THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Labor and Workforce Development

Labor Standards and Safety
Wage and Hour
1251 Muldoon Road, Suite 113
Anchorage, Alaska 99504
Main: 907.269.4900

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Dear Employer,

The Alaska Department of Labor and Workforce Development, Wage and Hour is responding to ongoing problem areas concerning personal care attendants (PCAs) hired by agency based and consumer directed personal care attendant agencies. For the purpose of education, this letter is being sent as an industry-wide notice to address multiple issues that appear to be subject to widespread misunderstanding throughout the industry. Among the issues that have been the focus of questions, complaints and subsequent enforcement activities are:

- The implementation of statutorily required paid sick leave following the passage of Ballot Measure 1 in the 2024 general election and subsequent new regulation adopted in 2025;
- The absence of written hiring agreements between the PCA agency and the PCA;
- Changes to the rate of pay without the required written notice;
- Payment of wages and overtime inconsistent with the *Alaska Wage and Hour Act*;
- Nonpayment of wages for all hours worked;
- Insufficient or non-existent records of all daily and weekly hours worked by every employee;
- Nonpayment or insufficient payment for the time spent in travel and other work-related duties;
- Employees being incorrectly classified as independent contractors or volunteers;
- Employees not being paid for overtime when their employers enter into a joint-employer relationship, and
- PCAs subjected to unlawful deductions from wages, the withholding of paychecks, or who are being compelled to reimburse employers for hours they were directed to work but were later denied by Medicaid.

We will address each of these issues in this letter and we are always available to discuss any follow-up questions you may have.

Paid Sick Leave

Following the passage of Ballot Measure 1 in the 2024 General Election, Alaska has adopted laws guaranteeing paid sick leave to most employees. Alaska's paid sick leave laws went into effect on July 1, 2025. All covered employees will accrue sick leave at the same rate, 1 hour per every 30 hours worked. These hours worked are cumulative. The hours counted for salary-exempt employees may be limited to 40 hours per week.

The amount of paid sick leave that can be accrued and used in a year is capped depending on the number of employees an employer has. While accrual and usage are capped, the sick leave balance is not capped. Unused sick leave must be carried forward into the next year.

Employers who have existing paid time off programs need to review their policies to assure they meet the minimum standards established by the new law. Employers are free to offer a more generous plan to their employees if they choose.

Employers are prohibited from interfering with, restraining, or denying the use of paid sick leave. They cannot require employees to find coverage for missed shifts or take adverse actions against employees for the usage of paid sick leave. Documented verification of the need for paid sick leave, such as a doctor's note, can only be requested for paid sick leave usage of more than three consecutive workdays and must comply with statutory requirements.[1]

The Department has published frequently asked questions to aid with the understanding of Alaska's new sick leave laws and has provided a link to the ballot measure language. These can be found at: https://labor.alaska.gov/lss/sick-leave-faq.html.

Written Hiring Agreements and Changes in the Rate of Pay *(see page 4)*

Under Alaska Labor Law, employers must provide all employees with a written hiring agreement. This must include their rate of pay, where they receive payment, and the established payday which cannot occur less frequently than once per month (i.e. daily, weekly, bi-weekly, or monthly). Any time the employer elects to make a change, they must provide the employee with written notification of the change no later than on the payday before the time of change. The change cannot be made in the middle of a pay period and cannot be retroactive.[2]

Minimum Wage and Overtime

Outside of any specific Medicaid requirement concerning minimum payments for service, the current Alaska minimum wage is $13.00 per hour as of July 1, 2025. The minimum wage will increase to $14.00 on July 1, 2026, and $15.00 on July 1, 2027, due to the passage of Ballot Measure 1 in 2024. Alaska's minimum wage will return to annual adjustment using the Consumer Price Index for the previous calendar year on January 1, 2028. Ballot Measure 1 only changes the minimum wage rate; it does not change to whom the minimum wage applies.

Barring any allowable exemptions, an employee who works over 8 hours in a day and/or more than 40 straight-time hours in a week must be paid 1.5 times their regular rate of pay[3] (this requirement of the law is referred to as "overtime"[4]). Furthermore, if an employee is paid

[1] AS 23.10.067
[2] AS 23.05.160
[3] 8 AAC 15.100
[4] AS 23.10.060

multiple rates of pay, the employer has the option to pay the overtime by using a weighted average formula[5] or 1.5 times the rate of pay for the type of work being performed during overtime hours.[6] We recommend employers document which method they will use in hiring agreements.

Time spent working is compensable time, even if an employee's CPR license or other certifications have lapsed. If the work is directed by or allowed by the employer or if the employer has reason to suspect that the employee worked, the time spent working is compensable.[7] An accurate record of all daily and weekly hours worked must be kept, and most importantly, the employee must be paid correctly for all these hours.

Salary

Payment on a salary basis does not eliminate overtime requirements. Individuals who are paid on a non-exempt salary basis must be paid in a manner consistent with the minimum wage and overtime requirements of the *Alaska Wage and Hour Act*.

Personal care attendants are not specifically exempt from overtime requirements and must be paid 1.5 times their regular rate of work performed in excess of 8 hours per day and/or 40 straight time hours in a work week. Payment on a salary basis does not eliminate overtime pay obligations. If a fixed and recurring pay rate for a set period of time, i.e. week or month, (salary) has been established, the applicable compensation basis must be converted to an hourly rate when determining the regular rate of computing overtime compensation and a written contract must be provided showing the hourly rate, the overtime rate, and the fixed number of hours worked each week to arrive at the specified, fixed salary amount. If the contract fails to establish a fixed number of daily and weekly hours that the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract without a corresponding adjustment in hourly pay, the salary will be considered to be compensation for an 8 hour workday and 40-hour workweek, and overtime will be computed on that basis.[8]

To be properly classified as a salary exempt employee, an employee must meet a three-part test. First, they must be paid on a salary basis. This means they are paid a fixed rate regardless of hours worked with limited exception. Second, they must be paid the minimum salary level which is set at two times the minimum wage for a 40-hour workweek. This is currently $1,040/week and will increase to $1,120/week on July 1, 2026, and $1,200/week on July 1, 2027. Third, the employee must meet the duties test by performing work that falls into an approved category of executive, administrative, professional, computer, or outside sales employee. To determine if an employee qualifies as a salary-exempt employee consult the *Code of Federal Regulations 29 C.F.R. §541, Alaska Statute 23.10.055, and Alaska Administrative Code 8 AAC 15.908*, or contact the Wage and Hour office for additional information.

Accurate Record of Hours Worked

An employer shall keep an accurate record of all the daily and weekly hours worked by each employee.[9] This recordkeeping requirement applies to all employees regardless of how they are compensated or how they are classified to include salary-exempt employees. A mere record of hours scheduled may not be sufficient to account for all the hours actually worked by the

[5] 29 C.F.R. §778.115
[6] 29 C.F.R. §778.419
[7] 29 C.F.R. §785.11
[8] 8 AAC 15.100
[9] AS 23.05.080

employee. As a best practice, employees should also keep a record of hours separately from their employer's so they can check the employer's accounting for accuracy at the time of payment. The time worked may also include, but is not limited to, time spent preparing to deliver services to the recipient and time spent on post-provision duties (such as preparing records or cleaning at the end of the shift, travelling between facilities, doctor's appointments for clients, trips to the store to purchase items, etc.).

The burden to keep hours is borne by the employer under statute. Requiring an employee to keep a timesheet does not absolve an employer of this responsibility. Failure of an employee to follow employer reporting policy or issues with electronic reporting systems also do not resolve employers of the responsibility to maintain employee records and ensure employees are paid on the appropriate payday. Failure to follow employer policies may result in adverse administrative actions up to and including termination, it cannot result in the withholding of pay.

Travel Time

The employer must determine whether time spend in travel is working time. In contrast to regular home to work travel, which is not compensable, if time spent in travel is part of the principle activity of the employee's work day, such as taking a client to a doctor's appointment, the time is considered work and must be counted as hours worked.[10] When an employee has been directed to provide services to one consumer and is then assigned to provide services to a second consumer, the time spend in travel between the two sites is also compensable time. Put simply, travel from job site to job site during the workday must be counted as hours worked.

Independent Contractor, Volunteer, or Employee?

Frequent calls to Wage and Hour have also raised the issue of caregivers being classified as independent contractors rather than employees. When determining whether or not the relationship between the business and the alleged employee is subject to the *Alaska Wage and Hour Act* and the *Fair Labor Standards Act* (FLSA), it must be determined "whether the worker is dependent upon finding employment in the business of others. If the facts show such a dependency, the worker is an employee."[11] Employers are encouraged to review the factors established by the Alaska Supreme Court (see footnote #10). In general, all caregivers should be treated as employees to avoid issues with agencies such as Wage and Hour, Workers' Compensation, Unemployment Insurance taxes, and IRS taxes, unless the alleged employer can clearly demonstrate that a worker is an independent contractor. This is very unlikely unless the caregiver is the owner of the business. The mere possession of an Alaska business license, the provision of an IRS 1099 form, or simply calling someone an independent contractor is not enough to substantiate independent contractor status.

With regard to volunteers, a for-profit business is barred from using volunteer labor.[12]

Change Rate of Pay

The employer can change the rate of pay as long as the employee is given written notice of the change the payday before it takes effect. For example, if the employee's normal payday (the day the employee is paid their wages) is on the 20th of the month, the employer could give the employee written notice of a change in the rate of pay any day up to and including the 20th. All

[10] 29 C.F.R. §785.38
[11] *Jeffcoat v. State, Dept. of Labor*, Sup. Ct. Op. No. 3162 (File No. S-1444), 732 P2d 1073 (1987)
[12] AS 23.10.055(6)

work done by the employee after the 20th would be at the new rate.

A contractual clause that merely advises an employee of the **possibility** of a future change does not constitute notice of an **actual** change in pay. The statutory timing requirement *"on the payday before the time of change"* requires notice that is contemporaneous with the change itself. Notice provided months or years in advance does not satisfy the plain-language requirements of the statute.

For example, a clause in a hiring agreement stating that an employee's rate of pay *may* be reduced if the employee is late more than three times in a month, or if the employee fails to submit a timesheet, does not notify the employee that a pay reduction **will occur** at a specific time. Because such provisions do not provide notice of the actual change when it is implemented, they do not constitute adequate notice under the statute.

Joint-Employer Relationship

A single individual may be an employee of two or more employers at the same time. A determination of whether the employment by two or more employers is to be considered joint employment or separate and distinct employment depends upon all the facts in the particular case. If all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer(s). On the other hand, if the facts establish that the employee is employed jointly by two or more employers (i.e. that the employment by one employer is not completely disassociated from the employment by the other employer(s)) all of the employee's work for all of the joint employers during the workweek is considered as one employment. In this event, all joint employers are responsible, both individually and jointly, for compliance with Alaska's overtime and minimum wage requirements with respect to the entire employment for the particular workweek and pay period. In simple terms, if one agency hires a caregiver for 24 hours over three days, and a joint employer hires the same caregiver for 24 hours over three days, 8 hours of overtime would be due.

Work Directed by the Employer

In some cases, consumer directed agencies have directed PCAs to provide care to a recipient prior to the approval of a service plan. Even though a joint-employer relationship exists between the recipient and the agency, if the agency indicates to the employee (or directs the recipient to indicate to the employee) that hours are to be worked and then the hours are worked, those hours must be paid. It may be the case that billed hours are later denied, or a reimbursement for services billed in error is required by Medicaid for hours that have already been worked. The employer's responsibility to compensate for hours worked by the employee remains the same. In this instance, deductions made from an employee's check, the withholding of paychecks, or the requirement that employees reimburse the employer for such hours out of the employee's wages already received or anticipated to be received are strictly prohibited.

Room and Board

When an employee lives at the home, the employer is allowed to deduct an amount from the employee's wages for the reasonable cost of room and board. The amount of this deduction must be reasonable and without profit to the employer and based on a *written agreement signed by the*

employee. Use of the facilities must be voluntarily, and no deduction for room and board is lawful in any situation in which an employer requires an employee to use the employer-provided facilities. Hiring or firing employees based upon the employee's willingness to authorize deductions for room and board costs from their check is not considered voluntary.[13]

Furthermore, unless the employer and the employee have a *written agreement*, that meets the requirements of Alaska regulation 8 AAC 15.160, signed by the employee, before the deduction, the employer is prohibited from seeking to retroactively deduct the cost of room and board from their wages as an offset against wages due upon termination or wage deficiencies subject to the collection by the department. An employer may deduct an amount from the minimum wage or overtime rates set out under AS 23.10 of an employee's earnings, to reimburse an employer for the reasonable cost of furnishing board or lodging based on a written agreement. A deduction of $20 per day or less for board or lodging will not require a determination by the director unless evidence indicates that the deductions unreasonable for the board or lodging provided or results in a profit to the employer.

Before an employer decides they will implement a room and board agreement, they should consult Alaska Regulation 8 AAC 15.160(d) for the full list of requirements.

Sleep Time

If an employee is required to be on duty for a 24-hour period of time, the employer and the employee may agree (preferably in writing) to exclude designated meal periods (no less than 20 minutes) and regularly scheduled sleeping time of up to 8 hours from hours worked, provided *adequate* sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period consists of more than 8 hours, only 8 hours will be credited. If there is no agreement in place, the 8 hours of sleeping time and lunch periods are to be counted as hours worked.[14]

If the sleeping period is interrupted by work, this time is compensable. If the period is interrupted to such an extent that the employee cannot get at least 5 hours of uninterrupted sleep, the entire period must be counted as hours worked.

For further information on this subject you should study the information provided on the U.S. Department of Labor website found at https://www.dol.gov/agencies/whd/direct-care/sleep-time.

Deductions

An employer and employee may enter into a written agreement to provide for deductions of monetary obligations of an employee. An employer may not require compensation from an employee to which they are entitled through force, intimidation, or threat of dismissal from employment, or any other manner. A written agreement for deductions is not valid if it would reduce the employee's wage rate below the statutory minimum wage and overtime rates.

An employer may not deduct from an employee's wages any of the following:

- Customer checks returned due to insufficient funds or any other reason,
- Non-payment for goods or services as a result of theft or credit default,

[13] 8 AAC 15.160
[14] 29 C.F.R. §785.22(a)(b) (2013)

- 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,
- 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,
- Damage or breakage costs, unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

An employer shall give each employee a written or electronic statement of earnings and deductions for each period. The statement of earnings and deductions must contain the employee's:

- Rate of pay;
- Gross wages;
- Net wages;
- Beginning and end dates of the pay period;
- Federal income tax deductions;
- Federal Insurance Contribution Act deductions;
- Alaska Employment Security Act contributions;
- Board and lodging costs;
- Advances;
- Straight time and overtime hours actually worked in the pay period;
- Other authorized deductions;
- Sick leave used in the accrual year established under 8 AAC 15.107; and
- Sick leave balance.[15]

Final Paycheck

If the employment is terminated by the employee, payment is due at the next regular payday that is at least three days after the employer received notice of the employee's termination of services. If employment is terminated by the employer, regardless of the cause for the termination, payment is due within three working days after the termination.[16] The day of firing, weekends, and bank or state holidays, are not included in these three days. If an employer violates this statute, 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.

Workers' Compensation Coverage

Any business operating in Alaska with even one part-time employee is required to carry workers' compensation insurance under Alaska Statute 23.30.075. The policy must be bound in the State of Alaska; Alaska is not a reciprocal state and does not recognize coverage bound in any other state or country, even if the policy purports to cover an injury occurring in Alaska. There is no exemption for family members or friends for purposes of workers' compensation liability. Employee status is determined using the independent contractor definition found in Alaska Statute 23.30.230(a)(12). The criteria in this definition are all-inclusive. Penalties for not having workers' compensation coverage are severe. It is a crime under the Alaska Workers' Compensation Act for employers to misclassify employees or deduct all or any portion of workers' compensation premiums from an employee's paycheck. If you have questions

[15] 8 AAC 15.160
[16] AS 23.05.140

regarding workers' compensation requirements, please download and review the Employer's Guide to the Alaska Workers' Compensation Act at https://labor.alaska.gov/wc/publications/employer_guide_to_wc_act.pdf or contact the Alaska Division of Workers' Compensation at (907) 269-4980.

Unemployment Insurance Coverage

An employer misclassifying a worker as an independent contractor instead of an employee may be liable for penalties and interest for failure to report the worker and pay associated taxes. If you have questions regarding unemployment tax requirements, please contact Employment Security Tax at (888) 448-3527.

Resources

In conclusion, a business that is involved in practices that are not consistent with Alaska wage and hour laws must correct the discrepancies immediately to avoid future enforcement actions. We hope that your organization will take this opportunity to conduct an internal review and voluntarily make any wage adjustments. We have noted several applicable statutes and regulations for your review. Employers are encouraged to conduct a complete review of Alaska's wage and hour laws and regulations as published in the *Pamphlet 100* publication, which can be found at: https://labor.alaska.gov/lss/forms/pam100.pdf. Our website can be found at: https://labor.alaska.gov/lss/whhome.htm.The Wage and Hour office provides a cost-free counseling service to Alaska employers, and we invite you to take advantage of this service. A regular, monthly webinar is offered to employers and employees concerning wage and hour laws. Check our website for the webinar schedule and contact our office at (907) 269-4900 for registration. In addition, an investigator is on duty each business day to answer any questions you may have.

Alternatively, you may wish to contact a private attorney. The Alaska Lawyer Referral Service may be able to assist you with locating an attorney to address your specific concerns. You may contact this office at 1-800-770-9999 or visit the following website for additional information: https://www.alaskabar.org.