enable people taking a Longevity Bonus sabbatical to remain eligible for the dividend. Sponsored by senators John Torgerson and Tim Kelly, Senate Bill 4 adds unpaid sabbaticals to the list of allowable excuses for being physically absent from the state for more than the 180-day maximum limit.

Torgerson said he and Kelly were approached by constituents who questioned having to lose a dividend check while taking an authorized sabbatical. The bill will help make the rules for the two differ-

ent programs more consistent, he said.

"It just makes sense to go ahead and do that."

Jones, however, said the bill is unnecessary because even though they may lose one dividend check for the year they are gone, people who return from a sabbatical can re-qualify and resume getting their dividend checks in subsequent years.

"I think there's a little confusion right there with the author of that bill with what the implications are," she said.

Jones noted that the Longevity Bonus sabbatical is an unpaid absence. Since people lose their Bonus checks for time spent out of the state, she argued, why should they not expect to do the same for the Permanent Fund dividend?

"The physical presence is the driver for the Longevity Bonus program, and that's the basis for our program," she said. If the exception in SB 4 is granted, Permanent Fund checks will go to people

see "New bill", page 28 please

7

Ombudsman under fire

Forgery charge for LTC advocate

13

Preparing for Rondy

Center Section

23

Awakening Giant, part 2

Going Places

o control homes, bonus...

ision, Elgee said. 'Pioneers' Homes Ad-board, a panel of state and private appointments help determine policy for homes, discussed the several months and it, she said.

y recommended it. It the two divisions be distinct."

n Montano, administrator of the Fairbanks Pioneer Home, said she is very about the new divi-

r being very great at the homes and our is different than Senior Services," she said. in-patient facilities, focusing on commu-

gioners' homes hold a appeal for Alaskans. ing in their own divi-ty will be in a better n to play on that . Montano said.

her important differ-ll be the separation : the Pioneers' homes,

which include assisted-living units, and the Division of Senior Services, which regulates assisted-living facilities in the state through its licensing duties.

Having the assisted-living "watchdog" agency in the business of running its own assisted-living facilities created a question of conflict of interest, Montano said.

"Licensing helps us examine ourselves, look at our standards. And it's always better if that's coming from a different perspective."

No abrupt changes

Montano, who has been at the Fairbanks home for seven and a half years, said the creation of the Division of Alaska Longevity Programs is not really a new idea, but rather a return to the system the state had in place for years.

"When I first came, [the Pioneers' homes] were a separate division. About three years ago that changed, and we were incorporated under

Senior Services."

Nevertheless, with the recent return to separate divisions, many people expressed concerns, Montano said.

"I've tried to emphasize that it was always this way. It was only changed for a couple of years, and now it's going back to the way it was. It shouldn't be considered scary or a negative change. It can help us."

The reorganization should have no effect on the day-to-day operations of the Pioneers' homes, Montano said.

Elgee agreed and added that the change will not cost the state extra money.

"[Jim Kohn's] position was not replaced within the Division of Senior Services because he was running the same programs that are now under him."

Despite the new organization, staff will remain pretty much in the same offices that they have been using, Elgee said. "This did not require any new money or increased staff."

New bill...

from page 1

who are not in the state, while Longevity Bonus checks will not, she said.

Meanwhile, the people who run the Longevity Bonus program say most clients they talk with are well aware of the potential loss of a dividend check. A booklet published by the Permanent Fund division spells out clearly that Bonus sabbaticals are not allowable absences.

Longevity Bonus program supervisor Karen Phillips said that 130 people are currently on the unpaid sabbatical, although not all of them will be gone for 12 months.

"It's amazing how many seniors ask if [taking an unpaid sabbatical] is going to affect their permanent fund dividend. I think they're surprised that it will," Phillips said. However, she added that she has "not heard anyone say they would decline a sabbatical if it meant they would lose their Permanent Fund."

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Representative Joe Ryan

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MEMORANDUM

TO: Representative Norman Rokeberg, Chairman
House Labor and Commerce Committee

FROM: Representative Joe Ryan *JR*

DATE: March 27, 1997

SUBJECT: House Bill 67

Please schedule House Bill 67 for a hearing at the earliest possible moment. Thank you for your consideration.

APR 10 1997

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-I.S0331\B

Cook

4/10/97

mc
2:37pm
slr

CS FOR HOUSE BILL NO. 67(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE RYAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to repayment of certain permanent fund dividends, to the
2 amount of a dividend, and, for purposes of eligibility for a permanent fund
3 dividend, to an absence from the state while on an unpaid sabbatical under the
4 longevity bonus program; and providing for an effective date."

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

6 * Section 1. AS 43.23 is amended by adding a new section to read:

7 **Sec. 43.23.018. Repayment of certain dividends.** (a) An individual who
8 receives a dividend but does not remain a state resident during the entire dividend year
9 and the immediately succeeding calendar year shall repay the amount of the dividend
10 to the department. Repayment is due under this subsection within 60 days after the
11 individual ceases to be a state resident. The department shall deposit the repayment
12 in the dividend fund.

13 (b) The permanent fund application form must include notice of the
14 requirements of (a) of this section.

1 * Sec. 2. AS 43.23.025(a) is amended to read:

2 (a) By October 1 of each year the commissioner shall determine the value of
3 each permanent fund dividend for that year by

4 (1) determining the total amount available for dividend payments,
5 which equals

6 (A) the amount of income of the Alaska permanent fund
7 transferred to the dividend fund under AS 37.13.145(b) during the current year;

8 (B) plus the unexpended and unobligated balances of prior fiscal
9 year appropriations that lapse into the dividend fund under AS 43.23.045(d);

10 (C) plus the amount of repayments deposited to the dividend
11 fund under AS 43.23.018 during the current year;

12 (D) [(C)] less the amount necessary to pay dividends from the
13 dividend fund in the current year under AS 43.23.055(3) and (7);

14 (E) [(D)] less the amount necessary to pay dividends from the
15 dividend fund due to eligible applicants who, as determined by the department,
16 filed for a previous year's dividend by the filing deadline but who were not
17 included in a previous year's dividend computation;

18 (F) [(E)] less appropriations from the dividend fund during the
19 current year, including amounts to pay costs of administering the dividend
20 program and the hold harmless provisions of AS 43.23.075;

21 (2) determining the number of individuals eligible to receive a dividend
22 payment for the current year; and

23 (3) dividing the amount determined under (1) of this subsection by the
24 amount determined under (2) of this subsection.

25 * Sec. 3. AS 43.23.095(8) is amended to read:

26 (8) "state resident" means an individual who is physically present in the
27 state with the intent to remain permanently in the state under the requirements of
28 AS 01.10.055 or, if the individual is not physically present in the state, intends to
29 return to the state and remain permanently in the state under the requirements of
30 AS 01.10.055, and is absent only for any of the following reasons:

31 (A) vocational, professional, or other specific education for

- 1 which a comparable program was not reasonably available in the state;
- 2 (B) secondary or postsecondary education;
- 3 (C) military service;
- 4 (D) medical treatment;
- 5 (E) service in Congress;
- 6 (F) other reasons which the commissioner may establish by
- 7 regulation;
- 8 (G) service in the Peace Corps;
- 9 (H) to care for the individual's terminally ill parent, spouse,
- 10 sibling, child, or stepchild;
- 11 (I) for up to 220 days to settle the estate of the individual's
- 12 deceased parent, spouse, sibling, child, or stepchild; [OR]
- 13 (J) to care for a parent, spouse, sibling, child, or stepchild with
- 14 a critical life-threatening illness whose treatment plan, as recommended by the
- 15 attending physician, requires travel outside the state for treatment at a medical
- 16 specialty complex; or
- 17 (K) unpaid sabbatical under AS 47.45.035;

18 * Sec. 4. This Act takes effect January 1, 1998.

CS FOR HOUSE BILL NO. 67(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/1/97

Referred: Labor and Commerce, Finance

Sponsor(s): REPRESENTATIVE RYAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating, for purposes of eligibility for a permanent fund dividend, to
 2 absences from the state while on certain sabbaticals; and providing for an
 3 effective date."

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

5 * Section 1. AS 43.23.005 is amended by adding a new subsection to read:

6 (h) An individual who was qualified on January 1, 1997, to receive longevity
 7 bonus payments and is/no longer qualified to receive longevity bonus payments may
 8 take a sabbatical for a period of up to 12 consecutive months by notifying the
 9 department of the period the individual elects to be on sabbatical status. The notice
 10 shall be provided to the department at least 30 days before the first day of the
 11 sabbatical period. While on sabbatical status, the individual may be absent from the
 12 state at any time without being disqualified from receiving a permanent fund dividend
 13 solely on the basis of the absence. An individual who has taken a sabbatical under
 14 this subsection or under AS 47.45.035 may not elect to take a subsequent sabbatical

1 under this subsection until a period of at least five years has elapsed beginning on the
2 day the sabbatical ended.

3 * Sec. 2. AS 43.23.095(8) is amended to read:

4 (8) "state resident" means an individual who is physically present in the
5 state with the intent to remain permanently in the state under the requirements of
6 AS 01.10.055 or, if the individual is not physically present in the state, intends to
7 return to the state and remain permanently in the state under the requirements of
8 AS 01.10.055, and is absent only for any of the following reasons:

9 (A) vocational, professional, or other specific education for
10 which a comparable program was not reasonably available in the state;

11 (B) secondary or postsecondary education;

12 (C) military service;

13 (D) medical treatment;

14 (E) service in Congress;

15 (F) other reasons which the commissioner may establish by
16 regulation;

17 (G) service in the Peace Corps;

18 (H) to care for the individual's terminally ill parent, spouse,
19 sibling, child, or stepchild;

20 (I) for up to 220 days to settle the estate of the individual's
21 deceased parent, spouse, sibling, child, or stepchild; [OR]

22 (J) to care for a parent, spouse, sibling, child, or stepchild with
23 a critical life-threatening illness whose treatment plan, as recommended by the
24 attending physician, requires travel outside the state for treatment at a medical
25 specialty complex;

26 (K) unpaid sabbatical under AS 47.45.035; or

27 (L) sabbatical under AS 43.23.005(h);

28 * Sec. 3. This Act takes effect January 1, 1998.

HB

68

File 1

Shirley Armstrong

**STATE OF ALASKA
DEPARTMENT OF LABOR**



TITLE 23. LABOR

CHAPTER 05. - CHAPTER 10

DEPARTMENT OF LABOR

EMPLOYMENT PRACTICES & WORKING CONDITIONS

AS 23.05.010 - 23.05.340

AS 23.10.015 - 23.10.150 - 23.10.375 - 23.10.400

AS 23.10.430 - 23.10.550, AS 23.40.205

SEPTEMBER 1996

WAGE & HOUR ADMINISTRATION PAMPHLET NO. 100

TONY KJOWLES, GOVERNOR

MAILIN LIST REQUEST

If you would like to be on the mailing list to receive Wage & Hour or Mechanical Inspection publications or regulations information, please indicate your areas of interest below, print your name and mailing address in the space provided, and mail this page to:

Wage and Hour Administration
P.O. Box 107021
Anchorage, Alaska 99510-7021

- Wage & Hour Title 23 Employment Practices
- Wage & Hour Title 36 Public Works
- Pamphlet #600 Laborers' & Mechanics' Minimum Rates of Pay
- Employment Agencies
- Child Labor
- Employment Preference (Local Hire)
- Plumbing Code
- Electrical Code
- Boiler/Pressure Vessel Construction Code
- Elevator Code
- Recreational Devices
- Regulation information relating to any of the above

Seminars: Electrical Plumbing
 Boiler Elevator

Name: _____

Address: _____

C.F.R. Sec. 785.48

C.F.R. Sec. 785.48

(b) "Rounding" practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

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ALASKA DEPARTMENT OF LABOR
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PO Box 107021
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WAGE & HOUR ADMINISTRATION
ALASKA DEPARTMENT OF LABOR
Regional State Office Building
675 - 7th Avenue, Station J
Fairbanks, Alaska 99701
Phone: 451-2886

Section 785.45. Suggestion systems.

Generally, time spent by employees outside of their regular working hours in developing suggestions under a general suggestion system is not working time, but if employees are permitted to work on suggestions during regular working hours the time spent must be counted as hours worked. Where an employee is assigned to work on the development of a suggestion, the time is considered hours worked.

SUBPART D-RECORDING WORKING TIME**Section 785.47. Where records show insubstantial or insignificant periods of time.**

In recording working time under the Act, insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. The courts have held that such trifles are de minimis. (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).) This rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities. An employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him. See Glenn L. Martin Nebraska Co. v. Culkin, 197 F. 2d 981, 987 (C.A. 8, 1952), cert. denied, 344 U.S. 866 (1952), rehearing denied, 344 U.S. 888 (1952), holding that working time amounting to \$1 of additional compensation a week is "not a trivial matter to a workingman," and was not de minimis; Addison v. Huron Stevedoring Corp., 204 F. 2d 88, 95 (C.A. 2, 1953), cert. denied 346 U.S. 877, holding that "To disregard workweeks for which less than a dollar is due will produce capricious and unfair results." Hawkins v. E. I. du Pont de Nemours & Co., 12 W.H. Cases 448, 27 Labor Cases, para. 69,094 (E.D. Va., 1955), holding that 10 minutes a day is not de minimis.

Section 785.48. Use of time clocks.

(a) **Differences between clock records and actual hours worked.** Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

Friday, the travel time during these hours is work time on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Section 785.40. When private automobile is used in travel away from home community.

If an employee is offered public transportation but requests permission to drive his car instead, the employer may count as hours worked either the time spent driving the car or the time he would have had to count as hours worked during working hours if the employee had used the public conveyance.

Section 785.41. Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

ADJUSTING GRIEVANCES, MEDICAL ATTENTION, CIVIC AND CHARITABLE WORK, AND SUGGESTION SYSTEMS

Section 785.42. Adjusting Grievances.

Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

Section 785.43. Medical attention.

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

Section 785.44. Civic and charitable work.

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

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Section 785.37. Home to work on special one-day assignment in another city.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, D.C., with regular working hours from 9 a.m. to 5 p.m., may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in § 785.36), or like travel that is all in the day's work (see § 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

Section 785.38. Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (Walling v. Mid-Continent Pipe Line Co., 143 F. 2d 308 (C.A. 10, 1944))

Section 785.39. Travel away from home community.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through

Section 785.32. Apprenticeship training.

As an enforcement policy, time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which substantially meets the fundamental standards of the Bureau of Apprenticeship and Training of the U.S. Department of Labor; and

(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

TRAVEL TIME**Section 785.33. General.**

The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved. The subject is discussed §§ 785.35 to 785.41, which are preceded by a brief discussion in § 785.34 of the Portal-to-Portal Act as it applies to travel time.

Section 785.35. Home to work; ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

Section 785.36. Home to work in emergency situations.

There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers, all time spent on such travel is working time. The Divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

ALASKA STATUTES**TITLE 23. Labor and Workers' Compensation.****Chapter**

05. Department of Labor (§§ 23.05.010-23.05.340)
10. Employment Practices and Working Conditions (§§ 23.10.015-23.10.400)

CHAPTER 05. Department of Labor.**Article**

1. Administration (§§ 23.05.010-23.05.130)
2. Wage Claims (§§ 23.05.140-23.05.260)
3. Violations and Penalties (§§ 23.05.270-23.05.280)
4. Reciprocal Agreements (§§ 23.05.320-23.05.340)

Article 1. Administration.**Section**

10. Purpose
20. Records of department
30. Funds
40. Bond of commissioner
50. Power to issue subpoenas and take testimony
60. Powers of the department
80. Employer's records
90. Employer shall furnish information
100. Inspections and examination of records
110. Biennial report
120. Cooperation with other agencies
130. Preference for resident workers

Sec. 23.05.010. Purpose. The Department of Labor shall foster and promote the welfare of the wage earners of the state, improve their working conditions and advance their opportunities for profitable employment. (§ 43-1-1 ACLA 1949)

Sec. 23.05.020. Records of department. The department shall keep a record of all proceedings. All records shall be open during regular hours of business for public inspection. (§ 43-1-3 ACLA 1949)

Sec. 23.05.030. Funds. The department shall remit to the Department of Revenue all money it receives and sign and issue vouchers for necessary disbursements. (§ 43-1-3 ACLA 1949)

Sec. 23.05.040. Bond of commissioner. The commissioner shall give bond approved by the Department of Administration in the sum of \$10,000 running to the state, conditioned upon the faithful performance of the duties of the office. The bond shall be filed with the Department of Administration. (§ 43-1-3 ACLA 1949)

Sec. 23.05.050. Power to issue subpoenas and take testimony. The department may issue subpoenas, administer oaths, and take testimony concerning any matter within its jurisdiction. (§ 43-1-4 ACLA 1949)

Sec. 23.05.060

Sec. 23.05.060. Powers of the department. The department may:

(1) enforce all state labor laws;

(2) act as mediator and appoint deputy commissioners of conciliation in labor disputes whenever it considers the interest of industrial peace requires it;

(3) make investigations, collect and compile statistical information concerning the conditions of labor generally and upon all matters relating to the enforcement of this chapter;

(4) institute court proceedings against an employer of labor without cost to the employee when it is satisfied that the employer has failed to pay an employee an amount due by contract;

(5) issue cease and desist orders and other orders and regulations necessary for the enforcement of state labor laws;

(6) in accordance with AS 37.07 (the Executive Budget Act), receive and spend money derived from agreements with local governments, nongovernmental organizations, or other persons. (§ 43-1-5 ACLA 1949; am § 1 ch 34 SLA 1949; am § 2 ch 15 SLA 1972; am § 1 ch 107 SLA 1975; am § 43 ch 138 SLA 1986)

Sec. 23.05.070. Accounting and disposition of receipts. [Repealed, § 28 ch 90 SLA 1991.]

Sec. 23.05.080. Employer's records. An employer shall keep an accurate record of the name, address, and occupation of each person employed, of the daily and weekly hours worked by each person, and of the wages paid each pay period to each person. The record shall be kept on file for at least three years. (§ 43-1-6 ACLA 1949; am § 2 ch 107 SLA 1975)

Sec. 23.05.090. Employer shall furnish information. An employer shall furnish to the department the information it is authorized to require, and shall make true and specific answers to all questions, whether submitted orally or in writing, authorized to be asked of the employer. (§ 43-1-7 ACLA 1949)

Sec. 23.05.100. Inspections and examination of records. The department may

(1) enter a place of employment during regular hours of employment and in cooperation with the employer, or someone designated by the employer, collect facts and statistics relating to the employment of workers;

(2) make inspections for the proper enforcement of all state labor laws;

(3) for the purpose of examination, have access to and copy from any book, account, record, payroll, paper or document relating to the employment of workers. (§ 43-1-8 ACLA 1949)

Sec. 23.05.100

C.F.R. Sec. 785.27

C.F.R. Sec. 785.31

(c) the course, lecture, or meeting is not directly related to the employee's job; and

(d) the employee does not perform any productive work during such attendance.

Section 785.28. Involuntary attendance.

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

Section 785.29. Training directly related to employee's job.

The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. For example, a stenographer who is given a course in stenography is engaged in an activity to make her a better stenographer. Time spent in such a course given by the employer or under his auspices is hours worked. However, if the stenographer takes a course in bookkeeping, it may not be directly related to her job. Thus, the time she spends voluntarily in taking such a bookkeeping course outside of regular working hours, need not be counted as working time. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.

Section 785.30. Independent training.

Of course, if an employee on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

Section 785.31. Special situations.

There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

PART 785-HOURS WORKED

SUBPART C-APPLICATION OF PRINCIPLES

EMPLOYEES "SUFFERED OR PERMITTED" TO WORK

Section 785.11. General.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (Handler v. Thrasher, 191 F. 2d 120 (C.A. 10, 1951); Republican Publishing Co. v. American Newspaper Guild, 172 F. 2d 943 (C.A. 1, 1949); Kappler v. Republic Pictures Corp., 59 F. Supp. 112 (S.D. Iowa 1945), aff'd 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); Hogue v. National Automotive Parts Ass'n, 87 F. Supp. 816 (E.D. Mich. 1949); Barker v. Georgia Power & Light Co., 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); Steger v. Beard & Stone Electric Co., Inc., 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

PREPARATORY AND CONCLUDING ACTIVITIES

Section 785.25. Illustrative U.S. Supreme Court Decisions.

These principles have guided the Administrator in the enforcement of the act. Two cases decided by the U.S. Supreme Court further illustrate the types of activities which are considered an integral part of the employees' jobs. In one, employees changed their clothes and took showers in a battery plant where the manufacturing process involved the extensive use of caustic and toxic materials (Steiner v. Mitchell, 350 U.S. 247 (1956).) In another case, knifemen in a meat packing plant sharpened their knives before and after their scheduled workday. (Mitchell v. King Packing Co., 350 U.S. 260 (1956)). In both cases the Supreme Court held that these activities are an integral and indispensable part of the employees' principal activities.

LECTURES, MEETINGS AND TRAINING PROGRAMS

Section 785.27. General.

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) attendance is in fact voluntary;

Sec. 23.05.110. Biennial report. The department shall submit a report to the governor for transmittal to the legislature concerning its activities during the preceding two years. (§ 43-1-9 ACLA 1949)

Sec. 23.05.120. Cooperation with other agencies. The department may negotiate with the United States Department of Labor and with other federal and state agencies the arrangements that it considers expedient for cooperation in formulating and carrying out policies and projects designed to encourage and assist in the protection and welfare of labor of the state. (§ 43-1-10 ACLA 1949)

Sec. 23.05.130. Preference for resident workers. The department shall aid and assist resident workers to obtain, safeguard and protect their rightful preference to be employed in industries in the state. (§ 43-1-11 ACLA 1949)

Article 2. Wage claims.

Section

- 140. Pay periods
- 160. Notice of wage payments
- 170. Wages earned before strike, lockout or layoff
- 180. Wages in dispute
- 190. Enforcement of wage claims
- 200. Hearings on wage claims
- 210. Proceedings by attorney general
- 220. Assignment of liens and claims to department
- 230. Prosecution of claims
- 240. Officers to execute process without security
- 250. Witness fees of garnishee defendants
- 260. Disposition of funds recovered

Sec. 23.05.140. Pay periods. (a) An employee and employer may agree in an annual initial contract of employment to monthly pay periods when the employer shall pay all employees for all labor performed or services rendered. Otherwise, the employer shall establish monthly or semi-monthly pay periods, at the election of the employee.

(b) If the employment is terminated, regardless of the cause of termination, all wages, salaries or other compensation for labor or services become due immediately and shall be paid within three working days after the termination at the place where the employee is usually paid or at a location agreed upon by the employer and employee.

(c) [Repealed, § 2 ch 19 SLA 1971.]

(d) If an employer violates (b) of this section by failing to pay within three working days of termination, the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount. (§ 43-2-11 ACLA 1949; am § 2 ch 34 SLA 1949; am § 1 ch 118 SLA 1959; am §§ 1, 2 ch 19 SLA 1971; am §§ 1, 2 ch 11 SLA 1976; am § 1 ch 47 SLA 1983)

Sec. 23.05.160

Sec. 23.05.150. Pay orders. [Repealed, § 2 ch 19 SLA 1971.]

Sec. 23.05.160. Notice of wage payments. An employer shall notify an employee in writing at the time of hiring of the day and place of payment, and the rate of pay, and of any change with respect to these items on the payday before the time of change. An employer may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as the employee comes or goes to the place of work. (§ 43-2-11(a) ACLA 1949; am § 2 ch 34 SLA 1949)

Sec. 23.05.170. Wages earned before strike, lockout or layoff. An employee who goes on strike, or is temporarily laid off or subjected to an employer lockout during a pay period shall receive the portion of compensation earned on or before the next regular payday established as required in this chapter. (§ 43-2-11(b) ACLA 1949; am § 2 ch 34 SLA 1949)

Sec. 23.05.180. Wages in dispute. (a) If the amount of wages is in dispute, the employer shall give written notice to the employee of the wages, or part of the wages, that the employer concedes to be due, and shall pay that amount, without condition, within the time set by this chapter. The employee retains all remedies that the employee might otherwise be entitled to, including those provided under this chapter or AS 23.10, to any balance claimed.

(b) The acceptance by an employee of a payment under this section does not constitute a release of the balance of the claim, and a release required by an employer as a condition of payment is void. (§ 43-2-11(c) ACLA 1949; am § 2 ch 34 SLA 1949; am § 2 ch 47 SLA 1983)

Sec. 23.05.190. Enforcement of wage claims. The department shall

- (1) enforce this chapter;
- (2) investigate possible violations of this chapter;
- (3) institute actions for penalties provided in this chapter. (§ 43-2-11 ACLA 1949; am § 2 ch 34 SLA 1949)

Sec. 23.05.200. Hearings on wage claims. (a) The department may hold hearings to investigate a claim for wages. It may cooperate with an employee in the enforcement of a claim against the employer when it considers the claim just and valid.

(b) The authorized representative of the department, in conducting a hearing under this chapter, may administer oaths and examine witnesses under oath, issue subpoenas to compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, evidentiary documents, and may take depositions and affidavits in a proceeding before the department at the place most convenient to both employer and employee.

C.F.R. Sec. 778.120

C.F.R. Sec. 778.121

(ii) An employee received \$384 in commissions for a 4-week period. Dividing this by 4 gives him a weekly increase of \$96. Assume that he is due overtime compensation after 40 hours and that in the 4-week period he worked 44, 40, 44 and 48 hours. He would be due additional compensation of \$4.36 for the first and third week (\$96 divided by 44 = \$2.18 divided by 2 = \$1.09 x 4 overtime hours = \$4.36), no extra compensation for the second week during which no overtime hours were worked, and \$8 for the fourth week, computed in the same manner as weeks one and three. The additional overtime pay due may also be computed by multiplying the amount of the weekly increase by the appropriate decimal on the coefficient table, for each week in which overtime was worked.

(b) Allocation of equal amounts to each hour worked. Sometimes, there are facts which make it inappropriate to assume equal commission earnings for each workweek. For example, the number of hours worked each week may vary significantly. In such cases, rather than following the method outlined in paragraph (a) of this section, it is reasonable to assume that the employee earned an equal amount of commission in each hour that he worked during the commission computation period. The amount of the commission payment should be divided by the number of hours worked in the period in order to determine the amount of the increase in the regular rate allocable to the commission payment. One-half of this figure should be multiplied by the number of statutory overtime hours worked by the employee in the overtime workweeks of the commission computation period, to get the amount of additional overtime compensation due for this period.

Example: An employee received commissions of \$192 for a commission computation period of 96 hours, including 16 overtime hours (i.e., two workweeks of 48 hours each). Dividing the \$192 by 96 gives a \$2 increase in the hourly rate. If the employee is entitled to overtime after 40 hours in a workweek, he is due an additional \$16 for the commission computation period, representing an additional \$1 for each of the 16 overtime hours.

Section 778.121. Commission payments-delayed credits and debits.

If there are delays in crediting sales or debiting returns or allowances which affect the computation of commissions, the amounts paid to the employee for the computation period will be accepted as the total commission earnings of the employee during such period, and the commission may be allocated over the period from the last commission computation date to the present commission computation date, even though there may be credits or debits resulting from work which actually occurred during a previous period. The hourly increase resulting from the commission may be computed as outlined in the preceding paragraphs.

Section 778.120. Deferred commission payments not identifiable as earned in particular workweeks.

If it is not possible or practicable to allocate the commission among the workweeks of the period in proportion to the amount of commission actually earned or reasonably presumed to be earned each week, some other reasonable and equitable method must be adopted. The following methods may be used:

(a) **Allocation of equal amounts to each week.** Assume that the employee earned an equal amount of commission in each week of the commission computation period and compute any additional overtime compensation due on this amount. This may be done as follows:

(1) For a commission computation period of 1 month, multiply the commission payment by 12 and divide by 52 to get the amount of commission allocable to a single week. If there is a semimonthly computation period, multiply the commission payment by 24 and divide by 52 to get each week's commission. For a commission computation period of a specific number of workweeks, such as every 4 weeks (as distinguished from every month) divide the total amount of commission by the number of weeks for which it represents additional compensation to get the amount of commission allocable to each week.

(2) Once the amount of commission allocable to a workweek has been ascertained for each week in which overtime was worked, the commission for that week is divided by the total number of hours worked in that week, to get the increase in the hourly rate. Additional overtime due is computed by multiplying one-half of this figure by the number of overtime hours worked in the week. A shorter method of obtaining the amount of additional overtime compensation due is to multiply the amount of commission allocable to the week by the decimal equivalent of the fraction

$$\frac{\text{Overtime hours}}{\text{Total hours} \times 2}$$

A coefficient table (WH-134) has been prepared which contains the appropriate decimals for computing the extra half-time due.

Examples:

(i) If there is a monthly commission payment of \$416, the amount of commission allocable to a single week is \$96 (\$416 x 12 = \$4,992 divided by 52 = \$96). In a week in which an employee who is due overtime compensation after 40 hours works 48 hours, dividing \$96 by 48 gives the increase to the regular rate of \$2. Multiplying one-half of this figure by 8 overtime hours gives the additional overtime pay due of \$8. The \$96 may also be multiplied by 0.083 (the appropriate decimal shown on the coefficient table) to get the additional overtime pay due of \$8.

(c) If a person fails to comply with a subpoena or a witness refuses to testify to a matter regarding which the witness may be lawfully interrogated, the judge of a competent court may, on application by the department, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify before it. (§ 43-2-11(d)(1)-(3) ACLA 1949; am § 2 ch 34 SLA 1949)

Sec. 23.05.210. Proceedings by attorney general. The attorney general may prosecute a civil case arising under this chapter that is referred to the attorney general by the department for that purpose. (§ 43-2-11(d)(4) ACLA 1949; am § 2 ch 34 SLA 1949)

Sec. 23.05.220. Assignment of liens and wage claims to department. (a) The department may take an assignment of (1) a wage claim and an incidental expense account and an advance; (2) a mechanics or other lien of an employee; (3) a claim based on a "stop order" for wages or on a bond for labor; for damages for misrepresentation of a condition of employment; against an employment agency or its bondsman; for unreturned bond money of an employee; for a penalty for nonpayment of wages; for the return of a worker's tools in the illegal possession of another person; and for vacation pay or severance pay.

(b) The department is not bound by any rule requiring the consent of the spouse of a married claimant, the filing of a lien for record before it is assigned, or prohibiting the assignment of a claim for penalty before the claim has been incurred or by any other technical rule with reference to the validity of an assignment.

(c) The department may not accept an assignment of a claim in excess of \$5,000. (§ 43-2-11(e)(1) ACLA 1949; am § 2 ch 34 SLA 1949; am § 1 ch 172 SLA 1959; am § 1 ch 36 SLA 1965; am § 3 ch 11 SLA 1976)

Sec. 23.05.230. Prosecution of claims. (a) The department may prosecute an action for the collection of a claim of a person whom it considers entitled to its services, and whom it considers to have a claim that is valid and enforceable.

(b) The department may prosecute an action for the return of a worker's tools which are in the illegal possession of another person.

(c) The department may join several claimants in one lien to the extent allowed by the lien laws and, in case of suit, join them in one cause of action. A bond is not required from the department in connection with an action brought as assignee under this section and AS 23.05.220. (§ 43-2-11(e)(1), (2) ACLA 1949; am § 2 ch 34 SLA 1949; am § 1 ch 172 SLA 1959)

Sec. 23.05.240. Officers to execute process without security. (a) An officer, requested by the department to serve a summons, writ, complaint, order, garnishment paper, or other process within the officer's jurisdiction, shall do it without requiring the department to furnish security or bond.

Sec 23.05.240

(b) When the department requests an officer to seize or levy on property in an attachment proceeding to satisfy a wage claim judgment, the officer shall do so without requiring the department to furnish security or bond.

(c) The officer, in carrying out the provisions of this section, is not responsible in damages for a wrongful seizure made in good faith.

(d) If anyone other than the defendant claims the right of possession or ownership to the seized property, the officer may permit the third party claimant to have the custody of property, pending determination of the court as to who has the better right to possession or ownership. (§ 43-2-11(e) (3), (4) ACLA 1949; am § 2 ch 34 SLA 1949; am § 1 ch 172 SLA 1959)

Sec. 23.05.250. Witness fees of garnishee defendants. A garnishee defendant, when required to appear in court in an action brought under AS 23.05.230, shall do so without having witness fees paid in advance. But the witness fees are included as part of the taxable costs of the action and are paid to the garnishee defendant after judgment. (§ 43-2-11(e) (5) ACLA 1949; am § 2 ch 34 SLA 1949; am § 1 ch 172 SLA 1959)

Sec. 23.05.260. Disposition of funds recovered. (a) Out of a recovery in an action under AS 23.05.220 there shall be paid first, court costs advanced by the department which shall be returned to the department's appropriation for this purpose and second, the wage claim involved.

(b) When an action is lost by the department, it shall pay costs out of money appropriated for that purpose. (§ 43-2-11(e) (5), (6) ACLA 1949; am § 1 ch 172 SLA 1959)

Article 3. Violations and Penalties.

Section

- 270. Violations by employer
- 280. Penalties

Sec. 23.05.270. Violations by employer. It is a violation of this chapter for an employer to

- (1) hinder or unnecessarily delay the department in the enforcement of this chapter;
- (2) refuse to admit an authorized representative of the department to a place of employment;
- (3) falsify or fail to keep a record required under provisions of this chapter, or refuse to make the records accessible or to furnish a sworn statement of the records; or
- (4) refuse to give information required for the enforcement of this chapter, upon demand, to the department. (§ 43-1-8 ACLA 1949)

Sec. 23.05.270

C.F.R. Sec. 778.116

C.F.R. Sec. 778.119

and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

Section 778.117. Commission payments-general.

Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount, or on some other formula) are payments for hours worked and must be included in the regular rate. This is true regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis, and regardless of the method, frequency, or regularity of computing, allocating and paying the commission. It does not matter whether the commission earnings are computed daily, weekly, biweekly, semimonthly, monthly, or at some other interval. The fact that the commission is paid on a basis other than weekly, and that payment is delayed for a time past the employee's normal pay day or pay period, does not excuse the employer from including this payment in the employee's regular rate.

Section 778.118. Commission paid on a workweek basis.

When the commission is paid on a weekly basis, it is added to the employee's other earnings for that workweek (except overtime premiums and other payments excluded as provided in section 7(e) of the Act), and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate for the particular workweek. The employee must then be paid extra compensation at one-half of that rate for each hour worked in excess of the applicable maximum hours standard.

Section 778.119. Deferred commission payments-general rules.

If the calculation and payment of the commission cannot be completed until sometime after the regular pay day for the workweek, the employer may disregard the commission in computing the regular hourly rate until the amount of commission can be ascertained. Until that is done he may pay compensation for overtime at a rate not less than one and one-half times the hourly rate paid the employee, exclusive of the commission. When the commission can be computed and paid, additional overtime compensation due by reason of the inclusion of the commission in the employee's regular rate must also be paid. To compute this additional overtime compensation, it is necessary, as a general rule, that the commission be apportioned back over the workweeks of the period during which it was earned. The employee must then receive additional overtime compensation for each week during the period in which he worked in excess of the applicable maximum hours standard. The additional compensation for that workweek must be not less than one-half of the increase in the hourly rate of pay attributable to the commission for that week multiplied by the number of hours worked in excess of the applicable maximum hours standard in that workweek.

multiplied by the number of hours worked in excess of 40 in the week. (For an alternative method of complying with the overtime requirements of the Act as far as pieceworkers are concerned, see § 778.418.) Only additional half-time pay is required in such cases where the employee has already received straight-time compensation at piece rates or by supplementary payments for all hours worked. Thus, if the employee has worked 50 hours and has earned \$245.50 at piece rates for 46 hours of productive work and in addition has been compensated at \$5.00 an hour for 4 hours of waiting time, his total compensation, \$265.50 must be divided by his total hours of work, 50, to arrive at his regular hourly rate of pay - \$5.31. For the 10 hours of overtime the employee is entitled to additional compensation of \$26.55 (10 hours at \$2.655). For the week's work he is thus entitled to a total of \$292.05 (which is equivalent to 40 hours at \$5.31 plus 10 overtime hours at \$7.965).

(b) **Piece rates with minimum hourly guaranty.** In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the workweek fall short of the amount that would be earned for the total hours of work at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed \$5.50 an hour for productive working time, he would be paid \$253 (46 x \$5.50) for the 46 hours of productive work (instead of the \$245.50 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional \$2.75 (half time) for each of the 6 overtime hours worked, to bring his total compensation up to \$269.50 (46 hours at \$5.50 plus 6 hours at \$2.75 or 40 hours at \$5.50 plus 6 hours at \$8.25). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the 2 hourly rates, as discussed in § 778.115.

Section 778.115. Employees working at two or more rates.

Where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in §§ 778.400 and 778.415 through 778.421.

Section 778.116. Payments other than cash.

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See Part 531 of this chapter for a discussion as to the inclusion of goods

Sec. 23.05.280. Penalties. A person who violates a provision of this chapter or a regulation adopted or order made under this chapter upon conviction is punishable for each offense by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. Each day's continuance of a violation is a separate offense. (§ 43-1-12 ACLA 1949; § 6 ch 148 SLA 1957)

Article 4. Reciprocal Agreements.

Section

320. Reciprocal agreements with other states

330. Actions in courts of other states

340. Actions in this state for demands arising in other states

Sec. 23.05.320. Reciprocal agreements with other states. The commissioner may enter into reciprocal agreements with the labor department or corresponding agency of another state, or with the person, board, officer, or commission authorized to act on behalf of that department or agency for the collection in the other state of claims or judgments for wages based upon claims previously assigned to the commissioner. (§ 1 ch 114 SLA 1966)

Sec. 23.05.330. Actions in courts of other states. The commissioner may, to the extent permitted by a reciprocal agreement with an agency of another state, maintain actions in the courts of that state for the collection of claims or judgments for wages, and may assign claims or judgments to the labor department or agency of that state for collection. (§ 1 ch 114 SLA 1966)

Sec. 23.05.340. Actions in this state for demands arising in other states. The commissioner may, upon the written request of the labor department or corresponding agency of another state or of a person, board, officer or commission authorized to act on behalf of that department or agency, maintain actions in the courts of this state upon assigned claims or judgments for wages arising in another state in the same manner and to the same extent that such actions by the commissioner are authorized for claims arising in this state; provided that these actions may be maintained only in the event that the department or agency in the other state provides, by agreement, reciprocal services to the commissioner. (§ 1 ch 114 SLA 1966)

CHAPTER 10. Employment Practices and Working Conditions.

Article

1. Coercion and Fraud (§§ 23.10.015-23.10.037)
2. Payment of Wages (§§ 23.10.040-23.10.047)
3. Alaska Wage and Hour Act (§§ 23.10.050-23.10.150)
4. Employment of Children (§§ 23.10.325-23.10.370)
5. Transportation of Employees (§§ 23.10.375-23.10.400)
6. Employment in Underground Mines (§§ 23.10.405-23.10.415)
7. Employee Rights (§ 23.10.430)

Article 1. Coercion and Fraud.

Section

15. False representations to procure employees prohibited
20. Penalty for violation of AS 23.10.015
30. Worker's right of action
35. Limit of application
37. Lie-detector tests

Secs. 23.10.005-23.10.010. Coercion to use hotel or store prohibited; penalty. [Repealed, by § 21 ch 166 SLA 1978. For current law on the crime of coercion see AS 11.41.530.]

Sec. 23.10.015. False representations to procure employees prohibited. A person doing business in this state may not personally or through an agent induce an individual to change from one place to another in this state, or bring an individual into this state to work as an employee in this state, by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or the amount and character of the compensation to be paid for the work, or the sanitary or other conditions of employment. (§ 43-2-43 ACLA 1949; am § 1 ch 59 SLA 1971)

Sec. 23.10.020. Penalty for violation of AS 23.10.015. A person who, personally or as agent or servant for another, violates AS 23.10.015 is punishable by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both. (§ 43-2-44 ACLA 1949)

Sec. 23.10.025. Use of armed guards. [Repealed, § 3 ch 59 SLA 1976.]

Sec. 23.10.030. Worker's right of action. A worker induced to accept employment with a person mentioned in AS 23.10.015 by conduct violating that section has a right of action for damages caused by the false or deceptive representations used to induce the worker to change the worker's place of employment, against the person directly or indirectly causing the damages. In addition to the actual damages the worker has sustained, the worker may recover the reasonable attorney fees which the court shall fix, to be taxed as costs. (§ 43-2-46 ACLA 1949)

conveniently and accurately measuring wages earned or facilities furnished during a single pay period is not prohibited. Piecework earnings, for example, may be calculated by issuing tokens (representing a fixed amount of work performed) to the employee, which are redeemed at the end of the pay period for cash. The tokens do not discharge the obligation of the employer to pay wages, but they may enable him to determine the amount of cash which is due to the employee. Similarly, board, lodging, or other facilities may be furnished during the pay period in exchange for scrip or coupons issued prior to the end of the pay period. The reasonable cost of furnishing such facilities may be included as part of the wage, since payment is being made not in scrip but in facilities furnished under the requirements of section 3(m). But the employer may not credit himself with "unused scrip" or "coupons outstanding" on the pay day in determining whether he has met the requirements of the Act because such scrip or coupons have not been redeemed for cash or facilities within the pay period. Similarly, the employee cannot be charged with the loss or destruction of scrip or tokens.

Section 531.35. "Free and clear" payment; "kickbacks."

Whether in cash or in facilities, "wages" cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The wage requirements of the Act will not be met where the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the "kick-back" is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer's particular work, there would be a violation of the Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act. See also in this connection, § 531.32(c).

PART 778-OVERTIME COMPENSATION

SUBPART B-THE OVERTIME PAY REQUIREMENTS

PRINCIPLES FOR COMPUTING OVERTIME PAY BASED ON THE "REGULAR RATE" Section 778.111. Pieceworker.

(a) **Piece rates and supplements generally.** When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions): This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For his overtime work, the pieceworker is entitled to be paid, in addition to his total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay

to be considered "facilities" within the meaning of section 3(m) include: Safety caps, explosives, and miners' lamps (in the mining industry); electric power (used for commercial production in the interest of the employer); company police and guard protection; taxes and insurance on the employer's buildings which are not used for lodgings furnished to the employee; "dues" to chambers of commerce and other organizations used, for example, to repay subsidies given to the employer to locate his factory in a particular community; transportation charges where such transportation is an incident of and necessary to the employment (as in the case of maintenance-of-way employees of a railroad); charges for rental of uniforms where the nature of the business requires the employee to wear a uniform; medical services and hospitalization which the employer is bound to furnish under workmen's compensation acts, or similar Federal, State, or local law. On the other hand, meals are always regarded as primarily for the benefit and convenience of the employee. For a discussion of reimbursement for expenses, such as "supper money," "travel expenses," etc., see § 778.217 of this chapter.

Section 531.33. "Reasonable cost"; "fair value."

(a) Section 3(m) directs the Administrator to determine "the reasonable cost" * * * to the employer of furnishing * * * facilities" to the employee, and in addition it authorizes him to determine "the fair value" of such facilities for defined classes of employees and in defined areas, which may be used in lieu of the actual measure of the cost of such facilities in ascertaining the "wages" paid to any employee. Subpart B contains three methods whereby an employer may ascertain whether any furnished facilities are a part of "wages" within the meaning of section 3(m): (1) An employer may calculate the "reasonable cost" of facilities in accordance with the requirements set forth in § 531.3; (2) an employer may request that a determination of "reasonable cost" be made, including a determination having particular application; and (3) an employer may request that a determination of "fair value" of the furnished facilities be made to be used in lieu of the actual measure of the cost of the furnished facilities in assessing the "wages" paid to an employee.

(b) "Reasonable costs," as determined in § 531.3 "does not include a profit to the employer or to any affiliated person." Although the question of affiliation is one of fact, where any of the following persons operate company stores or commissaries or furnish lodging or other facilities they will normally be deemed "affiliated persons" within the meaning of the regulations: (1) A spouse, child, parent, or other close relative of the employer; (2) a partner, officer, or employee in the employer company or firm; (3) a parent, subsidiary, or otherwise closely connected corporation; and (4) an agent of the employer.

Section 531.34. Payment in scrip or similar medium not authorized.

Scrip, tokens, credit cards, "dope checks," coupons, and similar devices are not proper mediums of payment under the Act. They are neither cash nor "other facilities" within the meaning of section 3(m). However, the use of such devices for the purpose of

Sec. 23.10.035. Limit of applications. AS 23.10.015-23.10.030 may not be construed to interfere with the right of a person to guard or protect the person's private property, or private interest as provided by law. AS 23.10.015-23.10.030 may be construed only to apply when a worker is brought into the state or induced to go from one place to another in the state by a false pretense, false advertising, or deceptive representation, or is brought into the state under arms, or is moved from one place to another in the state under arms. (§ 43-2-45 ACLA 1949)

Sec. 23.10.037. Lie-detector tests. (a) A person either personally or through an agent or representative may not request or suggest to an employee of the person or to an applicant for employment by the person or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with police officers in its employ or with persons applying to be employed as police officers. In this subsection, "police officers" includes officers and employees of the Department of Transportation and Public Facilities who are stationed at an international airport and have been designated to have the general police powers authorized under AS 02.15.230(a).

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 36 SLA 1964; am § 2 ch 71 SLA 1989)

Article 2. Payment of Wages.

Section

- 40. Payment of wages in state
- 43. Deposit of wages
- 45. Payments into benefit fund
- 47. Employee's lien

Sec. 23.10.040. Payment of wages in state. (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) [Repealed, § 2 ch 28 SLA 1971.]

(c) [Repealed, § 2 ch 28 SLA 1971.]

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

Sec. 23.10.043

Sec. 23.10.043. Deposit of wages. An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

Sec. 23.10.045. Payments into benefit fund. (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare, and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

Sec. 23.10.047. Employee's lien. (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of the employees, or has entered into a collective bargaining agreement providing for the payments, but fails to make the payments when due, a lien is created in favor of each affected employee on the earnings of the employer and on all property of the employer used in the operation of the employer's business to the extent of the money, plus penalties due to be paid on the employee's behalf to qualify the employee for participation in the fund and for expenses incurred by the employee for which the employee would have been entitled to reimbursement under the fund if the required payments had been made.

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must record a notice of claim within 60 days after the employer's payment is due with the recorder of the recording district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and

Section 531.30. "Furnished" to the employee.

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced. See *Williams v. Atlantic Coast Line Railroad Co.* (E.D.N.C.), 1 W.H. Cases 289.

Section 531.31. "Customarily" furnished.

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to his employees or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities. *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812 (C.A. 9), cert. denied, 327 U.S. 803; *Southern Pacific Co. v. Joint Council* (C.A. 9) 7 W.H. Cases 536. Facilities furnished in violation of any Federal, State, or local law, ordinance or prohibition will not be considered facilities "customarily" furnished.

Section 531.32. "Other facilities."

(a) "Other facilities," as used in this section, must be something like board or lodging. The following items have been deemed to be within the meaning of the term: Meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing, and household effects); fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee; transportation furnished employees between their homes and work where the travel time does not constitute hours worked compensable under the Act and the transportation is not an incident of and necessary to the employment.

(b) Shares of capital stock in an employer company, representing only a contingent proprietary right to participate in profits and losses or in the assets of the company at some future dissolution date, do not appear to be "facilities" within the meaning of the section.

(c) It should also be noted that under § 531.3(d)(1), the cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Items in addition to those set forth in § 531.3 which have been held to be primarily for the benefit or convenience of the employer and are not therefore

(4) When the actual cost of the facility or facilities is known an itemized statement of such cost to the employer or employers of the furnished facility or facilities;

(5) The cash wages paid;

(6) The reason or reasons for which the determination is requested, including any reason or reasons why the determinations in § 531.3 should not apply; and

(7) Whether an opportunity to make an oral presentation is requested; and if it is requested, the inclusion of a summary of any expected presentation.

Section 531.5. Making determinations of "fair value."

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

(b) **Petitions of interested persons.** Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "fair value" under section 3(m) of the Act shall contain the information required under paragraph (b) of § 531.4, and in addition, to the extent possible, the following:

(1) A proposed definition of the class or classes of employees involved;

(2) A proposed definition of the area to which any requested determination would apply;

(3) Any measure of "fair value" of the furnished facilities which may be appropriate in addition to the cost of such facilities.

SUBPART C-INTERPRETATIONS

Section 531.29. Board, lodging, or other facilities.

Section 3(m) applies to both of the following situations: (a) Where board, lodging, or other facilities are furnished in addition to a stipulated wage; and (b) where charges for board, lodging, or other facilities are deducted from a stipulated wage. The use of the word "furnishing" and the legislative history of section 3(m) clearly indicate that this section was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions to or deductions from wages

(5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the recording of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance that attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but that was not recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962; § 42 ch 161, SLA 1988)

Article 3. Alaska Wage and Hour Act.

Section

- 50. Public policy
- 55. Exemptions
- 60. Payment for overtime
- 65. Minimum wages
- 70. Exemptions from minimum wage
- 71. Wages for work therapy
- 75. Labor standards and safety division
- 80. Powers and duties of division
- 85. Scope of administrative regulations
- 90. Administrative procedures
- 95. Adoption of federal regulations
- 100. Employer to keep records
- 105. Posting summary required
- 110. Remedies of employee
- 115. Enforcement by injunction
- 120. Enforcement of subpoenas
- 125. Collective bargaining
- 130. Statute of limitations
- 135. Violations
- 140. Penalty
- 145. Definitions
- 150. Short title

Sec. 23.10.050. Public policy. It is the public policy of the state to

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and

Sec. 23.10.050

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards that do not provide adequate standards of living. (§ 1 ch 171 SLA 1959)

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050-AS 23.10.150 do not apply to

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

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

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

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

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

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery, or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

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

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

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

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

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

rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

(d)(1) The cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

Section 531.4. Making determinations of "reasonable cost."

(a) **Procedure.** Upon his own motion or upon the petition of any interested person, the Administrator may determine generally or particularly the "reasonable cost" to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. Notice of proposed determination shall be published in the FEDERAL REGISTER, and interested persons shall be afforded an opportunity to participate through submission of written data, views, or arguments. Such notice shall indicate whether or not an opportunity will be afforded to make oral presentations. Whenever the latter opportunity is afforded, the notice shall specify the time and place of any hearing and the rules governing such proceedings. Consideration shall be given to all relevant matter presented in the adoption of any rule.

(b) **Contents of petitions submitted by interested persons.** Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "reasonable cost" shall include the following information:

(1) The name and location of the employer's or employers' place or places of business;

(2) A detailed description of the board, lodging, or other facilities furnished by the employer or employers, whether or not these facilities are customarily furnished by the employer or employers, and whether or not they are alleged to constitute "reges";

(3) The charges or deductions made for the facility or facilities by the employer or employers;

assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

(2) No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or authorized representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c)(2).

(b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any addition to the wages paid are a part of wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m) of the Act, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see part 531 of this chapter.)

(c) The records specified in this section are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act in nonovertime weeks is discussed part 531 of this chapter.)

PART 531-WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART B-DETERMINATIONS OF "REASONABLE COST" AND "FAIR VALUE"; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

Section 531.3. General determinations of "reasonable cost."

(a) The term "reasonable cost" as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) "Reasonable cost" does not include a profit to the employer or to any affiliated person.

(c) Except whenever any determination made under § 531.4 is applicable, the "reasonable cost" to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5 1/2 percent) for interest on the depreciated amount of capital invested by the employer: Provided, that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the

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

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

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

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

(14) A person who holds a license under AS 08.54 and who is employed by a registered guide or master guide licensed under AS 08.54, for the first 60 work days in which the person is employed by the registered guide or master guide during a calendar year. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982; § 2 ch 12 SLA 1990; am § 2 ch 13 SLA 1993)

Sec. 23.10.060. Payment for overtime. (a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

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

(d) This section does not apply with respect to

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

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

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

(4) an employee engaged in agriculture;

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

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

(7) [Repealed, Sec. 5 ch 13 SLA 1993.]

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

(9) an employee employed as a seaman;

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

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

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

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

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

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

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

(B) the department has issued a certificate approving the plan that states the work is for 40 hours a week and

(a) (1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate,"

(b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,

(c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked,

(d) The date of the agreement or understanding to use this method of compensation and the period covered. If the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to use this method of compensation a single notation of the date of the agreement or understanding and the period covered will suffice.

Section 516.27. "Board, lodging, or other facilities" under section 3(m) of the Act.

(a) In addition to keeping other records required by this part, an employer who makes deductions from the wages of employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance, utilities, and repairs for all the houses may be shown together. Original cost and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishing similar or closely related facilities, moreover, may be shown in combined records. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses; total sales through the store or commissary, total receipts from sales of fuel, etc.

(1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the

(c) Sales and purchase records. A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

Section 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years:

(1) Basic employment and earnings records. From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) Wage rate tables. From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in § 516.2(a)(10) and,

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

SUBPART B-RECORDS PERTAINING TO EMPLOYEES SUBJECT TO MISCELLANEOUS EXEMPTIONS UNDER THE ACT; OTHER SPECIAL REQUIREMENTS

Section 516.25. Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.

With respect to each employee compensated for overtime work in accordance with section 7(g)(1) or 7(f)(2) of the Act, employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a)(6) and (9) and, in addition, the following:

not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

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

(17) an individual employed as a community health aide by a local or regional health organization as those terms are defined in AS 18.28.100. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983; am § 1 ch 160 SLA 1990; am § ch 103 SLA 1992; am § 5 ch 13 SLA 1993)

Sec. 23.10.065. Minimum wages. (a) Except as provided under (b) of this section, an employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section.

(b) subject to the limitation under (c) of this section, an employer shall pay to each person employed as a public school bus driver wages at a rate of not less than two times the minimum wage established under (a) of this section, for hours worked in a pay period, whether work is measured by time, commission, or otherwise. An employer may not apply fringe benefits as a credit toward payment of the minimum wage established under this subsection.

(c) Notwithstanding (b) of this section, an employer who contracts with the Department of Education, a school district, or a regional educational attendance area to provide school bus transportation services is not required to adjust school bus driver wages under (b) of this section, except when entering into or renewing the contract. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974; §§ 3, 4 ch 12 SLA 1990)

NOTE: Alaska minimum wage is as follows:

EFFECTIVE DATE	MINIMUM WAGE
4/1/91 - 9/30/96	\$4.75
10/1/96 - 8/31/97	\$5.25
9/1/97	\$5.65

Sec. 23.10.070

Sec. 23.10.080

Sec. 23.10.070. Exemptions from minimum wage. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050-23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner; and

(2) an apprentice at the wages which are approved by the commissioner; or

(3) a learner at the wages and subject to the restrictions and for the periods of time which are fixed by the commissioner. (§ 5 ch 171 SLA 1959; am § 3 ch 2 SIA 1962)

Sec. 23.10.071. Wages for work therapy. (a) For work therapy, as defined in AS 47.37.270, a participant in a residential drug abuse or alcoholism treatment program designed to extend more than 120 days may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 if the rate has been approved by the commissioner under this section and is in compliance with federal law.

(b) The commissioner shall adopt regulations regarding the payment of wages for work therapy. In adopting the regulations, the commissioner shall consider whether the work performed by the patient

(1) is solely for the benefit of the patient and is that which is ordinarily carried on by patients in a residential treatment program;

(2) would ordinarily be performed by full-time employees of the program;

(3) is work that may produce income to the patient, other than wages;

(4) produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program; and

(5) creates an unfair competition with private enterprise because of lower wage standards. (§ 1 ch 58 SLA 1983)

Sec. 23.10.075. Labor standards and safety division. There is established in the department the division of labor standards and safety. The director of the division is responsible to the commissioner. The director shall administer AS 18.60.010-18.60.105 and AS 23.10.050-23.10.150. (§ 6(1) ch 171 SLA 1959; am Executive Order No. 52, § 4 (1982))

Sec. 23.10.080. Powers and duties of division. The director, or an authorized representative of the director, shall

C.F.R. Sec. 516.3

C.F.R. 516.5

Section 516.3. Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by §516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks' paid vacation," etc.)

Section 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) Payroll records. From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) Certificates, agreements, plans, notices, etc. From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

(b) **Records of retroactive payment of wages.** Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) **Employees working on fixed schedules.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records that relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050-23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may adopt, amend or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050-23.10.150 that are necessary for the administration of AS 23.10.050-23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050-23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050-23.10.150, or to prevent the circumvention or evasion of AS 23.10.050-23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050-23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

Sec. 23.10.090. Administrative procedures. Regulations adopted or hearings conducted under AS 23.10.050-23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with the Administrative Procedure Act (AS 44.62). (§ 6(4) ch 171 SLA 1959)

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

Sec. 23.10.100. Employer to keep records. (a) An employer shall keep for a period of at least three years at the place where an employee is employed a record of the name, address, and occupation of each employee, the rate of pay and the amount paid

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each pay period to each employee, the hours worked each day and each workweek by each employee, and other payroll information which the commissioner may require.

(b) The commissioner or an authorized representative of the commissioner may copy the employer's records at any reasonable time. An employer shall furnish to the commissioner or the representative on demand a sworn statement of the employer's records, and the commissioner may require that the sworn statement be made upon forms the commissioner has prescribed or approved. (§ 7 ch 171 SLA 1959)

Sec. 23.10.105. Posting summary required. An employer subject to AS 23.10.050-23.10.150 shall keep a summary or abstract of these sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. (§ 8 ch 171 SLA 1959)

Sec. 23.10.110. Remedies of employee; attorney fees; offers of judgment; settlement; waiver. (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and, except as provided in (d) of this section, in an additional equal amount as liquidated damages.

(b) An action to recover from the employer the wages and damages for which the employer is liable may be maintained in a competent court by an employee personally and for other employees similarly situated, or an employee may individually designate in writing an agent or representative to maintain an action for the employee. The consent shall be filed in the court in which the action is brought. At the request of a person paid less than the amount to which the person is entitled under AS 23.10.050-23.10.150, the commissioner may take an assignment in trust for the employee of the full amount to which the employee is entitled under this section and may bring any legal action necessary to collect the claim.

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and, except as provided in (e) - (h) of this section, reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

(d) In an action under (a) of this section to recover unpaid overtime compensation or liquidated damages for unpaid overtime, if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in (a) of this section.

Sec 23.10.110**C.F.R. Sec. 516.2****C.F.R. Sec. 516.2**

The following Sections of the Code of Federal Regulations have been adopted by reference:

PART 516-RECORDS TO BE KEPT BY EMPLOYER UNDER THE FEDERAL LABOR STANDARDS ACT OF 1938, AS AMENDED

SUBPART A-GENERAL REQUIREMENTS

Section 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) **Items required.** Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,

(2) Home address, including zip code,

(3) Date of birth, if under 19,

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR part 1620.)

(5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice.

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

and other relief as he considers appropriate to correct the unlawful conduct. The hearing officer's decision is final. (Eff. 5/18/78, Register 66)

Authority: AS 23.05.060(5) AS 23.05.200

8 AAC 25.030. DEFINITIONS. In this chapter and in AS 23.05.010-AS 23.05.280, unless the context requires otherwise

(1) "director" means the director of the labor standards and safety division of the Alaska Department of Labor or the director's designee;

(2) "division" means the labor standards and safety division of the Alaska Department of Labor;

(3) "rate of pay" as used in AS 23.05.160 means all remuneration for service from whatever source, including the basic hourly rate of pay, commissions, accrued vacation or holiday pay, cash value of board and lodging if customarily employer-furnished and other similar advantages or fringe benefits received or anticipated to be received by an individual in the course of his service that are a contractual condition of his employment;

(4) "regular wage, salary or other compensation" as used in AS 23.05.140 means that level of compensation paid to an employee for his services which was usual and regular for a daily, weekly, or monthly period of work, as the case may be; this "regular" level is to be determined based on the employee's actual working situation and is not limited to a level of compensation based on a "standard" eight-hour workday or 40-hour workweek where the employee's regular and usual course of employment actually involved more or less hours of work for the relevant period; nothing in this paragraph requires that an employee have been hired on an hourly or weekly basis; he may have been paid by piece rate, salary, commission or other method of compensation agreed upon between the employer and employee;

(5) "working days" as used in AS 23.05.140 with respect to an employer's obligation to pay within three working days after termination of an employee, means only the days Monday through Friday exclusive of any legal holiday occurring in any applicable week; however, with respect to computing a penalty due an employee under AS 23.05.140, "working days" mean those days an employee customarily and regularly worked during the course of his employment;

(6) "labor performed" as used in AS 23.05.140(a), in the context of underground mining or tunnel operations, includes all time spent underground traveling to or from the mine or tunnel opening to the working face or worksite. (Eff. 5/18/78, Register 66; am 9/28/85, Register 95, am 1/21/91, Register 116)

Authority: AS 23.05.060

(e) If the plaintiff prevails in an action for unpaid overtime compensation under (a) of this section, the court shall award reasonable attorney fees to the plaintiff unless the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, in which case

(1) the court may award attorney fees to the plaintiff in accordance with court rules; or

(2) if the defendant would be entitled to attorney fees if the action were subject to the standards under court rule offers of judgment, the court may not award attorney fees to either the plaintiff or the defendant.

(f) If the defendant prevails in an action for unpaid overtime compensation under (a) of this section and had previously made an offer of judgment to the plaintiff, the court shall award attorney fees to the defendant unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060. If the court awards attorney fees to the defendant, the award shall be made in accordance with court rule.

(g) Failure to inquire into Alaska law is not consistent with a claim of good faith under this subsection.

(h) Subsections (d) - (g) of this section do not apply to an action brought under this section by the commissioner.

(i) The commissioner may supervise the payment of the unpaid overtime compensation owing to an employee under AS 23.10.060. Payment in full in accordance with an agreement by an employee to settle a claim for unpaid overtime compensation or liquidated damages for unpaid overtime compensation constitutes a waiver of any right as to this claim the employee may have under (a) of this section to unpaid overtime compensation or liquidated damages for unpaid overtime compensation.

(j) In a settlement for unpaid overtime compensation that is not supervised by the department or the court, an employee is entitled to liquidated damages under (a) of this section unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. A private written settlement agreement under this subsection is not valid unless submitted to the department for review. The department shall review the agreement and approve it if it is fair to the parties. The department shall approve or deny an agreement within 30 days of receipt. A waiver of liquidated damages may not be a condition of employment. (§ 9(3) ch 171 SLA 1959; am §§ 1-3 ch 37 SLA 1995)

Sec. 23.10.115. Enforcement by injunction. If it appears to the commissioner that an employer is engaged in an act or practice that violates or will violate a provision of AS 23.10.050-23.10.150 or of a regulation adopted under these sections, the commissioner may bring an action in a competent court to enjoin the act or

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practice, and to enforce compliance with AS 23.10.050-23.10.150 or with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. (§ 9(4) ch 171 SLA 1959; am §§ 1-3 ch 37 SLA 1995)

Sec. 23.10.120. Enforcement of subpoenas. If a person fails to comply with a subpoena issued under AS 23.10.080, or if a witness refuses to produce evidence or to testify to a matter regarding which the witness may be lawfully interrogated, a competent court shall, upon application of the commissioner or an authorized representative, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify before it. (§ 9(5) ch 171 SLA 1959)

Sec. 23.10.125. Collective bargaining. AS 23.10.050-23.10.150 do not limit the right of employees to bargain collectively through representatives of their own choosing to establish wages or conditions of work in excess of the applicable minimum under AS 23.10.050-23.10.150 or to establish hours of work shorter than the applicable maximum under AS 23.10.050-23.10.150. (§ 10 ch 171 SLA 1959)

Sec. 23.10.130. Statute of limitations. An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050-23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

Sec. 23.10.135. Violations. An employer violates AS 23.10.050-23.10.150 if the employer (1) hinders or delays the commissioner or an authorized representative of the commissioner in the performance of their duties in the enforcement of AS 23.10.050-23.10.150; (2) refuses to admit the commissioner or an authorized representative to any place of employment; (3) fails to keep or falsifies a record required under the provisions of AS 23.10.050-23.10.150; (4) refuses to make a record accessible, or to furnish a sworn statement of the record, or to give information required for the enforcement of AS 23.10.050-23.10.150, upon demand, to the commissioner or an authorized representative; (5) fails to post an abstract of AS 23.10.050-23.10.150 as required by AS 23.10.105; (6) discharges or in any other manner discriminates against an employee because the employee has filed a complaint, or has instituted or caused to be instituted any proceeding under or related to AS 23.10.050-23.10.150, or has testified or is about to testify in such a proceeding. (§ 9(1) ch 171 SLA 1959)

Sec. 23.10.140. Penalty. An employer who violates a provision of AS 23.10.050-23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 1 ch 113 SLA 1972)

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for his decision. An investigator who has investigated the claim may not be appointed hearing officer.

(f) The hearing officer has full authority to control the procedure of the hearing and to rule on all motions and objections.

(g) The hearing officer may admit any relevant evidence, regardless of the existence of any common law or statutory or court rule which might make improper the admission of such evidence over objection in civil actions, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(h) Oral evidence must be given under oath or affirmation. A record of the proceedings will be kept.

(i) At the request of the respondent or upon his own motion, the hearing officer may order the taking of depositions and affidavits relevant to the proceeding and may issue subpoenas to compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, evidentiary documents or other evidence at a deposition or the hearing.

(j) At the hearing, the hearing officer, respondent, and claimant may

(1) call and examine witnesses;

(2) cross-examine opposing witnesses on any matter relevant to the issue at hand even though that matter was not covered in direct examination; and

(3) introduce exhibits.

(k) If the respondent or claimant does not testify in his own behalf, he may be called and examined as if under cross-examination.

(l) The hearing officer may, for good cause shown, continue a hearing from day to day or recess it to a later date or to a different place by announcement at the hearing or by notice. (Eff. 5/18/78, Register 66)

Authority: AS 23.05.060(5) AS 23.05.200

8 AAC 25.020. DECISIONS. (a) The hearing officer shall prepare a written decision containing findings of fact and conclusions of law within 20 days after the close of the hearing.

(b) Upon making his decision, the hearing officer shall serve it upon the respondent and claimant by personal service or certified mail, return receipt requested. If the hearing officer determines that the respondent owes the claimant wages or has otherwise violated AS 23.05, his decision may contain such orders

(b) If, after investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.375-23.10.400 has occurred, it will attempt to correct the unlawful practice by conference and persuasion. The division will provide the employer with a copy of the assignment or a description of the alleged violation and will inform the employer of the results of its investigation. The division will then schedule an informal conference with the employer to discuss the matter and attempt to correct the alleged violation. (Eff. 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.385 AS 23.10.395

8 AAC 20.030. DEFINITIONS. In this chapter, unless the context requires otherwise

(1) "return transportation" means all transportation and costs as originally furnished to, financed for, or provided to an employee by an employer;

(2) "subsistence" means board and lodging furnished at the employer's facilities if board and lodging facilities are normally furnished by the employer, or, when the employer's facilities are not used, \$35 per day living expenses. (Eff. 4/17/74, Register 49; am 9/28/85, Register 95)

Authority: AS 23.10.380 AS 23.10.395

CHAPTER 25. PAYMENT OF WAGES

Section

- 10. Investigative hearings
- 20. Decisions
- 30. Definitions

8 AAC 25.010. INVESTIGATIVE HEARINGS. (a) In those cases where he considers an investigative hearing on a claim assigned under AS 23.05.220 to be appropriate, the director shall determine the time and place of the hearing and deliver or mail a notice of hearing to the claimant, respondent, and any interested party at least 15 days before the hearing.

(b) Notice of the hearing must include the claimant's statement of facts regarding the claim and specify the regulations and statutes the respondent is alleged to have violated.

(c) The location of the hearing must be designated by the director with due regard for the convenience of all parties involved. All hearings are public.

(d) The respondent may be represented by counsel. If counsel notifies the division, in writing, that he is appearing in the matter on behalf of the respondent, service of notice, memoranda, recommendations, etc. will be considered sufficient if made on either or both the party and his counsel.

(e) The director shall appoint a wage and hour investigator as hearing officer to preside over the hearing and to make findings of fact and conclusions of law to be used as a basis

Sec. 23.10.145. Definitions. If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050-23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

Sec. 23.10.150. Short title. AS 23.10.050-23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

Article 5. Transportation of Employees.

Section

- 375. Policy
- 380. Right to return transportation
- 385. Enforcement by civil action
- 390. Construction of contracts
- 395. Orders and regulations
- 400. Penalty

Sec. 23.10.375. Policy. The welfare of the state demands that adequate provision be made for financing the return transportation of certain persons to their place of recruitment inside and outside the state upon termination of employment. (ch 67 SLA 1949)

Sec. 23.10.380. Right to return transportation. (a) An employer who furnishes, finances, agrees to furnish or finance, or in any way provides transportation for a person from the place of hire to a point inside or outside the state to employ the person shall provide the person with return transportation to the place of hire from which transportation was furnished or financed, or to a destination agreed upon by the parties, with transportation to be furnished or financed

(1) on or after the termination of employment for a cause considered good and sufficient by the department, beyond the control of the person, or on or after the termination of the contract of employment or a renewal of the contract; and

(2) upon the request of the person or the department made within 45 days after the termination of employment.

(b) Upon the termination of employment the subsistence of the employee may not continue longer than 10 days after the termination or until transportation is available, whichever occurs first. (§ 1 ch 67 SLA 1949; am § 1 ch 136 SLA 1959; am § 1 ch 164 SLA 1960)

Sec. 23.10.385. Enforcement by civil action. (a) The department may take a written assignment of a right of action provided by AS 23.10.380, and may prosecute the action. The department may join various employees in one claim and in case of suit may join them in one action.

(b) The general provisions of law respecting wage collection suits brought by the department in behalf of employees apply in an action brought under this section. (§ 2 ch 67 SLA 1949)

Sec. 23.10.390

Sec. 23.10.500

Sec. 23.10.390. Construction of contracts. AS 23.10.375-23.10.400 are considered a part of every contract of hire involving transportation of an employee to and from this state or from one part of the state to another. (§ 2(a) ch 67 SLA 1949)

Sec. 23.10.395. Orders and regulations. The department may issue orders and adopt regulations necessary to carry out AS 23.10.375-23.10.400. (§ 4 ch 67 SLA 1949)

Sec. 23.10.400. Penalty. An employer who violates AS 23.10.375-23.10.400 is, in addition to any civil liability, guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. (§ 3 ch 67 SLA 1949)

Article 7. Employee Rights.

Sec. 23.10.430. Access to personnel files. (a) An employer shall permit an employee or former employee to inspect and make copies of the employee's personnel file and other personnel information maintained by the employer concerning the employee under reasonable rules during regular business hours. The employer may require an employee or former employee who requests copies of material under this subsection to pay the reasonable cost of duplication.

(b) This section does not supersede the terms of a collective bargaining agreement.

(c) In this section,

(1) "employee" means a person employed by an employer;

(2) "employer" means a person who employs one or more other persons and includes the state, the University of Alaska, the Alaska Railroad, and political subdivisions of the state. (§ 1 ch 24 SLA 1989)

Article 8. Pregnancy, Childbirth, and Family Leave.

- Section
- 500. Employment benefits and privileges for health and family care
 - 510. Employee notice
 - 520. Employee transfer
 - 530. Application to other laws
 - 540. Investigation and conciliation of complaints
 - 550. Definitions

Sec. 23.10.500. Employment benefits and privileges for health and family care. (a) An employer shall grant an employee whose health is affected by pregnancy, childbirth, or a related medical condition the same employment benefits and privileges that the employer grants to other employees with similar ability to work who are not so affected, including allowing the employee to take disability or sick leave or other accrued leave that the employer makes available to temporarily disabled employees.

8 AAC 15.910

8 AAC 20.025

(b) For the purpose of AS 23.10.060(d)(7), "employee" means a taxicab driver or a driver of other motor vehicles that are a functional part of the employer's taxicab business.

(c) For the purposes of AS 23.10.060 (d)(13), "hospital" includes a nursing facility as described in 7 AAC 12.250 and licensed in accordance with 7 AAC 12.610. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 10/4/90, Register 115; am 02/10/93, Register 125; am 03/18/93, Register 125)

Authority: AS 23.05.060 AS 23.10.085

CHAPTER 20. TRANSPORTATION OF EMPLOYEES

- Section
- 10. Involuntary and voluntary terminations
 - 20. Subsistence
 - 25. Investigations
 - 30. Definitions

8 AAC 20.010. INVOLUNTARY AND VOLUNTARY TERMINATIONS. (a) A termination by an employer of any employee, who falls within the purview of AS 23.10.375-23.10.400, during the term of the contract of employment is deemed "a cause good and sufficient, beyond the control of the employee," as the phrase is used in AS 23.10.380(a)(1), and imposes upon the employer the obligation to provide return transportation as that term is defined in sec. 30 of this chapter, except if the reason for termination is falsification of the employment application, intoxication, fighting or prolonged, unexcused absence from duties.

(b) Voluntary termination by an employee, who falls within the purview of AS 23.10.375-23.10.400, for reasons other than misrepresentation of wages or conditions of employment or lodging, or for reasons other than safety or health dangers does not impose upon the employer the obligation to provide return transportation as that term is defined in sec. 30 of this chapter. (Eff. 4/17/74, Register 49)

Authority: AS 23.10.380 AS 23.10.395

8 AAC 20.020. SUBSISTENCE. If an employee, who falls within the purview of AS 23.10.375-23.10.400, voluntarily terminates for just cause, or is terminated for any cause during the term of his contract of employment and if immediate transportation is unavailable upon the termination, the employee is entitled to subsistence, as that term is defined in sec. 30 of this chapter, for the period from the date of termination until the date that transportation becomes available or for 10 days, whichever occurs first. (Eff. 4/17/74, Register 49)

Authority: AS 23.10.380(b) AS 23.10.395

8 AAC 20.025. INVESTIGATIONS. (a) The division will investigate potential violations of AS 23.10.375-23.10.400 after the assignment to it of a claim under AS 23.10.385.

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

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

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

(15) "workweek" means a fixed and regularly recurring period of 168 hours; 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;

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

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

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

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

(b) An employee is eligible to take family leave if the employee has been employed by the employer for at least 35 hours a week for at least six consecutive months or for at least 17 1/2 hours a week for at least 12 consecutive months immediately preceding the leave. The leave may be unpaid leave. However, the employee may choose to substitute, or the employer may require the employee to substitute, accrued paid leave to which the employee is entitled. An employer shall permit an eligible employee to take family leave because of a serious health condition for a total of 18 workweeks during any 24-month period. An employer shall permit an eligible employee to take family leave because of pregnancy and childbirth or adoption for a total of 18 workweeks within a 12-month period; the right to take leave for this reason expires on the date one year after the birth or placement of the child. If the employee is entitled to a longer period of time under (a) of this section, then the longer period applies. An eligible employee is entitled to take family leave

(1) because of pregnancy and the birth of a child of the employee or the placement of a child, other than the employee's stepchild, with the employee for adoption; an employer may require that an employee using family leave under this paragraph take the leave in a single block of time;

(2) in order to care for the employee's child, spouse, or parent who has a serious health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster child, stepchild, or legal ward; and

(3) because of the employee's own serious health condition.

(c) Notwithstanding (b) of this section, if a parent or child of two employees employed by the same employer has a serious health condition, the employer is not required to grant family leave to both employees simultaneously.

(d) During the time that an employee is on leave under this section, the employer shall maintain coverage under any group health plan at the level and under the conditions that coverage would have been provided if the employee had been employed continuously from the date the leave began to the date the employee returns from leave under (e) of this section. However, the employer may require that the employee pay all or part of the costs for maintaining health insurance coverage during a period of unpaid leave.

(e) Unless the employer's business circumstances have changed to make it impossible or unreasonable, when an employee returns from leave under this section, the employer shall restore the employee

(1) to the position of employment held by the employee when the leave began; or

(2) to a substantially similar position with substantially similar benefits, pay, and other terms and conditions of employment.

Sec. 23.10.500

Sec. 23.10.520

(f) This section does not apply to an employer's small employment facility if the total number of employees employed within 50 road miles of the small employment facility, including those employed at the facility, was fewer than 21 during the 20 consecutive workweeks in which the employer employed at least 21 employees at all business facilities. (\$ 6 ch 96 SLA 1992)

Sec. 23.10.510. Employee notice. If the necessity for leave under AS 23.10.500 is foreseeable based on an expected birth or adoption or on planned medical treatment or supervision, the employee shall provide the employer with prior notice of the expected need for leave in a manner that is reasonable and practicable. If the necessity for leave under that section is foreseeable based on planned medical treatment or supervision, the employee shall also make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the employee's child, spouse, or parent. (\$ 6 ch 96 SLA 1992)

Sec. 23.10.520. Employee transfer. (a) A pregnant employee may request a transfer to a suitable position under this section. An employer may not fill the position with a person other than the requesting employee until the employer has offered the position to the employee and the employee has refused the offer. A position is suitable if

(1) it is an existing unfilled position in the same administrative division in which the employee is currently employed and is less strenuous or less hazardous than the employee's current position;

(2) transfer to the position is recommended by a licensed health care provider;

(3) the employee is qualified and immediately able to perform the duties of the position; and

(4) the transfer will not subject the employer to legal liability under a collective bargaining contract or employment contract.

(b) An employer shall compensate an employee who receives a transfer under this section at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply generally to the work force, at which

(1) the employee was compensated immediately before requesting the transfer; or

(2) the position into which the employee transfers is compensated. (\$ 6 ch 96 SLA 1992)

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

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

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

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

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

(A) whose primary duty is

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

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work 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

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

(2) "casual employee," as used in AS 23.10.060(12), 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 the employer;

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

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

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

(6) "domestic service in or about a private home," as used in AS 23.10.055(4), means 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 the employee is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

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

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

(D) who customarily and regularly exercises discretionary authority;

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

Sec. 23.10.530

Sec. 23.10.550

Sec. 23.10.530. Application to other laws. (a) The provisions of AS 23.10.500-23.10.550 do not affect any other provision of law relating to sex discrimination, pregnancy, or parenthood.

(b) The provisions of AS 23.10.500-23.10.550 are subject to collective bargaining. However, except as provided in (c) of this section, a collective bargaining contract that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 23.10.500-23.10.550 shall be considered to contain the benefit provisions of those statutes.

(c) The commissioner of education may approve a collective bargaining agreement entered into between a school district or a regional educational attendance area and a bargaining organization representing certificated employees that does not meet the leave requirements of AS 23.10.500-23.10.550, if the district or attendance area establishes to the satisfaction of the commissioner that a variance from the requirements of AS 23.10.500-23.10.550 is necessary to avoid a hardship on the school district based on the lack of qualified, available substitute teachers to replace teachers on leave under AS 23.10.500-23.10.550 or the lack of available housing for replacement teachers who do not live in the community. (§ 6 ch 96 SLA 1992)

Sec. 23.10.540. Investigation and conciliation of complaints. (a) A person aggrieved by a denial of a right or privilege granted by AS 23.10.500-23.10.540 may file a complaint with the department.

(b) The department shall informally, promptly, and impartially investigate the matters set out in a filed complaint. If the investigator determines that the allegations are supported by substantial evidence, the investigator shall immediately try to eliminate the denial of rights or privileges by conference, conciliation, and persuasion. (§ 6 ch 96 SLA 1992)

Sec. 23.10.550. Definitions. In AS 23.10.500-23.10.550,

(1) "child" means an individual who is

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability;

(2) "employer" means the state and a political subdivision of the state that employed at least 21 employees in the state for each working day during any period of 20 consecutive workweeks in the preceding two calendar years; "employer" does not include a regional Native housing authority created under AS 18.55.995-18.55.998;

(3) "health care provider" means a dentist licensed under AS 08.36, a physician licensed under AS 08.64, or a psychologist licensed under AS 08.86;

Sec. 23.10.550

(4) "parent" means a biological or adoptive parent, a parent-in-law, or a stepparent;

(5) "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves

(A) inpatient care in a hospital, hospice, or residential health care facility; or

(B) continuing treatment or continuing supervision by a health care provider;

(6) "small employment facility" means a facility of an employer that did not employ 21 or more employees during any period of 20 consecutive workweeks in the preceding two calendar years;

(7) "state" includes the University of Alaska, the Alaska Railroad, and the executive, legislative, and judicial branches of state government including public and quasi-public corporations and authorities established by law. (§ 6 ch 96 SLA 1992)

Sec. 23.40.205. Family Leave. Notwithstanding any provision of AS 23.40.070-23.40.260 to the contrary, an agreement between the employer subject to AS 23.10.500-23.10.550 and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 23.10.500-23.10.550 shall be considered to contain the benefit provisions of those statutes. (§ 7 ch 96 SLA 1992)

Sec. 23.40.205

8 AAC 15.907

(c) An employer may handle tips only for the purpose of

(1) delivering the cash amount of the tip to the employee when a customer provides for a tip on a credit card charge slip; or

(2) redistributing the tips to employees under a tip pooling arrangement.

(d) If an employer must pay a credit card company a fee based on a percentage of a customer's bill, an employer may reduce the amount of a credit card tip by a percentage not greater than the percentage charged by the credit card company for its fee.

(e) For the purposes of this section,

(1) "tip pooling arrangement" means an agreement under which a portion of an employee's tips is collected for distribution among certain other employees;

(2) "tips" means an amount of cash, or an amount designated as a "tip" by a credit card customer on a credit card charge slip, that is determined, and freely given, by a customer in recognition of an employee's service to that customer; "tips" does not include a compulsory charge for service that is part of the employer's gross receipts, such as a service charge of 15 percent of a customer's bill. (Eff. 4/7/96, Register 138)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.085
AS 23.10.095

8 AAC 15.910. DEFINITIONS. (a) 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 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, or in the case of an employee of a retail or service establishment who earns at least two and one half times the state minimum wage per hour for the first 40 hours of employment each week and who does not devote more than 40 percent of the employee's weekly hours to activities that are not described in this paragraph or paragraphs (7) or (11) of this section;

Article 6. General Provisions

Section

900. Recordkeeping
 905. Line haul truck driver recordkeeping requirements
 907. Employee tips
 910. Definitions

8 AAC 15.900. **RECORDKEEPING.** (a) For the purposes of AS 23.10.100, "the place where an employee is employed" means the central office of an employer located within the state. An employer may keep duplicate records at the sites or premises where the work is performed.

(b) For the purposes of AS 23.10.100, "other payroll information which the commissioner may require" means the information required by 29 C.F.R. secs. 516.2(a), 516.3, 516.5, 516.6, 516.25 and 516.27. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.085 AS 23.10.095
 AS 23.10.100

8 AAC 15.905. **LINE HAUL TRUCK DRIVER RECORDKEEPING REQUIREMENTS.** (a) In addition to the records identified in 8 AAC 15.900, an employer of a line haul truck driver who has elected to pay overtime to drivers using an alternate rate of overtime pay calculated in accordance with AS 23.10.060(d) (16) and 8 AAC 15.101, shall maintain records that substantiate that rate, including the

(1) basic rate of pay;

(2) rate of overtime pay;

(3) average hours used as a part of any formula to determine a rate of overtime pay; and

(4) source of data used to determine averages under 8 AAC 15.101.

(b) An employer shall provide the records required in (a) of this section to the department upon request. (Eff. 11/06/92, Register 124)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085
 AS 23.10.100

8 AAC 15.907. **EMPLOYEE TIPS.** (a) The purpose of this section is to prevent the circumvention or evasion of AS 23.10.050 - 23.10.150 (Alaska Wage and Hour Act) by an employer handling, or taking possession or control of, an employee's tips.

(b) Except as provided in this section, an employer may not handle or take possession or control of an employee's tips. However, nothing in this section precludes a tip pooling arrangement to the extent allowed under 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938, as amended).

ALASKA ADMINISTRATIVE CODE

TITLE 8. LABOR

PART 1. INDUSTRIAL WELFARE

CHAPTER 15. ALASKA WAGES AND HOURS

Article

1. Coverage and Exemptions (8 AAC 15.010-8 AAC 15.070)
2. Minimum Wages and Overtime (8 AAC 15.100-8 AAC 15.105)
3. Exemptions (8 AAC 15.120-8 AAC 15.145)
4. Reduction of Wages (8 AAC 15.160-8 AAC 15.165)
5. Procedures Relating to Violations, Investigations or Hearings (8 AAC 15.175-8 AAC 15.180)
6. General Provisions (8 AAC 15.900-8 AAC 15.910)

Article 1. Coverage And Exemptions

Section

10-70. Repealed

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

8 AAC 15.015 **EXEMPTION FOR SEARCHING FOR PLACER OR HARD ROCK MINERALS.** Repealed (12/9/78, Register 68)

8 AAC 15.020 **EXEMPTION FOR INDIVIDUALS UNDER 18 WHO ARE PART TIME EMPLOYEES.** Repealed (12/9/78, Register 68)

8 AAC 15.030 **DETERMINING THE NUMBER OF EMPLOYEES FOR PURPOSES OF AS 23.10.060(1).** Repealed (12/9/78, Register 68)

8 AAC 15.040 **SMALL MINING OPERATIONS.** Repealed (12/9/78, Register 68)

8 AAC 15.050 **DEDUCTIONS FROM AN EMPLOYEE'S WAGES.** Repealed (12/9/78, Register 68)

8 AAC 15.060 **PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING.** Repealed (12/9/78, Register 68)

8 AAC 15.070 **DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050-23.10.150.** Repealed (12/9/78, Register 68)

Article 2. Minimum Wages and Overtime

Section

100. Payment for overtime
101. Overtime for line haul truck drivers
102. Voluntary flexible work hour plans
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. An employee need not

actually be hired at an hourly rate. The employee 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. The following provisions apply for an employee paid on a salary basis:

(1) The employment contract must set out the specific number of hours the employee is expected to work each day and each week. The contract must establish a regular hourly rate of pay with respect to the salary to be paid and the hours to be worked. Changes to the pay schedule of a salaried employee must conform to the provisions of AS 23.05.160.

(2) If a contract fails to establish a fixed number of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour workday and 40-hour workweek, and overtime will be computed on that basis.

(b) In order to compute a regular hourly rate for the purpose of determining the overtime rate for an employee who is paid other than hourly or by salary, the following provisions of 29 C.F.R. Part 778 apply:

(1) for a pieceworker, 29 C.F.R. Sec. 778.111;

(2) for an employee who works at two or more hourly rates, 29 C.F.R. sec. 778.115;

(3) for an employee who receives wages in a form other than cash, 29 C.F.R. sec. 778.116; or

(4) for an employee who receives a commission, 29 C.F.R. secs. 778.117-778.122.

(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 (29 U.S.C. (f) as implemented in 29 C.F.R. 778.402-778.414);

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

Article 5. Procedures Relating To Violations, Investigations or Hearings

Section

175. (Repealed)

180. Investigations, conferences and persuasion

8 AAC 15.175. ASSIGNMENT OF CLAIMS. Repealed 9/28/85.

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 Procedure 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 ch. 25 of this title. (Eff. 12/9/78, Register 69)

Authority: AS 23.10.080 AS 23.10.085 AS 23.10.090
AS 23.10.110

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

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;
- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) federal insurance contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95)

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

8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT. An employer may not require an employee to purchase a uniform or equipment if the nature of the employer's business requires the use of either and if the uniform or equipment

- (1) is distinctive and advertises or is associated with the products or services of the employer;
- (2) cannot be worn or used during normal social activities of the employee; or
- (3) is required by the safety or health codes of the United States, State of Alaska, or a local government. (Eff. 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.085
AS 23.10.095

(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 workweek. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085
AS 23.10.095

Editor's note: The federal regulations cited in 8 AAC 15.100(b) are printed on pages 47-67 of this booklet.

8 AAC 15.101. OVERTIME FOR LINE HAUL TRUCK DRIVERS. (a) If an employer of a line haul truck driver elects not to use the overtime rate established in AS 23.10.060(b), the employer shall establish alternate rates of overtime pay that meet the requirements of AS 23.10.060(d)(16) and this section.

(b) An alternative rate of overtime pay may be calculated as a mileage rate, a fuel usage rate, or on some other reasonable basis; however, any formula used to calculate an alternate rate of overtime pay must take into consideration the time spent performing all of the duties of a line haul truck driver on the route for which the rate was established, including the time spent

- (1) driving;
- (2) hooking up;
- (3) fueling;
- (4) tying down;
- (5) chaining up and unchaining;
- (6) performing pre-trip and in-transit equipment and load checks;
- (7) during breakdowns;
- (8) making tire repairs;
- (9) offloading; and
- (10) completing required paperwork.

(c) If an employer averages the time spent performing the duties identified in (b) of this section over time, those averages are subject to review by the department to determine if they are accurate and reasonable. The department will, in its discretion, require the employer to validate an average used by having the employer record the actual hours currently worked by drivers operating over the route in which the average is being applied. If a department's audit of the actual hours currently worked reveals a substantial difference from the average used by the employer, and the result is that the employer's rate of overtime pay is less than the minimum rate that would be payable under AS 23.10.060(b), the department will, in its discretion,

(1) consider the employer's previous audits or annual adjustments and then reevaluate the employer's rate of overtime pay for compliance with this section;

(2) order the employer to make whatever adjustments are necessary to make the employer's rate of overtime pay comparable to the minimum rate required in AS 23.10.060(b); or

(3) void the employer's exemption under AS 23.10.060(d)(16).

(d) Before implementing an alternate rate of overtime pay, an employer shall, in accordance with AS 23.05.160, notify each employee affected by the alternate rate of overtime pay on the payday before the new rate is implemented.

(e) Upon the request of a driver, the employer shall provide the driver with a copy of the formula and substantiating records used to determine the rate of overtime pay for a specific route.

(f) Except as provided in (g) of this section, an employer shall

(1) annually certify that the rate of overtime pay for each route has been reviewed and found to be appropriate; and

(2) post a copy of the annual certification and the rate of overtime pay for each route in a conspicuous place where each driver may review them.

(g) If the formula for determining the rate of overtime pay has been negotiated with a collective bargaining representative, possession of the formula by that representative satisfies the posting requirements of (f)(2) of this section as long as the representative makes the formula available to all drivers. An employer who has entered into a collective bargaining agreement is exempt from the certification requirements of (f)(1) of this section as long as the employer is subject to a collective bargaining relationship which includes a negotiated formula for overtime pay. (Eff. 11/6/92, Register 124; am 9/15/94, Register 131)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085
AS 23.10.100

8 AAC 15.102. VOLUNTARY FLEXIBLE WORK HOUR PLANS. (a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(15) must be filed by the employer with a wage and hour administration office of the department. The request must be in writing, and must include

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

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

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

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

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

(1) reduce the employee's wages below the statutory minimum; or

(2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

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

(1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;

(2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and

(3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

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

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

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

(1) the deduction is based on a written agreement;

(2) the total deposit does not exceed the cost of the item; and

(3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one-half times the contractual rate of pay.

(b) The exemption from the payment for overtime under AS 23.10.060 for employers engaged in small mining operations is available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.060(3) AS 23.10.085

Article 4. Reduction of Wages

Section

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

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum, or if it would require an employee to reimburse the employer for any of the following:

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

(2) nonpayment for goods or services as a result of theft or credit default;

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

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

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

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

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(15). An approved plan constitutes the certificate required in AS 23.10.060(15)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for the denial.

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

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

(e) An employee may choose to participate in an approved voluntary flexible work hour plan at initial employment or at any other time during employment. Once an employee has chosen to participate in an approved voluntary flexible work hour plan, that employee is bound to do so, and may opt out of participation in the voluntary flexible work hour plan only from November 1 through December 31 each calendar year. Termination of an employee, regardless of the cause of termination, voids that employee's participation. An employee who is rehired by the employer must again choose to participate in the voluntary flexible work hour plan in order to be included in the approved plan. Nothing in this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time. (Eff. 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085
AS 23.10.100

8 AAC 15.105. MINIMUM WAGE. (a) 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. Sec. 206 (a)(1)) as the minimum wage generally applicable to employees subject to that Act.

(b) The department will determine compensable hours subject to the payment of the minimum wage or the contractually established wage in accordance with the provisions of 29 C.F.R. secs. 785.11-785.25, 785.27-785.33, 785.35-785.45, and 785.47-785.48. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.085
AS 23.10.095

*July in
Public*
Complaints, - *Summer*
return transportation 1994
employers for
outside - return
transportation statute
has 3 complaints to
send back outside

Editor's note: Copies of the federal statute and regulations cited in 8 AAC 15.105 are included in this pamphlet following the Administrative Code citations.

Article 3. 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(d)(1)
- 145. Small mining operations

8 AAC 15.120. 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. 12/9/78, Register 68)

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 ch. 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. 12/9/78, Register 68)

Authority: AS 23.10.070(3) AS 23.10.085

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 begun. (Eff. 12/9/78, Register 68)

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 workweek in which an individual normally within the ambit of AS 23.10.055(11) is employed in excess of 30 hours. (Eff. 12/9/78, Register 68)

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. 12/9/78, Register 68)

Authority: AS 23.10.060(1) AS 23.10.085

8 AAC 15.145. SMALL MINING OPERATIONS. (a) For purposes of AS 23.10.060(3), a mining season means the cumulative period of time during which operations are carried on during a calendar year, but not exceeding 20 weeks.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

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FAX: (907) 488-4271

While in Session
State Capitol
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House District 33

House Of Representatives

MEMORANDUM

TO: Representative Norm Rokeberg, Chair
House Labor and Commerce Committee

FROM: Representative Gene Therriault *Gene J.*

DATE: January 23, 1997

SUBJECT: Scheduling of House Bill 68

I respectfully request that you schedule HB 68, "An act relating to the requirement for payment for overtime under a voluntary work hour plan; and providing for an effective date" at your earliest convenience.

I have attached a copy of the sponsor statement, letters of support and a chart comparing sample work schedules under the current law and under the proposed law.

Thank you for your consideration of this request.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

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House Of Representatives

House District 33

Sponsor Statement

HB 68

HB 68 proposes to amend the employee voluntary flexible work hour law. Current law allows employees in any industry working under a voluntary flexible work plan to work 10 hours a day and up to 40 hours a week without overtime pay if approved by the Commissioner of the Department of Labor. My intent is to extend this exemption from 10 hours to 12 hours for employees at surface mines.

I was initially approached by Fort Knox mine representatives with a petition signed by over 95 percent of the employees. The petition urges the Legislature to change the law allowing the employees to establish a voluntary flexible work plan which would include working the same number of hours in 14 days which they currently work in 21. This would give the employees more time at home with their families and cut down on the number of commuting hours, which for many employees generally are 1.5 hours per day.

In addition to reviewing the petition, I also contacted individual employees who work at the mine to make sure there had been no coercion to sign the petition. I was assured that there was no pressure and in fact the employees were enthusiastic about the proposed change. Under the current work schedule, most employees at Fort Knox work 21 days every four weeks and are compensated for 8 hours of overtime pay. The proposed change would allow the employees to work 14 days every four weeks including 16 hours of overtime.

Under collective bargaining, a flexible work plan as desired by Fort Knox employees could be achieved. However, the employees are not unionized and therefore, current law does not permit them to make these types of arrangements. In addition, this legislation will have no impact on the employees right to consider collective bargaining in the future if they choose.

While drafting this bill, I included provisions which I felt would help the mine and its employees reach their goal as well as limit the potential abuses. For example, the bill would only permit a 12 hour exemption if all three of the following criteria were met. First, the employer and the employee would have to voluntarily write out a work plan approved by both parties stating that no more than 40 hours a week may be worked without overtime; second, the plan would have to be filed with the Department of Labor; and finally, the Commission of the Department of Labor would have to issue a certificate of approval for the plan. Keep in mind, this process is set up on a case by case basis and would not impact employees currently receiving overtime pay for hours in excess of 8 per day.

Current Schedule

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Week 1	Days	Days	Days	Days	Days	Off	Off
Week 2	Off	Off	Swing	Swing	Swing	Swing	Swing
Week 3	Swing	Swing	Off	Night	Night	Night	Night
Week 4	Night	Night	Night	Off	Off	Days	Days

	Hours	Dollars
Straight Time	40	\$700
Overtime	0	\$0
Straight Time	40	\$700
Overtime	0	\$0
Straight Time	40	\$700
Overtime	8	\$210
Straight Time	40	\$700
Overtime	0	\$0
Straight Time	160	\$2,800
Overtime	8	\$210
Total	168	\$3,010

Proposed

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Week 1	Days	Days	Days	Days	Off	Off	Off
Week 2	Off	Off	Off	Off	Night	Night	Night
Week 3	Night	Off	Off	Off	Day	Day	Day
Week 4	Off	Night	Night	Night	Off	Off	Off

Straight Time	40	\$700
Overtime	8	\$210
Straight Time	36	\$630
Overtime	0	\$0
Straight Time	40	\$700
Overtime	8	\$210
Straight Time	36	\$630
Overtime	0	\$0
Straight Time	152	\$2,680
Overtime	16	\$420
Total	168	\$3,080

of paragraph (18) could not be known at the time instructions for ch. 107, SLA 1990 were sent to the publisher.

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.060 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, 821 P.2d 890 (Alaska 1990).

Helicopter pilot not classified as professional. — A commercial helicopter pilot is not a professional for purposes of the Alaska Wage and Hour Act. *Dayhoff v. Temco Helicopters, Inc.*, 848 P.2d 1387 (Alaska 1993).

Prisoners excluded from operation of chapter. — *See McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1976).

Restaurant managers. — Partial summary judgment for plaintiffs was improper where superior court was obliged to consider district manager's testimony that restaurant managers such as plaintiffs spent less

than 10 percent of their time performing tasks otherwise performed by hourly employees; a genuine issue of material fact existed as to whether plaintiffs spent more than 20 percent of their time on duties not directly and closely related to management of the restaurant. *American Restaurant Group v. Clark*, 889 P.2d 595 (Alaska 1996).

Retail manager not exempt. — Although the retail store manager supervised employees and made more than \$600 per week, he was not exempt from the Alaska Wage and Hour Act since he spent more than 20% of his time in retail sales, an activity normally performed by nonmanagerial employees. *Grimes v. Kinney Shoes Corp.*, 902 P. Supp. 1070 (D. Alaska 1988).

Applied in Alaska Int'l Indus., Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979).

Cited in Dresser Indus., Inc. v. Alaska Dep't of Labor, 833 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1718, 72 L. Ed. 2d 137 (1982).

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

Who is employed in "professional capacity," within

exemption, under 29 USC § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 ALR Fed. 681.

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

Sec. 23.10.060. Payment for overtime. (a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

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

(d) This section does not apply with respect to

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

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

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

(4) an employee engaged in agriculture;

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

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

(7) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$600 a month;

(8) an employee employed as a seaman;

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

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

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

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

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

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

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

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

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

(16) an individual employed as a community health aide by a local or regional health organization as those terms are defined in AS 18.28.100. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 46 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983; am § 1 ch 160 SLA 1990; am § 1 ch 103 SLA 1992; am § 5 ch 13 SLA 1993)

Revisor's notes. — The paragraphs of (d) of this section were renumbered in 1990 and 1993 to reflect the deletion of repealed paragraphs.

Effect of amendments. — The 1992 amendment, effective September 18, 1992, in subsection (d), added paragraph (18) and made stylistic changes.

The 1993 amendment, effective May 8, 1993 repealed former paragraph (17).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.060 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 18, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act, 46 U.S.C. §§ 151-

188. April 15, 1980, Op. Att'y Gen.

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

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

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 46 U.S.C. §§ 161-168, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.060 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

An administrative regulation which would require an employer to include underground travel time as part of the "workweek" for calculating wages and overtime under this section might raise the issue of

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MEMORANDUM

January 29, 1997

SUBJECT: Voluntary flexible work hour plan for employees of surface metal mining operations (CSHB 68 (), version "B" dated 1/29/97)

TO: Representative Gene Therriault

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked how the legislature should prepare a record to anticipate questions about whether the enclosed draft Committee Substitute for House Bill 68 violates the equal protection clauses of the state or federal constitution. The draft CS permits employees of surface metal mining operations to enter into voluntary flexible work hour plans under which the employees are not entitled to overtime until they have worked 12 hours in a day or 40 hours in a week.

Under the equal protection clauses of the state and federal constitution, a legislature is permitted to create laws that treat individual groups differently and to address part of an issue but not the entire issue, so long as there is a rational basis for the distinction the legislature is making. For distinctions that affect protected groups or certain rights, the reason for the difference in treatment has to be more persuasive and the method chosen to address the problem will have to be more tightly fitted to the problem being solved, but it is unlikely that a court would find that the groups created here would be entitled to that kind of heightened scrutiny.

Applying the rational basis test to the groups created by the CS, the state would have to show that there was some reason for making voluntary flexible work hour plans as described in the Committee Substitute available at surface metal mines but not available elsewhere, to other employees or employers. Information that you provided points out that historically the state has treated coal mines differently (see the Alaska Surface Coal Mining Control and Reclamation Act - AS 21.27), and that sand and gravel mines have been treated differently (see AS 43.65.010(a)), too. If there is a reason that the employees at surface metal mines should be treated differently from employees elsewhere, it would be helpful to include that in testimony before a legislative committee. Such a difference might arise from the customary working conditions when considering the length of time required for activities at surface metal mines in contrast to the time required at other mines.

Please let me know if I can be of additional assistance.

TC:glc
97-025.glc

0-LS0329\F
Cramer
1/29/97

CS FOR HOUSE BILL NO. 68()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIault, Kelly, Vezey, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an exemption from the requirement for payment for overtime
2 under a voluntary work hour plan for work performed by employees at certain
3 mines; and providing for an effective date."

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

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

6 (17) work performed by an employee under a voluntary flexible work
7 hour plan that is not entered into under paragraphs (13) or (14) of this subsection if
8 the employee is employed at a surface metal mining operation that operates year round
9 and if includes coal + gravel

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

12 (B) the department has issued a certificate approving the plan
13 that states the work is for 40 hours a week and not more than 12 hours a day;
14 for work over 40 hours a week or 12 hours a day under a flexible work hour

1 plan not entered into under paragraphs (13) or (14) of this subsection,
2 compensation at the rate of one and one-half times the regular rate of pay shall
3 be paid for the overtime.

4 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

FAIRBANKS GOLD MINING, INC. Fort Knox Mine					
NONEXEMPT WAGE SCALE - JANUARY 1, 1997					
CLASSIFICATION	STEP I	STEP II	STEP III	STEP IV	STEP V
LEVEL I	\$11.25	\$11.55	\$11.85	\$12.15	\$12.45
Helper					
LEVEL II	\$12.85	\$13.15	\$13.45	\$13.75	\$14.05
Construction Technician Data Entry Technician Maintenance Technician Secretary/Receptionist Environmental Technician Geotech					
LEVEL III	\$14.10	\$14.50	\$14.90	\$15.30	\$15.70
Assay Technician Mine Trainee Rodman Mill Trainee Crusher Trainee Maintenance Trainee Data Coordinator Safety/Training Coordinator Security/First Aid Officer Warehouse Technician Senior Environmental Technician					
LEVEL IV	\$16.10	\$16.50	\$16.90	\$17.30	\$17.70
Compactor Operator Truck Driver Water Truck Driver Surveyor Mill Operator Metallurgical Technician Crusher Mechanic/Operator Pond Operator Fire/Assay Technician Fuel/Lube Mechanic Senior Warehouse Technician					
LEVEL V	\$17.75	\$18.25	\$18.75	\$19.25	\$19.75
Dozer Operator Grader Operator Loader Operator Driller Blaster Tire Mechanic Senior Mill Operator Senior Crusher Mechanic/Operator Refinery Operator Welder/Mechanic Small Vehicle Mechanic					
LEVEL VI	\$19.85	\$20.35	\$20.85	\$21.35	\$21.85
Production Shovel Operator Production Loader Operator Mill Control Room Operator Electrician/Mechanic Instrumentation/Mechanic Mobile Mechanic Plant Mechanic					

LABORERS' INTERNATIONAL UNION
of NORTH AMERICA
LOCAL 341

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BUSINESS MANAGER
SECRETARY-TREASURER
ANDREW J. PIEKARSKI
PRESIDENT
VICE PRESIDENT
MIKE GALLACHER

FIELD REPRESENTATIVES:
ANDREW J. PIEKARSKI
MIKE GALLACHER
BLAKE JOHNSON

FAX TRANSMITTAL FORM

DATE: 1-29-97

TO: NORM ROKEBERG

ORGANIZATION _____

FAX NUMBER: _____ NUMBER OF PAGES 2

FROM MANO SUBJECT FT. KNOX

WAGE SCHEDULE

