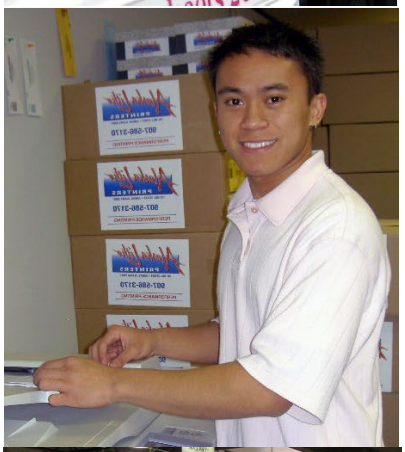

Employment Practices and Working Conditions

Wage and Hour Pamphlet 100

Statutes
Regulations
Adopted CFR's

July 2025

Alaska Department of Labor and
Workforce Development
Labor Standards and Safety Division

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TO ALL ALASKAN EMPLOYEES AND EMPLOYERS:

The focus of the Alaska Department of Labor and Workforce Development is putting Alaskans to work. An important part of that mission is to ensure that working conditions and wage payment practices are legal. This publication, Pamphlet 100, Employment Practices and Working Conditions, is designed to assist employers and employees by providing the applicable laws and regulations.

The pamphlet is divided into five sections:

I. The Alaska labor statutes (Alaska labor laws);

II. The Alaska Family Leave Act (AFLA);

III. The Alaska Administrative Code (Alaska regulations);

IV. Specific sections of Code of Federal Regulations that Alaska has adopted as law by reference dealing with labor issues. For this reason, a particular topic, such as deductions from wages, may appear in each of the three sections, and

V. Specific sections of the Code of Federal Regulations

that are included for information only.

The index of topics on page 70 should provide assistance in locating where in the pamphlet a particular topic is referenced.

When reviewing the subjects contained in this pamphlet, keep in mind that the statutes carry the greatest weight. The regulations (State and Federal) have been established to further clarify and interpret language used in the statute.

Many wage and hour subjects are complex. Please take advantage of the cost-free counseling services to clarify your questions. For questions regarding this pamphlet and Alaska's labor laws, you may call or come into the nearest Wage and Hour office Monday through Friday during regular business hours, and a Wage and Hour Investigator will be happy to assist you. Addresses and phone numbers for these offices are listed on the inside cover page of this pamphlet.

For additional copies of this pamphlet, contact the nearest Wage and Hour office, in Anchorage, Juneau or Fairbanks, or you may download and print this pamphlet from our Internet site at: http://labor.alaska.gov/lss/forms/pam100.pdf.

Employment Practices and Working Conditions

Wage and Hour Pamphlet 100

Statutes - Regulations - Adopted CFRs

July 2025

State of Alaska

Alaska Department of Labor and Workforce Development

Labor Standards and Safety Division

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Disclaimer:

Note to Readers: The statutes and administrative regulations listed in this publication were taken from the official codes, as of the effective date of the publication. However, there may be errors or omissions that have not been identified and changes that occurred after the publication was printed. This publication is intended as an informational guide only and is not intended to serve as a precise statement of the statutes and regulations of the State of Alaska. To be certain of the current laws and regulations, please refer to the official codes.

ALASKA STATUTES

ALASKA STATUTES

TITLE 22. Judiciary

CHAPTER 15. District Courts and Magistrates Section

40. Small claims
120. Limitations on proceedings which magistrate may hear

Sec. 22.15.040. Small claims.

(a) Except as otherwise provided in this subsection, when a claim for relief does not exceed $10,000, exclusive of costs, interest, and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved, or the state is a defendant. The Department of Labor and Workforce Development may bring an action as a small claim under this subsection for the payment of wages under AS 23.05.220 in an amount not to exceed $20,000, exclusive of costs, interest, and attorney fees. The Supreme Court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

(b) All potential small claim litigants shall be informed if mediation, conciliation, and arbitration services are available as an alternative to litigation.

(§ 8(4) ch 184 SLA 1959; added by § 1 ch 91 SLA 1961; am § 1 ch 12 SLA 1970; am § 1 ch 23 SLA 1978; am §§ 1, 2 ch 3 SLA 1986; am § 2 ch 119 SLA 1992; am § 1 ch 33 SLA 1997; am § 1 ch 48 SLA 2000; am § 2 ch 65 SLA 2004)

Sec. 22.15.120. Limitations on proceedings which magistrate may hear.

(a) A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

(1) for the recovery of money or damages only when the amount claimed, exclusive of costs, interest, and attorney fees, does not exceed$10,000;

(2) for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed $10,000;

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $10,000;

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) to give judgment of conviction upon a plea of guilty or no contest by the defendant in a criminal proceeding within the jurisdiction of the district court;

(6) to hear, try, and enter judgments in all cases involving misdemeanors that are not minor offenses if the defendant consents in writing that the magistrate may try the case;

(7) to hear, try, and enter judgments in all cases involving minor offenses and violations of ordinances of political subdivisions;

(8) for the extradition of fugitives as authorized under AS 12.70;

(9) to provide post-conviction relief under the Alaska Rules of Criminal Procedure for any of the cases specified in (5), (6), or (7) of this subsection if the conviction occurred in the district court; or

(10) to hear, try, and enter judgments in actions for the payment of wages brought by the Department of Labor and Workforce Development as provided in AS 22.15.040(a)

(a) A magistrate may not preside in small claims cases under AS 22.15.040 when service is made on a defendant outside the state under Rule 11(a)(4)(C), District Court Rules of Civil Procedure.

(b) In this section, "minor offense" means

(1) an offense classified by statute as an infraction or a violation;

(2) an offense for which a bail forfeiture amount has been authorized by statute and

(3) established by supreme court order; or

a statutory offense for which a conviction cannot result in incarceration, a fine greater than $300, or the loss of a valuable license.

(§ 19 ch 184 SLA 1959; am § 5 ch 5 SLA 1960; am § 1 ch 85 SLA 1961; am § 2 ch 91 SLA 1961; am § 12 ch 70 SLA 1964; am § 8 ch 110 SLA 1967; am §§ 18 – 20 ch 71 SLA 1972; am § 1 ch 65 SLA 1978; am § 3 ch 3 SLA 1986; am § 10 ch 12 SLA 1986; am § 8 ch 38 SLA 1987; am § 5 ch 125 SLA 1992; am §§ 1, 2 ch 31 SLA 1993; am § 1 ch 26 SLA 1995; am § 18 ch 103 SLA 1996; am § 2 ch 33 SLA 1997; am § 2 ch 48 SLA 2000; am § 4, 5 ch 65 SLA 2004)

TITLE 23. Labor and Workers' Compensation

CHAPTER 05. Department of Labor and Workforce Development

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 and Workforce Development 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 19)

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 ofthe 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. 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 requiresit;
(3) make investigations and 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 bycontract;
(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; am § 30 ch 41 SLA 2009)

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. 23.05.110. Biennial report.
The department shall submit a report to the governor concerning its activities during the preceding two years. The department shall notify the legislature that the report is available.
(§ 43-1-9 ACLA 1949; am § 44 ch 21 SLA 1995)

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 tobe employed in industries in the state.
(§ 43-1-11 ACLA 1949)

Article 2. Wage Claims

Section

140. Pay periods; penalty
160. Notice of wage payments
170. Wages earned before strike, lockout, or layoff
180. Wages in dispute
190. Enforcement
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; penalty.
(a) An employee and employer may agree in an annual initial contract of employment to monthly pay periods when the employer shall pay the employee 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, all wages, salaries or other compensation for labor or services become due immediately and shall be paid within the time required by this subsection at the place where the employee is usually paid or at a location agreed upon by the employer and employee. If the employment is terminated by the employer, regardless of the cause for the termination, payment is due within three working days after the termination. If the employment is terminated by the employee, payment is due at the

next regular pay day that is at least three days after the employer received notice of the employee's termination of services.

(c) [Repealed, § 2 ch 19 SLA 1971.]

(d) If an employer violates (b) of this section by failing to pay within the time required by that subsection, 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.

(e) In an action brought by the department under this section, an employer found liable for failing to pay wages within the time required by (b) of this section shall be required to pay the penalty set out in (d) of this section. The amount of the penalty shall be calculated based on the employee's straight time rate of pay for an eight-hour day.

(f) In an action brought for unpaid overtime under AS 23.10.060 that results in an award of liquidated damages under AS 23.10.110, the provisions of (d) of this section do not apply unless the action was brought by the department under (e) of this section.

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.

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) 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 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 the amount set out in AS 22.15.040 as the maximum amount, exclusive of costs, interest, and attorney fees, for the jurisdiction of the district court to hear an action for the payment of wages as a small claim.(§ 43-2-11(e)(1) ACLA 1949; am § 2 ch 34 SLA 1949; am § l ch 172 SLA 1959; am § l ch 36 SLA 1965; am § 3 ch 11 SLA 1976; am § 1 ch 24 SLA 1998; am § 6 ch 48 SLA 2000)

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 that 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; immunity from damages; custody of property.
(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.
(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. 23.05.280. 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. Transportation of Employees (§§ 23.10.375-23.10.400)
5. Employee Rights (§ 23.10.430)

6. Drug and Alcohol Testing by Employers (§ 23.10.630)

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

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. 23.10.030. 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)

Sec. 23.10.035. Limit of application.

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) Except as otherwise provided by AS 37.25.050, 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; am § 10 ch 175 SLA 2004)

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 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; am § 18 ch 3 SLA 2017)

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

(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 that 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)

Article 3. Alaska Wage and Hour Act

Section

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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

(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; compensation of executives, administrators, and professionals.

(a) 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, or delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating, 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 handpicking of shrimp;

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

(5) an individual employed by the United States or by the state or a 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 nonprofit activities of a nonprofit religious, charitable, cemetery, or educational organization or other nonprofit organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis and are related only to the organization's nonprofit activities; in this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

(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
(A) in a bona fide executive, administrative, or professional capacity;
(B) in the capacity of an outside salesman or a salesman who is employed on a straight commission basis; or
(C) as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker
(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;
(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;
(13) An individual who drives a taxicab, who is compensated for taxicab services exclusively by customers of the service, and whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based on flat contractual rates and not based on a percentageshare 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 workdays in which the person is employed by the registered guide or master guide during a calendar year;
(15) an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of AS 47.27 (Alaska temporary assistance program);
(16) an individual who
(A) provides emergency medical services only on a voluntary basis;
(B) serves with a full-time fire department only on a voluntary basis; or
(C) provides ski patrol services on a voluntary basis, or
(17) a student participating in a University of Alaska practicum described under AS 14.40.065.
(18) an individual who is employed by a motor vehicle dealer and whose primary duty is to
(A) receive, analyze, or reference requests for service, repair, or analysis of motor vehicles;
(B) arrange financing for the sale of motor vehicles and related products and services that are added or included as part of the sale; or
(C) solicit, sell, lease, or exchange motor vehicles.
(b) Notwithstanding (c) of this section, an individual employed in a bona fide executive, administrative, or professional capacity shall be compensated on a salary or fee basis at a rate of not less than two times the state minimum wage for the first 40 hours of employment each week, exclusive of board or lodging that is furnished by the individual’s employer.
(c) In (a)(9) of this section,

(1) “bona fide executive, administrative, or professional capacity” has the meaning and shall be interpreted in accordance with 29 U.S.C. 201 – 219 (Fair Labor Standards Act of 1938), as amended, or the regulations adopted under those sections;
(2) “computer systems analyst, computer programmer, software engineer, or other similarly skilled worker” has the meaning and shall be interpreted in accordance with 29 U.S.C. 201-219 (Fair Labor Standards Act of 1938), as amended, or the regulations adopted under those sections;
(3) “outside salesman” means an employee
(A) who is customarily and regularly away from the employer’s place of business; and
(B) whose primary duty is making sales or contracts for sales, consignments, or shipments, or obtaining orders for services or for use of facilities for which consideration will be paid by the client or customer;
(4) “salesman who is employed on a straight commission basis” means an employee
(A) who is customarily and regularly employed on the business premises of the employer;
(B) who is compensated on a straight commission basis for the purpose of making sales or contracts for sales, consignments, shipments, or obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and
(C) whose primary duty is making sales or contracts for sales, consignments, shipments, or obtaining orders for service or the use of facilities for which a consideration will be paid by the client or customer.
(d) In (a)(18) of this section,
(1) "lease" means a contract by which a person owning a motor vehicle grants to another person the right to possess, use, and enjoy the motor vehicle for a specified period of time in exchange for periodic payment of a stipulated price and in which the use of the vehicle is granted for a period of at least 12 months;
(2) "motor vehicle" has the meaning given in AS 45.25.990;
(3) "motor vehicle dealer" has the meaning given in AS 08.66.350, except that, in this paragraph, notwithstanding the definition of "motor vehicle dealer" given in AS 08.66.350, "motor vehicle" has the meaning given in this section.
(§ 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 SLA1982; am § 2 ch 12 SLA 1990; am § 2 ch 13 SLA 1993; am § 10 ch 33 SLA 1996; am § 9 ch 107 SLA 1996; am § 1 ch 23 SLA 1997; am §§ 1, 2 ch 19 SLA 1999; am § 2 ch 102 SLA 2004; am § 39 ch 84 SLA 2005; am §§ 1, 2 ch 90 SLA 2005; am §§ 1, 2 ch 11 SLA 2014)

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.
(b) If an employer finds it necessary to employ an employee for hours in excess of the limits set in this subsection, overtime compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. An employee is entitled to overtime compensation for hours worked in excess of eight hours a day. An employee is also entitled to overtime compensation for hours worked in excess of 40 hours a week; in determining whether an employee has worked more than 40 hours a week, the number of hours worked shall be determined without including hours that are worked in excess of eight hours in a day because the employee has or will be separately awarded overtime compensation based on those hours.
(c) This section is considered included in all contracts of employment.

(d) This section does not apply to

(1) an employee employed by an employer employing fewer 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 telephone or radio messages for the public under an agency or contract arrangement with a communications company where the communications revenue of the agency does not exceed $500 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;

(17) work performed by a mechanic primarily engaged in the servicing of automobiles, light trucks, and motor homes if the mechanic

(A) is employed as a flat-rate mechanic by a non-manufacturing establishment primarily engaged in the business of selling or servicing motor vehicles;
(B) has signed a written agreement with the employer that specifies the mechanic's flat hourly rate of pay and the automotive manual or manuals on which the flat rate is to be based
(C) is compensated for all hours worked in any capacity for that employer up to and including eight hours a day and 40 hours a week at an hourly rate that is not less than the greater of
(i) 75 percent of the flat hourly rate of pay agreed on by the employer and employee under (B) of this paragraph; or
(ii) twice the state minimum wage; and
(D) is compensated for all hours worked in any capacity for that employer in excess of eight hours a day or 40 hours a week at one and one-half times the rate described in (C) of this paragraph;
(18) work performed by an employee under a voluntary written agreement addressing the trading of work shifts among employees if
(A) the employee is employed by an air carrier subject to subchapter II of the Railway Labor Act (45 U.S.C. 181-188), including employment as a customer service representative;
(B) the trading agreement is not a flexible work hour plan entered into under (13) or (14) of this subsection;
(C) the trading agreement is filed with the employee's employer; and
(D) the trading agreement states that the employee is not entitled to receive overtime for any hours worked by the employee when the employee voluntarily works those hours under a shift trading practice under which the employee has the opportunity, in the same or other work weeks, to reduce hours worked by voluntarily offering a shift for trade or reassignment.
(19) work performed by a flight crew member employed by an air carrier subject to 45 U.S.C. 181 – 188 (subchapter II of the Railway Labor Act); in this paragraph, "flight crew" means the pilot, co-pilot, flight engineer, and flight attendants.
(e) The minimum amount due an employee under (d)(17)(C) and (D) of this section shall be figured on a weekly basis.
(§ 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 § 1 ch 103 SLA 1992; am § 5 ch 13 SLA 1993; am §§ 1, 2 ch 123 SLA 1998; am § 1 ch 39 SLA 1999; am § 2 ch 43 SLA 1999; am § 1 ch 11 SLA 2003; am § 3 ch 90 SLA 2005)

Sec. 23.10.065. Minimum wages.
(a) Except as otherwise provided for in law, an employer shall pay to each employee a minimum wage, as established herein, 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:
(1) Beginning July 1, 2025, the minimum wage shall be $13.00 per hour;
(2) Effective July 1, 2026, the minimum wage shall be $14.00 per hour;
(3) Effective July 1, 2027, the minimum wage shall be $15.00 per hour; and
(4) Thereafter the minimum wage shall be adjusted annually for inflation. The adjustment shall be calculated each September 30, for the proceeding January-December calendar year, by the Alaska Department of Labor and Workforce Development, using 100 percent of the rate of inflation based on the Consumer Price Index for all urban consumers for the Anchorage metropolitan area,

compiled by the Bureau of Labor Statistics, United States Department of Labor; the department shall round the adjusted minimum hourly wage up to the nearest ten cents; the adjusted minimum hourly wage shall apply to work performed beginning on January 1 through December 31 of the year for which it is effective.

(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 and Early Development, 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.

(d) If at any point the minimum wage determined under (a) of this section is less than two dollars over the federal minimum wage, the Alaska minimum wage shall be set at two dollars over the federal minimum wage. The two dollar amount itself shall be adjusted for inflation in subsequent years by the method established in (a) of this section.

(§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974; am §§ 3, 4 ch 12 SLA 1990; am § 3 ch 110 SLA 2002; am § 1 ch 148 SLA 2003; am § 1, ch. 56 SLA 2009; am §§ 3, 4, 2014 General Election Ballot Measure No. 3)

Sec. 23.10.066 Minimum paid sick leave benefit. Employers in Alaska are required to provide their employees paid sick leave as follows:

(1) Employers with 15 or more employees shall allow employees to accrue a minimum of one hour of paid sick leave for every 30 hours worked, but employees are not entitled to accrue or use more than 56 hours of paid sick leave per year, unless their employer sets a higher limit.

(2) Employers with fewer than 15 employees shall allow employees to accrue a minimum of one hour of paid sick leave for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of paid sick leave per year, unless their employer sets a higher limit.

(3) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) shall be assumed to work 40 hours in each work week for purposes of paid sick leave accrual unless their normal work week is less than 40 hours, in which case paid sick leave accrues based upon that normal work week.

(4) Paid sick leave shall carry over to the following year, but an employer is not required to allow an employee to use more than the applicable amounts of paid sick leave described in subsections (a) or (b) per year.

(5) Paid sick leave as provided in this section shall begin to accrue at the commencement of employment or July 1, 2025, whichever is later. An employee shall be entitled to use paid sick leave as it is accrued.

(6) Any employer with a paid leave or paid time off policy, who makes available an amount of paid leave sufficient to meet the requirements of this section that may be used for the same purposes and under the same conditions as paid sick leave under this section, is not required to provide additional paid sick leave.

(7) An employee who is transferred to a separate entity or location, but remains employed

by the same employer, is entitled to all paid sick leave accrued at the prior entity or location. When there is a separation from employment, but the employee is rehired within six months of separation by the same employer, previously accrued and unused paid sick leave shall be immediately reinstated. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all accrued and unused paid sick leave.

AS 23.10.067 Utilization of paid sick leave benefit.

The paid sick leave benefit required under AS 23.10.066 may be utilized as follows:

(1) Employees shall be permitted to use paid sick leave for:

(A) An employee's mental or physical illness, injury or health condition; the employee's need for medical diagnosis, care, or treatment; or the employee's need for preventative medical care;

(B) Care or assistance to the employee's family member relating to the needs described in subsection (A) of this paragraph; "family member" means an immediate family member as defined pursuant to AS 39.52.960(11); a domestic partner; a foster child, legal ward, or person to whom an employee stands in loco parentis; a foster parent, adoptive parent, legal guardian, or a person who stood in loco parentis when the employee was a minor child; or any other individual related by blood or whose close association is the equivalent of a family relationship; or

(C) absences necessary due to domestic violence, sexual assault, or stalking, provided the leave is to allow the employee to obtain for the employee or a family member: medical or psychological attention; services from a victim's aid organization; relocation or steps to secure an existing home; or legal services, including participation in any investigation or civil or criminal proceeding;

(2) when the need for paid sick leave is foreseeable, the employee shall make a good faith effort to provide notice to the employer in advance of the use of paid sick leave and make a reasonable effort to schedule use of paid sick leave in a manner that does not unduly disrupt the employer's operations;

(3) for paid sick leave of more than three consecutive workdays, an employer may require reasonable documentation that the paid sick leave has been used for a purpose covered by (1) of this section; documentation signed by a health care professional indicating that paid sick leave is or was necessary shall be considered reasonable documentation for (l)(A) or (B) of this section purposes, but an employer may not require that the documentation explain the nature or details of the illness or underlying health needs;

(A) in cases of domestic violence, sexual assault, or stalking, under (1)(C) of this section, one of the following types of documentation selected by the employee shall be considered reasonable documentation: a police report; a written statement from a witness advocate affirming services from a victim's aid organization; a court document indicating relevant legal action; or a written, non-notarized statement from the employee affirming that paid sick leave was taken for a qualifying purpose of (l)(C) of this section;

(B) unless otherwise required by law, an employer may not require disclosure of the details of an employee's or an employee's family member's health or safety information as a condition of providing paid sick leave under AS 23.10.066 and must treat any health or safety information regarding an employee or employee's family member as confidential medical records;

(4) paid sick leave under AS 23.10.066 may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time;

(5) an employer may not interfere with, restrain, or deny the exercise of: or the attempt to exercise, the right to paid sick leave under AS 23.10.066; an employer shall not:

(A) engage in retaliation or discrimination, or take any other adverse action, against an employee who utilizes, or attempts to utilize, their paid sick leave;
(B) require, as a condition of an employee's taking paid sick leave under this AS 23.10.066 and .067, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave; or
(C) use an absence control policy that counts paid sick leave taken under AS 23.10.066 and .067 as an absence that may lead to or result in retaliation or any other adverse action.

AS 23.10.068 Limitations, notice, and violations related to paid sick leave benefit.
(a) Nothing in AS 23.10.066 to .067 shall be construed as:
(1) Requiring financial reimbursement to an employee following the employee's termination, resignation, retirement, or other separation for unused paid sick leave, unless otherwise required by law;
(2) Preempting, limiting, or otherwise impacting the applicability of any other law, regulation, or policy providing more generous paid sick leave; or
(3) Prohibiting an employer from adopting or retaining a more generous paid sick leave policy or diminishing an employer's obligation to comply with any contract, agreement, employment benefit plan, or collective bargaining agreement providing more generous paid sick leave than required herein.
(b) An employer found to violate AS 23.10.066 or .067 is liable for an employee's lost wages or damages as may be appropriate and allowable under state law to remedy the violation.
(c) Employers shall give employees written notice of the following at the commencement of employment or within 30 days of this section's effective date, whichever is later: That beginning July 1, 2025, employees are entitled to paid sick leave and the amount of paid sick leave, the terms of its use guaranteed under AS 23.10.066 and .067, and that retaliation against employees who request or use paid sick leave is prohibited.
(d) The rights and remedies under AS 23.10.066 and .067 may not be waived by any agreement, policy, form, or condition of employment; provided, however, that they shall not apply to employees covered by a bona fide collective bargaining agreement if the requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.
(e) Application to multiemployer collective bargaining agreements. An employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations under AS 23.10.066 and .067 by making contributions to a multiemployer paid sick leave fund based on the hours each employee accrues pursuant to AS 23.10.066 while working under the multiemployer collective bargaining agreement, if the fund enables employees to collect paid sick leave from the fund based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified in AS 23.10.067.

AS 23.10.069 Exemptions from paid sick leave benefit.
(a) Employment described in AS 23.10.070, AS 23.10.071, AS 33.30.201, and AS 33.30.191 is exempt from the requirements of AS 23.10.066 to .068.
(b) Employment described in AS 23.10.055(a)(1) to (a)(8) and AS 23.10.055(a)(10) to (a)(18) is exempt from the requirements of AS 23.10.066 to.068. However, notwithstanding any other provisions of this chapter, employment described under AS 23.10.055(a)(9) shall be covered by the paid sick leave requirements of AS 23.10.066 to .068.
(c) An "employee" as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq. shall be exempt from the requirements of AS 23.10.066 to .068.

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 apprentice at the wages that are approved by the commissioner;
(2) a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the commissioner; or
(3) an individual employed by a nonprofit organization for not more than 12 weeks in a calendar year at a residential summer camp who receives room and board in addition to a weekly wage that is equal to or greater than
(A) 80 percent of the minimum hourly wage established under AS 23.10.065(a), multiplied by 40 hours; or
(B) 50 percent of the minimum wage established under AS 23.10.065(a) multiplied by the total hours worked in the week by the individual.
(§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962; am § 1 ch 74 SLA 2022)

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 E.O. No. 52, § 4 (1982))

Sec. 23.10.080. Powers and duties of division.
The director, or an authorized representative of the director, shall
(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; room and board deductions.
(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; am § 1 ch 76 SLA 2004; am § 4 ch 90 SLA 2005)

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 are subject to judicial review in accordance with AS 44.62 (Administrative Procedure Act)
(§ 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 that 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 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.
(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; am § 22 ch 22 SLA 2015)

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 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)

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)

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 29 U.S.C. 201-219 (Fair Labor Standards Act of 1938), as amended, or the regulations adopted under those sections.
(§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983; am § 5 ch 90 SLA 2005)

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. 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

Section

430. Access to personnel files
490. Employee rights to avoid speech under Section

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)

AS 23.10.450 Employee rights to avoid speech.

(a) An employer, either personally or through an agent or representative, may not take or threaten to take adverse employment action against an employee because that employee refuses to:

(1) attend an employer-sponsored meeting, the primary purpose of which is to communicate the employer's opinion about religious matters or political matters; or

(2) listen to communications, the primary purpose of which is to communicate the employer's opinion about religious matters or political matters.

(b) An employer found to violate (a) of this section is liable for the employee's lost wages resulting from the employee's decision not to participate or any adverse employment action taken as a result.

(c) This section does not prohibit:

(1) an employer or its agent or representative from communicating to its employees information:

the employer is required by law to communicate;

(B) necessary for an employee to perform the employee's job; or

(C) directly related to, or relevant to, the workplace.

(2) an institution of higher education or its agent or representative from communicating to its employees coursework, symposia, or an academic program;

(3) a requirement that an employer's executive personnel listen to communications about the employer's business;

(4) a bona fide religious organization from requiring its employees to attend an employer-sponsored meeting or participate in any communication with the employer of the employer's agent, representative, or designee for the primary purpose of communicating the employer's religious beliefs, practices, or tenets.

(d) The provisions of this section do not apply to informational meetings otherwise required by local, state, or federal law.

(e) In this section:

(1) "political matters" means matters relating to elections for political office, political parties, candidates, proposed legislation or regulations, and the decision whether or not to join or support a political party, or political, civic, communal, fraternal, or labor organization;

(2) "religious matters" means matters relating to religious affiliation and practice and the decision whether or not to join or support a religious organization or association.

Article 8. Drug and Alcohol Testing by Employers Section

Section

630. Collection of samples

Sec. 23.10.630. Collection of samples.

(a) An employer may test an employee for the presence of drugs or for alcohol impairment. An

employer may test a prospective employee for the presence of drugs.

(b) In order to test reliably, an employer may require an employee or prospective employee to provide a sample of the individual's urine, oral fluid, or breath and to present reliable individual identification to the person collecting the sample. Collection of the sample must conform to the requirements of AS 23.10.600-23.10.699. The employer may designate the type of sample to be used for testing.

(c) An employer shall normally schedule a drug test or an alcohol impairment test of employees during, or immediately before or after, a regular work period. Alcohol impairment or drug testing required by an employer is considered to be work time for the purposes of compensation and benefits for current employees. Sample collection shall be performed in a manner that guarantees the individual's privacy to the maximum extent consistent with ensuring that the sample is not contaminated, adulterated, or misidentified.

(d) An employer shall pay the entire actual costs for drug testing and alcohol impairment testing required of employees and prospective employees. An employer shall also pay reasonable transportation costs to an employee if the required test is conducted at a location other than the employee's normal work site.

(§ 1 ch 106 SLA 1997)

ALASKA FAMILY LEAVE ACT (AFLA)

Only for employees of the State, the University of Alaska, the Alaska Railroad, and political subdivisions of the state.

Chapter 40. Labor Organizations

Article 2. Public Employment Relations Act

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 39.20.500-39.20.550 and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 39.20.500-39.20.550 shall be considered to contain the benefit provisions of those statutes.
(§ 7 ch 96 SLA 1992)

TITLE 39. Public Officers and Employees

Chapter 20. Compensation, Allowances, and Leave

Article 5. Pregnancy, Childbirth, and Family Leave for Public Employees

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. 39.20.500. 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.
(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
(1) 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 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.

(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. 39.20.510. Employee notice.

If the necessity for leave under AS 39.20.500 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. 39.20.520. 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)

Sec. 39.20.530. Application to other laws.

(a) The provisions of AS 39.20.500-39.20.550 do not affect any other provision of law relating to sex discrimination, pregnancy, or parenthood.

(b) The provisions of AS 39.20.500-39.20.550 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 39.20.500-39.20.550 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 39.20.500-39.20.550, if the district or attendance area establishes to the satisfaction of the commissioner that a variance from the requirements of AS 39.20.500-39.20.550 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 39.20.500-39.20.550 or the lack of available housing for replacement teachers who do not live in the community.

(§ 6 ch 96 SLA 1992)

Sec. 39.20.540. Investigation and conciliation of complaints.

(a) A person aggrieved by a denial of a right or privilege granted by AS 39.20.500-39.20.540 may file a complaint with The Department of Labor and Workforce Development.

(b) The Department of Labor and Workforce Development 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. 39.20.550. Definitions.

In AS 39.20.500-39.20.550,

(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;

(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)

ALASKA ADMINISTRATIVE CODE (AAC)

(Alaska regulations)

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) Repealed
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 15.180)
6. General Provisions (8 AAC 15.900-8 AAC 15.910)

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. Payment on a salary basis does not eliminate overtime pay requirements. The following provisions apply for an employee whose work is not exempt by law from overtime pay requirements, but is paid on a salary basis:

(1) the employment contract must be in writing and must set out the specific number of straight time and overtime hours the employee is expected to work each day and each week; the contract must establish a regular straight time hourly rate of pay and the appropriate overtime rate with respect to the salary to be paid and the number of 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 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 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; or
(5) for an employee who receives a bonus, 28 C.F.R. secs 778.208-778.215.

(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 the employment. However, if the employee is completely relieved from all duties for 20 minutes or more during which the employee may use the time effectively for the employee's 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. 207(f) as implemented in 29 C.F.R. 778.402-778.414);
(2) compensatory time (comp time) off in place of payment for overtime; and
(3) flextime or flexi time 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.

(e) Except for an employee described in 8 AAC 15.908(c), an employee paid on a daily rate whose work is not otherwise exempted from overtime pay requirements under AS 23.10.055 or 23.10.060(d) must be compensated for overtime based on a written employment contract. The following provisions apply for an employee paid on a daily rate:

(1) if the daily rate is compensation for a set number of hours in a day, the written employment contract must set out the applicable straight time and overtime rates;
(2) if the employee works overtime hours not covered by the daily rate established in the employment contract, the employer must provide for an adjustment to the employee's pay at the overtime rate for
(A) hours worked in excess of the established daily number of hours; and
(B) all hours worked on days worked after 40 straight time hours in a week;

EXAMPLES

An employee paid $150.00 per day for working 10 hours a day would have a straight time rate of $13.64 per hour and an overtime rate of $20.44 per hour.

If an employee worked more than 10 hours in a day or more than 40 straight time hours in a week, the additional overtime hours must be compensated at $20.44 per hour.

(3) to maintain the hourly rates, the employer must reduce the employee's pay when the employee works less than the prescribed number of hours in a day; if the wages are not reduced, the daily rate is considered to compensate an employee for a variable number of hours worked and the overtime must be calculated and paid in accordance with (4) of this subsection;
(4) if there is not a written employment contract or if the daily rate provides compensation for a variable number of hours worked, the overtime must be calculated as follows:

(A) each week, the employer must calculate the straight time rate of pay by dividing the total amount paid at the daily rate by the total number of hours worked in the week; and

(B) the employer must pay one-half of the straight time rate established under A of this paragraph for each overtime hour worked in the week to bring the employee's wages up to one and one-half times the regular rate for hours worked over eight hours in a day and over 40 straight time hours in a week; this calculation must be performed separately each week.

EXAMPLES

An employee paid $150 per day for working three 10 hour days and two 8 hour days would have a straight time rate of $16.30 ($750 ÷ 46 hours = $16.30). As the daily rate is considered to compensate the employee for each hour worked at the straight time rate, the employee is owed the additional half time to bring the employee up to time-and-a-half for the overtime hours worked. In this example, the employee would be due the extra half time pay for six hours (two hours on each of the 10 hour days) or $48.90. In addition to the $750 for five days at $150 per day, the employee would be due $48.90 for a weekly total of $798.70.

In the final analysis, this equates to payment for 40 straight time hours at $16.30 per hour and six overtime hours at $24.45 per hour. This calculation must be performed separately for each week.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150; am 3/2/2008, Register 185; am 8/12/2018, Register 227)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060 AS 23.10.095

Editor's note: Copies of the federal regulations cited in 8 AAC 15.100 may be obtained from the Department of Labor and Workforce Development, Wage and Hour Administration, 1251 Muldoon Road, Suite 113, Anchorage, AK 99504; telephone: (907) 269-4900. As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

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)(15) and this section. This alternative rate of overtime pay must be explained in writing, and the written explanation must be signed by the employee.

(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)(15).

(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; am 4/29/99, Register 150; am 3/24/2011, Register 197)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060 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(d)(14) must be signed by the employer and submitted to a Wage and Hour Administration

office of the department. The request must be in writing on a form provided by the department, 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 daily and weekly hours to be worked under 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 signature of the employer or authorized representative.

(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(14). An approved plan constitutes the certificate required in AS 23.10.060(14)(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.

(f) A voluntary flexible work hour plan is not valid, unless the employee working under the plan has been offered an equivalent weekly schedule of hours with overtime pay after eight straight time hours in a day.

(g) The department will not approve a voluntary flexible work hour plan for a weekly schedule of less than four days or 33 hours.

(h) Except for occasional deviations in an employee’s work schedule that do not exceed 20 percent of the weeks worked by an employee under a voluntary flexible work hour plan, an employer shall pay overtime as required by AS 23.10.060(b) when an employee deviates from the approved flexible work hour plan.

(Eff. 9/28/85, Register 95; am 3/2/2008, Register 185)

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

Editor's note: The federal statutes and regulations cited in 8 AAC 15.105 are reproduced on pages 73-81 of this booklet.

Article 3. Exemptions

Section

125. Minimum wage exemption for student learners
126. Minimum wage exemption for non-profit residential summer camp employees
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 15.125. 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 50 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.

(e) The commissioner will determine the appropriate wage by considering the following factors:

(1) whether the nature of the employment is for the benefit of the minor and whether the employment of the minor is in accordance with AS 23.05.010;

(2) the goal of the training that the minor is expected to achieve;

(3) the schedule of organized and progressive work processes to be performed;

(4) the nature of the work being performed by the minor;

(5) the length of time the minor will be employed; and

(6) whether the employer is subject to 29 U.S.C. 201 – 219 (Fair Labor Standards Act of 1938).

(Eff. 12/9/78, Register 68; am 4/30/2021, Register 238)
Authority: AS 23.10.070 AS 23.10.085

8 AAC 15.126. MINIMUM WAGE EXEMPTION FOR NON-PROFIT RESIDENTIAL SUMMER CAMP EMPLOYEES.

(a) An employee of a non-profit residential summer camp is exempt from the minimum wage requirement set out in AS 23.10.065 if the residential summer camp employee

(1) is not employed by the non-profit organization for longer than 12 weeks in a calendar year;

(2) works at the non-profit residential summer camp; and

(3) receives room and board in addition to a weekly wage in the amount set out it AS 23.10.070(3).

(b) A non-profit residential summer camp must complete a one-time registration with the department to receive an exemption under (a) of this section. The registration must include

(1) completion of an application provided by the department, which includes all required information and is signed by the employer; and

(2) proof of the residential summer camp's non-profit status.

(c) The department will approve registration of a non-profit residential summer camp that meets the definition of "summer camp" set out under 8 AAC 15.910(a), and that meets the requirements of AS 23.10.070(3) and this section.

(Eff. 4/2/2023, Register 246)
Authority: AS 23.10.070 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(d)(1).

In determining the number of employees that an employer employs for purposes of AS 23.10.060(d)(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; am 4/29/99, Register 150)
Authority: AS 23.10.060 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.

(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 is not part of the exemption period.
(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)
Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060

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) The provisions of AS 23.05.140 and AS 23.10.085(c) do 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 that 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 wage or overtime rates, 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) non-payment 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) An employer may deduct an amount from earnings based on a written agreement signed by the employee, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, done, or other third party. The employer, or any person acting in the employer's behalf or interest, may not derive any profit or benefit from the transaction.
(c) An employer may deduct an amount from earnings based on a written agreement signed by the employee to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not reduce the
(1) employee's wages below the statutory minimum; or
(2) overtime compensation rate below one and one-half times the contractual rate of pay.
(d) 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, if
(1) repealed 5/16/2003;

(2) the board or lodging facilities of the employer are “customarily” furnished, as described in 29 C.F.R. 531.31, by the employer;
(3) the cost to the employee for the use of the employer's board or lodging facilities is reasonable and without profit to the employer as determined by the department.
(4) the employer has provided the employee prior written notice that
(A) provides a basic description of the board of lodging;
(B) states the amount to be deducted weekly for the board of lodging; and
(C) states that the employer’s acceptance of the board of lodging and deduction is voluntary; and
(5) the employee has provided signed and written acceptance of the board or lodging and deduction.
(e) Unless the employer has provided the employee the prior written notice described in (d)(3) of this section, the employer is prohibited from taking a deduction from seeking to retroactively deduct the cost of board or 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)(1) of this section in accordance with 29 C.F.R. 531.29 - 531.35; 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 deduction is unreasonable for the board or lodging provided or results in a profit to the employer.
(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, clean and in a state of good repair, of uniforms or equipment issued by the employer, if the
(1) deduction is based on a written agreement;
(2) total deposit does not exceed the cost of the item; and
(3) deduction does not reduce the employee's wage below the statutory minimum or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.
(h) An employer shall give each employee a written or electronic statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain the employee’s
(1) rate of pay;
(2) gross wages;
(3) net wages;
(4) beginning and ending dates of the pay 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 or lodging deductions;
(11) advances;
(12) straight time and overtime hours actually worked in the pay period; and
(13) other authorized deductions.
(i) An appeal of a determination made by the director under this section must
(1) be filed with the commissioner not later than 20 days after the employer received the determination;
(2) be in writing; and
(3) set out the specific reasons for the appeal.

(j) The commissioner will grant or reject an appeal under (i) of this section not later than 20 days after the date the employer filed it; in the decision to grant or reject the appeal, the commissioner will state that the decision is final and include a statement of the employer's right to request judicial review not later than 30 days after the decision.
(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150; am 5/16/2003, Register 166; am 3/2/2008, Register 185; am 7/28/2023, Register 247)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.085
AS 23.10.060 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:
(1) uniform or equipment is required by the federal, state, or local safety or health codes; or
(2) nature of the employer's business requires the use of either, and if the uniform or equipment
(A) is distinctive and advertises or is associated with the products or services of the employer, except that the clothing that constitutes a uniform or equipment may advertise the products or services of the employer if the uniform or equipment is customarily sold to the public by the employer; or
(B) cannot be worn or used during normal social activities of the employee.
(Eff. 9/28/85, Register 95; am 4/29/99, Register 150; am 3/2/2008, Register 185)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.065 AS 23.10.095

Article 5. Procedures Relating To Violations, Investigations or Hearings

Section
180. Investigations, conferences, and persuasion

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION.
(a) The labor standards and safety division will investigate potential violations of AS 23.10.050-23.10.150 on its own motion
(b) If, after an 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 the employer 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 division may, in its 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, an investigative proceeding conducted in accordance with 8 AAC 25.010-8 AAC 25.030 shall be initiated.

(Eff. 12/9/78, Register 68; am 4/29/99, Register 150)

Authority: AS 23.10.080 AS 23.10.090
AS 23.10.085 AS 23.10.110

Article 6. General Provisions

Section

900. Recordkeeping
905. Line haul truck driver recordkeeping requirements
907. Employee tips
908. Determining the salary of exempt employees
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 23.10.095
AS 23.10.085 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)(15) 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; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.085
AS 23.10.060 AS 23.10.100

8 AAC 15.907. EMPLOYEE TIPS.

(a) Except as provided in this section, an employer may not handle or take possession or control of an employee's tips.

(b) An employer may handle an employee's tips only for the purpose of

(1) Delivering the cash amount of a tip to the employee when a customer provides for a tip on a credit card charge slip;
(2) Redistributing tips to service employees under a tip pooling arrangement; an employer shall provide written notice to all service employees of the tip pooling arrangement; any change to a tip pooling arrangement must be provided in writing on or before the payday before the payday on which the change becomes effective; a tip pooling arrangement may not be retroactive; or
(3) Redistributing an employee's accumulated tips to the employee on the next regularly scheduled payday only if a daily accounting of the employee's tips is provided in writing to the employee on each day that the tips are provided by a customer.
(c) 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.
(d) For the purposes of this section,
(1) "service employee"
(A) Means an employee whose primary duty is to deliver or assist in the delivery of services to a customer who, including a host, hostess, order-taker, server, busser, dishwasher, or cook;
(B) Does not include an employee whose primary duty is managerial or administrative.
(2) "tip pooling arrangement" means an agreement under which a portion of an employee's tips is collected for distribution among service employees;
(3) "tip" means
(A) 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;
(B) does not include a compulsory charge 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; am 6/29/2018, Register 226; am 10/27/2021, Register 240)
Authority: AS 23.05.060 AS 23.10.085
AS 23.10.065 AS 23.10.095

8 AAC 15.908. DETERMINING THE SALARY OF EXEMPT EMPLOYEES.
(a) Subject to the exceptions specified in 29 C.F.R. 541.602 and 541.603, revised as of July 1, 2012 and adopted by reference; an exempt employee must receive the full salary for any week in which the employee performs any work regardless of the number of days or hours worked, except as provided in (c) of this section.
(b) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In those weeks the payment of a proportionate part of the employee's salary for the time actually worked meets the requirement. However, this is not to be construed to mean that an employee is on a salary basis if the employee is employed occasionally for a few days and is paid a proportionate part of the weekly salary when employed. In addition, payment of the full weekly salary under those circumstances would not meet the requirements, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of this section.
(c) An exempt administrative, executive, or professional employee may be compensated on a daily rate if
(1) the minimum compensation requirements established under AS 23.10.055(b) are met;
(2) the employee receives at least $300 per day; and

(3) subject to the provisions of this section, the employee receives the full daily salary for any day in which any hours are worked regardless of the number of hours worked.

(d) Except as provided in 29 C.F.R. 541.602 and 541.603, determining an exempt employee's salary is subject to the general rule that an employee is not required to be compensated for any week in which no work is performed or for any day in which no work was performed.

(Eff. 4/29/99, Register 150; am 3/2/2008, Register 185; am 7/28/2013, Register 207)

Authority: AS 23.05.060 AS 23.10.055
AS 23.10.085

Editor's note: Copies of the federal regulations cited in 8 AAC 15.908 may be obtained from the Department of Labor and Workforce Development, Wage and Hour, 1251 Muldoon Road, Suite 113, Anchorage, AK 99504; telephone: (907) 269-4900. As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

8 AAC 15.910. DEFINITIONS.

(a) In this chapter and AS 23.10.050-23.10.150, unless the context requires otherwise

(1) repealed 3/2/2008;

(2) "casual employee," as used in AS 23.10.060(d), means

(A) an employee engaged in an activity that occurs without regularity and is not in the usual course of trade, business, occupation or profession of the employer; or

(B) an individual employed on a seasonal basis for less than twelve weeks per calendar year at a recreational residential youth camp operated by a nonprofit religious, charitable, or educational organization;

(3) "commissioner" means the commissioner of labor and workforce development;

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

(5) "director" means the director of the labor standards and safety division of the department of labor and workforce development, or the directors designee;

(6) "domestic service, including babysitter, in or about a private home," as used in AS 23.10.055(a)(4),

(A) means a service or activity performed in or about a private home by an individual that is employed or paid by the owner or occupant of the private home or a family member of the owner or occupant of the private home; and

(B) includes services or activities such as a

(i) babysitter;

(ii) cook;

(iii) butler;

(iv) valet;

(v) maid;

(vi) housekeeper;

(vii) governess;

(viii) janitor;

(ix) laundress;

(x) caretaker;

(xi) handyman;

(xii) gardener;
(xiii) footman;
(xiv) groom;
(xv) chauffeur of automobiles for family use;
(7) repealed 3/2/2008;
(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 the time cannot be used effectively for the employee’s own purposes, but does not include the time an employee is not required to remain on or near the employer's premises or other place of employment but is merely required to leave word with the employer where the employee may be reached by cellular phone, beeper, or othermeans;
(10) repealed 3/2/2008;
(11) repealed 3/2/2008;
(12) repealed 3/2/2008;
(13) “standby or waiting time” means time that an employee is required to be at or near the place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which the time cannot be used effectively for the employee’s own purposes;
(14) repealed 3/2/2008;
(15) “workweek” means a fixed and regularly recurring period of 168 hours that is 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 the employee 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 as provided in AS 23.05.160;
(16) "straight commission"
(A) means any combination of compensation based on making sales, contracts for sales, consignments, orders, or shipments for goods or services, whether the compensation is calculated by using
(i) a percentage of gross or net sales value;
(ii) an agreed-upon formula for the value of goods or services sold; or
(iii) a flat rate for reaching a particular level of sales volume, or the sale of a particular item;
(B) does not include compensation described in (A) of this paragraph that is accompanied by any type of guaranteed payment of minimum hourly amounts not required by federal law or a minimum salary or base, separately or in combination with commissionpayments;
(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.
(20) “fee basis” means an agreed sum for asingle job regardless of the time required for its completion as specified in 29 C.F.R. 541.605, revised as of July 1, 2007 and adopted by reference, with the following revision: Section 541.605(b) is revised in its entirety to read: (b) To determine whether the fee

payment meets the minimum amount of salary required for an exemption with a weekly minimum of two times the minimum wage for 40 hours, the amount paid to the employee will be tested by dividing the fee paid for the job by the number of hours required to complete the job and multiplying the result by 40 hours. Thus, an artist paid $600 for a painting that took 20 hours to complete would meet the minimum salary requirement, since the earnings at this rate ($30 per hour) would yield the artist $1,200 if 40 hours were worked;

(21) "regular course of business," as used in AS 23.10.060(d)(1), means those activities that are integral and necessary to any enterprise or activity in which the employer is primarily engaged;

(22) "salary" means, subject to the provisions of 8 AAC 15.908, a fixed and recurring amount of money constituting all or part of an exempt employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(23) "provision of medical services," as used in AS 23.10.060(d)(12), means those necessary hands-on, medical functions, procedures, and protocols that an employee renders personally to an individual patient, where the services involve face-to-face or other direct interaction between the employee and the patient.

(24) "summer camp" means a seasonal, non-profit, residential camp that provides

(A) creative recreational and educational opportunities;

(B) a program of activities for campers;

(C) sustained supervision of campers; and

(D) trained leadership tasked with educating campers.

(b) Repealed 4/29/99.

(c) For the purposes of AS 23.10.060(d)(12), "hospital" includes a nursing facility as described in 7 AAC 12.250 and licensed in accordance with 7 AAC 12.610.

(d) As used in AS 23.10.430, "personnel file and other personnel information" means all papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine that employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action; "personnel file and other personnel information"

(1) Includes

(A) applications;

(B) notices of commendation, warning or discipline;

(C) authorization for withholding or deductions from pay;

(D) records of hours worked and leave records;

(E) formal and informal employee evaluations;

(F) reports relating to the employee's character, credit, work habits, compensation, and benefits;

(G) medical records; and

(H) letters of reference or recommendations from third parties, including former employers;

(2) does not include

(A) information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy;

(B) information relating to an ongoing investigation of a violation of a criminal or civil statute by an employee; or

(C) an employer's ongoing investigation of employee misconduct.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 10/4/90, Register 115; am 2/10/93, Register 125; am 3/18/93, Register 125; am 4/29/99, Register 150; am 3/2/2008, Register 185; am 3/24/2011, Register 197; am 7/28/2013, Register 207; am 4/2/2023, Register 246)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085
AS 23.10.055 **AS 43.10.070** AS 23.10.430

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 considered "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, except if the reason for termination is

(1) falsification of the employment application;

(2) intoxication;

(3) fighting; or

(4) unexcused absence from duties for more than three consecutive scheduled work days

(b) Voluntary termination by an employee, who falls within the purview of AS 23.10.375-23.10.400, does not obligate the employer to provide return transportation unless the employee terminates because of

(1) misrepresentation of wages, working hours, lodging, or other conditions of employment; or

(2) working conditions or employer-provided lodging that is unsafe or unhealthy.

(c) The labor standards and safety division will accept an employer's finding for termination for intoxication, unless the employee furnishes evidence that demonstrates the employee was not intoxicated during the incident that was the basis for termination by the employer.

(d) For the purposes of this section, "intoxication" means affected by the use of drugs and alcohol.

(Eff. 4/17/74, Register 49; am 4/29/99, Register 150; am 3/2/2008, Register 185)

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 the employee's contract of employment and if immediate transportation is unavailable upon the termination, the employee is entitled to subsistence, 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; am 4/29/99; Register 150)

Authority: AS 23.10.380 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) 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 23.10.395
AS 23.10.385

8 AAC 20.030. DEFINITIONS. In this chapter, unless the context requires otherwise
(a) "return transportation" means all transportation costs to return the employee only to the original place of hire;
(b) "subsistence" means board and lodging furnished by the employer or $100 per day furnished by the employer for living expenses.
(Eff. 4/17/74, Register 49; am 9/28/85, Register 95; am 4/29/99, Register 150; am 3/2/2008, Register 185) 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 cases where the director 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 counsel is appearing in the matter on behalf of the respondent, service of notice, memoranda, recommendations, or other documents will be considered sufficient if made on the party, or counsel, or both.
(e) The director shall appoint a hearing officer to preside over the hearing and to make findings of fact and conclusions of law to be used as a basis for the hearing officer's 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 the hearing officer's 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 the respondent's or claimant's own behalf, that person 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; am 4/29/99, Register 150)
Authority: AS 23.05.060 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 after the close of the hearing.
(b) Upon making a 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, the decision may contain those orders and other relief as the hearing officer considers appropriate to correct the unlawful conduct. The hearing officer's decision is final.
(Eff. 5/18/78, Register 66; am 4/29/99, Register 150)
Authority: AS 23.05.060 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 and Workforce Development or the director's designee;
(2) "division" means the labor standards and safety division of the Alaska Department of Labor and Workforce Development;
(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 furnished by the employer and other similar advantages or fringe benefits received or anticipated to be received by an individual in the course of service that are a contractual condition of the 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 services that 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 has been hired on an hourly or weekly basis; the employee 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 travelling to or from the mine or tunnel opening to the working face or worksite.

(Eff. 5/18/78, Register 66; am 4/29/99, Register 150)

Authority: AS 23.05.060

CODE OF FEDERAL REGULATIONS (CFRs)

The following sections of Title 29 of the CFRs have been adopted by reference by the State. However, some federal provisions may conflict with Alaska law. In these cases, Alaska law prevails.

If you have questions, please contact your nearest Alaska Wage and Hour office for assistance.

PART 516-RECORDS TO BE KEPT BY EMPLOYERS

SUBPART A-GENERAL REQUIREMENTS

§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),

(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.

§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.)

§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.

(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.

§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

§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:

(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.

§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 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 non-overtime 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

§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 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.

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

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

§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.

§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 un-coerced. See Williams v. Atlantic Coast Line Railroad Co. (E.D.N.C.), 1W.H. Cases 289.

§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. See *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.

§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 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.

§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 cost," 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.

§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 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 script 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.

§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 541-DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

SUBPART G-SALARY REQUIREMENTS

§541.602 Salary basis.

(a) *General rule*. An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

(2) An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(3) Up to ten percent of the salary amount required by § 541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives, and commissions, that are paid annually or more frequently. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. This provision does not apply to highly compensated employees under § 541.601.

(i) If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by § 541.600(a), the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any such final payment made after the end of the 52-week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

(ii) An employee who does not work a full 52-week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established in paragraph (a)(3) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (a)(3)(i) of this section within one pay period after the end of employment.

(b) *Exceptions*. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for

two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full- day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy, or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy, or practice, and after the employee has exhausted the leave allowance thereunder. Thus for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a state disability insurance law or under a state workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

§541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in Sec. 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.

(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

PART 778-OVERTIME COMPENSATION SUBPART B-THE OVERTIME PAY REQUIREMENTS
PRINCIPLES FOR COMPUTING OVERTIME PAY
BASED ON THE "REGULAR RATE"

§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 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 guarantee*. 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.

§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 non-overtime 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.

§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 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.

§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.

§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 hour's standard.

§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 hour's 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.

§778.120 Deferred commission payments not identifiable as earned in particular work weeks.
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 ($416x12=$4,992÷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.

(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÷44=$2.18÷2=$1.09x4 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.

§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.

§778.122 Computation of overtime for commission employees on established basic rate.
Overtime pay for employees paid wholly or partly on a commission basis may be computed on an established basic rate, in lieu of the method described above. See §778.400 and part 548 of this chapter.

SUBPART C-PAYMENTS THAT MAY BE EXCLUDED FROM THE "REGULAR RATE" BONUSES

§778.208 Inclusion and exclusion of bonuses in computing the "regular rate."
Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans. These are discussed in §§778.211 through 778.214. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion on the bonus form as an evasive bookkeeping device, see §§778.502 and 778.503.

§778.209 Method of inclusion of bonus in regular rate.
(a) *General rules*. Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation. No difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the other earnings of the employee (except statutory exclusions) and the total divided by total hours worked. Under many bonus plans, however, calculations of the bonus may necessarily be deferred over a period of time longer than a workweek. In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done, he may pay compensation for overtime at one and one-half times the hourly rate paid to the employee, exclusive of the bonus. When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then

receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

(b) Allocation of bonus where bonus earnings cannot be identified with particular workweeks. If it is impossible to allocate the bonus among the workweeks of the period in proportion to the amount of the bonus actually earned each week, some other reasonable and equitable method of allocation must be adopted. For example, it may be reasonable and equitable to assume that the employee earned an equal amount of bonus each week of the period to which the bonus relates, and if the facts support this assumption additional compensation for each overtime week of the period may be computed and paid in an amount equal to one-half of the average hourly increase in pay resulting from bonus allocated to the week, multiplied by the number of statutory overtime hours worked in that week. Or, if there are facts which make it inappropriate to assume equal bonus earnings for each workweek, it may be reasonable and equitable to assume that the employee earned an equal amount of bonus each hour of the pay period and the resultant hourly increase may be determined by dividing the total bonus by the number of hours worked by the employee during the period for which it is paid. The additional compensation due for the overtime workweeks in the period may then be computed by multiplying the total number of statutory overtime hours worked in each such workweek during the period by one-half this hourly increase.

§778.210 Percentage of total earnings as bonus.

In some instances, the contract or plan for the payment of a bonus may also provide for the simultaneous payment of overtime compensation due on the bonus. For example, a contract made prior to the performance of services may provide for the payment of additional compensation in the way of a bonus at the rate of 10 percent of the employee's straight-time earnings, and 10 percent of his overtime earnings. In such instances, of course, payments according to the contract will satisfy in full the overtime provisions of the Act and no re-computation will be required. This is not true, however, where this form of payment is used as a device to evade the overtime requirements of the Act rather than to provide actual overtime compensation, as described in §§778.502 and 778.503.

§778.211 Discretionary bonus.

(a) *Statutory provision*. Section 7(e)(3)(a) of the Act provides that the regular rate shall not be deemed to include "sums paid in recognition of services performed during a given period if * * * (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly * * *". Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Discretionary character of excluded bonus*. In order for a bonus to qualify for exclusion as a discretionary bonus under section 7(e)(3)(a) the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express, or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it. Thus, if an employer announces to his employees in January that he intends to pay them a bonus in June, he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees. Such a bonus would not be excluded from the regular rate under section 7(e)(3)(a). Similarly, an employer who promises to sales employees that they will receive a monthly bonus computed on the

basis of allocating 1 cent for each item sold whenever, is his discretion, the financial condition of the firm warrants such payments, has abandoned discretion with regard to the amount of the bonus though not with regard to the fact of payment. Such a bonus would not be excluded from the regular rate. On the other hand, if a bonus such as the one just described were paid without prior contract, promise or announcement and the decision as to the fact and amount of payment lay in the employer's sole discretion, the bonus would be properly excluded from the regular rate.

(c) *Promised bonuses not excluded*. The bonus, to be excluded under section 7(e)(3)(a), must not be paid "pursuant to any prior contract, agreement, or promise." For example, any bonus which is promised to employees upon hiring or which is the result of collective bargaining would not be excluded from the regular rate under this provision of the Act. Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing employment until the time the payment is to be made and the like are in this category; in such circumstances they must be included in the regular rate of pay.

(d) *Labels are not determinative*. The label assigned to a bonus does not conclusively determine whether a bonus is discretionary under section 7(e)(3). Instead, the terms of the statute and the facts specific to the bonus at issue determine whether bonuses are excludable discretionary bonuses. Thus, regardless of the label or name assigned to bonuses, bonuses are discretionary and excludable if both the fact that the bonuses are to be paid and the amounts are determined at the sole discretion of the employer at or near the end of the periods to which the bonuses correspond and they are not paid pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly. Examples of bonuses that may be discretionary include bonuses to employees who made unique or extraordinary efforts which are not awarded according to pre-established criteria, severance bonuses, referral bonuses for employees not primarily engaged in recruiting activities, bonuses for overcoming challenging or stressful situations, employee-of-the-month bonuses, and other similar compensation. Such bonuses are usually not promised in advance and the fact and amount of payment is in the sole discretion of the employer until at or near the end of the period to which the bonus corresponds.

§778.212 Gifts, Christmas and special occasion bonuses.

(a) *Statutory provision*. Section 7(e)(1) of the Act provides that the term “regular rate” shall not be deemed to include “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency * * *”. Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Gift or similar payment*. To qualify for exclusion under section 7(e)(1) the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to the contract (so that the employee has a legal right to the payment and could bring suit to enforce it), it is not in the nature of a gift.

(c) *Application of exclusion*. If the bonus paid at Christmas or on other special occasion is a gift or in the nature of a gift, it may be excluded from the regular rate under section 7(e)(1) even though it is paid with regularity so that the employees are led to expect it and even though the amounts paid to

different employees or groups of employees vary with the amount of the salary or regular hourly rate of such employees or according to their length of service with the firm so long as the amounts are not measured by or directly dependent upon hours worked, production, or efficiency. A Christmas bonus paid (not pursuant to contract) in the amount of two weeks' salary to all employees and an equal additional amount for each 5 years of service with the firm, for example, would be excludable from the regular rate under this category.

§778.213 Profit-sharing, thrift, and savings plans. Section 7(e)(3)(b) of the Act provides that the term "regular rate" shall not be deemed to include "sums paid in recognition of services performed during a given period if * * * the payments are made pursuant to a bona fide profit- sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations * * *". Such sums may not, however, be credited toward overtime compensation due under the Act. The regulations issued under this section are parts 547 and 549 of this chapter. Payments in addition to the regular wages of the employee, made by the employer pursuant to a plan which meets the requirements of the regulations in part 547 or 549 of this chapter, will be properly excluded from the regular rate.

§778.214 Benefit plans; including profit-sharing plans or trusts providing similar benefits.

(a) *Statutory provision*. Section 7(e)(4) of the Act provides that the term "regular rate" shall not be deemed to include: "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees * * *." Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Scope and application of exclusion generally*. Plans for providing benefits of the kinds described in section 7(e)(4) are referred to herein as "benefit plans". It is section 7(e)(4) which governs the status for regular rate purposes of any contributions made by an employer pursuant to a plan for providing the described benefits. This is true irrespective of any other features the plan may have. Thus, it makes no difference whether or not the benefit plan is one financed out of profits or one which by matching employee contributions or otherwise encourages thrift or savings. Where such a plan or trust is combined in a single program (whether in one or more documents) with a plan or trust for providing profit-sharing payments to employees, the profit-sharing payments may be excluded from the regular rate if they meet the requirements of the Profit-Sharing Regulations, part 549 of this chapter, and the contributions made by the employer for providing the benefits described in section 7(e)(4) of the Act may be excluded from the regular rate if they meet the tests set forth in §778.215. Advance approval by the Department of Labor is not required.

(c) *Tests must be applied to employer contributions*. It should be emphasized that it is the employer's contribution made pursuant to the benefit plan that is excluded from or included in the regular rate according to whether or not the requirements set forth in §778.215 are met. If the contribution is not made as provided in section 7(e)(4) or if the plan does not qualify as a bona fide benefit plan under that section, the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in the regular hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

(d) *Employer contributions when included in fringe benefit wage determinations under Davis-Bacon Act*. As noted in §778.6 where certain fringe benefits are included in the wage predeterminations of the Secretary of Labor for laborers and mechanics performing contract work subject to the Davis-Bacon Act and related statutes, the provisions of Public Law 88-349 discussed in §5.32 of this title should be considered together with the interpretations in this part 778 in determining the excludability of such fringe benefits from the regular rate of such employees. Accordingly, reference should be made to §5.32 of this title as well as to §778.215 for guidance with respect to exclusion from the employee's regular rate of contributions made by the employer to any benefit plan if, in the workweek or workweeks involved, the employee performed work as a laborer or mechanic subject to a wage determination made by the Secretary pursuant to part 1 of this title, and if fringe benefits of the kind represented by such contributions constitute a part of the prevailing wages required to be paid such employee in accordance with such wage determination.

(e) *Employer contributions or equivalents pursuant to fringe benefit determinations under Service Contract Act of 1965*. Contributions by contractors and subcontractors to provide fringe benefits specified under the McNamara-O'Hara Service Contract Act of 1965, which are of the kind referred to in section 7(e)(4), are excludable from the regular rate under the conditions set forth in §778.215. Where the fringe benefit contributions specified under such Act are so excludable, equivalent benefits or payments provided by the employer in satisfaction of his obligation to provide the specified benefits are also excludable from the regular rate if authorized under part 4 of this title, subpart B, pursuant to the McNamara-O'Hara Act, and their exclusion there from is not dependent on whether such equivalents, if separately considered, would meet the requirements of §778.215. See §778.7.

§778.215 Conditions for exclusion of benefit-plan contributions under section 7(e)(4).

(a) *General rules*. In order for an employer's contribution to qualify for exclusion from the regular rate under section 7(e)(4) of the Act the following conditions must be met:

(1) The contributions must be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employees. This may be either a company-financed plan or an employer-employee contributory plan.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(3) In a plan or trust, either:

(i) The benefits must be specified or definitely determinable on an actuarial basis; or

(ii) There must be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employees participating in the plan; or

(ii) There must be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust under section 7(e)(4) of the Act.

(iv) Note: The requirements in paragraphs (a)(3)(ii) and (iii) of this section for a formula for determining the amount to be contributed by the employer may be met by a formula which requires a specific and substantial minimum contribution and which provides that the employer may add somewhat to that amount within specified limits; provided, however, that there is a reasonable relationship between the specified minimum and maximum contributions. Thus, formulas providing for a minimum contribution of 10 percent of profits and giving the employer discretion to add to that amount up to 20 percent of profits, or for a minimum contribution of 5 percent of compensation and discretion

to increase up to a maximum of 15 percent of compensation, would meet the requirement. However, a plan which provides for insignificant minimum contributions and permits a variation so great that, for all practical purposes, the formula becomes meaningless as a measure of contributions, would not meet the requirements.

(4) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use or benefit. (It should also be noted that in the case of joint employer- employee contributory plans, where the employee contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the Act may result if the employee contributions cut into the required minimum or overtime rates. See part 531 of this chapter.) Although an employer's contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of marking payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the employer. In such a case the return by the insurance company to the employer of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

(5) The plan must not give an employee the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan: Provided, however, That if a plan otherwise qualified as a bona fide benefit plan under section 7(e)(4) of the Act, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit

(i) at the time of the severance of the employment relation due to causes other than retirement, disability, or death, or

(ii) upon proper termination of the plan, or

(iii) during the course of his employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits described in section 7(e)(4) of the Act.

(b) *Plans under section 401(a) of the Internal Revenue Code*. Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401(a) of the Internal Revenue Code in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in paragraphs (a)(l), (4), and (5) of this section.

PART 785-HOURS WORKED SUBPART C-APPLICATION OF PRINCIPLES EMPLOYEES "SUFFERED OR PERMITTED" TO WORK

§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, and 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))

§785.12 Work performed away from the premises or job site.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

§785.13 Duty of management.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

WAITING TIME

§785.14 General.

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they may show that he waited to be engaged." (*Skidmore v. Swift*, 323 U.S. 134 (1944)) Such questions "must be determined in accordance with common sense and the general concept of work or employment." (*Central Mo. Tel. Co. v. Conwell*, 170 F. 2d 641 (C.A. 8, 1948))

§785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: *Skidmore v. Swift*, 323 U.S. 134, 137 (1944); *Wright v. Carrigg*, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960*); Mitchell v. Wigger*, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); *Mitchell v. Nicholson*, 179 F. Supp, 292,14 W.H. Cases 487 (W.D.N.C. 1959))

§785.16 Off duty.

(a) *General*. Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples*. A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, DC to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (*Skidmore v. Swift*, 323 U.S. 134, 137 (1944); *Walling v. Dunbar Transfer & Storage*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Gifford v. Chapman*, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); *Thompson v. Daugherty*, 40 Supp. 279 (D. Md. 1941))

§785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while “on call”. An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro*, Georgia, 61 F. Supp. 384 (S.D. Ga. 1945))

REST AND MEAL PERIODS

§785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp*., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

§785.19 Meal.

(a) *Bona fide meal periods*. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (*Culkin* v. *Glenn L. Martin, Nebraska Co.,* 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson* v. *Stock & Sons, Inc.,* 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs* v. *Joshua Hendy Corp.,* 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling* v. *Dunbar Transfer & Storage Co.,* 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton* v. *Seneca Coal and Coke Co.,*

2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell* v. *Tampa Cigar Co.,* 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass* v. *Hurwitz Co.,* 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) *Where no permission to leave premises*. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

§785.20 General.

Under certain conditions an employee is considered to be working even though some of his time is spent sleeping or in certain other activities.

§785.21 Less than 24-hour duty.

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator for example, who is required to be on duty for specified hours, is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished with facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (*Central Mo. Telephone Co.* v. *Conwell,* 170 F. 2d 641 (C.A. 8, 1948); *Strand* v. *Garden Valley Telephone Co.,* 51 F. Supp. 898 (D. Minn. 1943); *Whitsitt* v. *Enid Ice & Fuel Co.,* 2 W. H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942).)

§785.22 Duty of 24 hours of more.

(a) *General*. Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 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 is of more than 8 hours only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (*Armour* v. *Wantock,* 323 U.S. 126 (1944); *Skidmore* v. *Swift,* 323 U.S. 134 (1944); *General Electric Co.* v. *Porter,* 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); *Bowers* v. *Remington Rand,* 64 F. Supp. 620 (S.D. Ill, 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); *Bell* v. *Porter,* 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); *Bridgeman* v. *Ford, Bacon & Davis,* 161 F. 2d 962 (C.A. 8, 1947); *Rokey* v. *Day & Zimmerman,* 157 F. 2d 736 (C.A. 8, 1946); *McLaughlin* v. *Todd & Brown, Inc.,* 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); *Campbell* v. *Jones & Laughlin,* 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) *Interruptions of sleep*. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. (See *Eustice* v. *Federal Cartridge Corp.,* 66 F. Supp. 55 (D. Minn. 1946).)

§785.23 Employees residing on employer's premises or working at home.

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal

private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and to a telephone operator who has the switchboard in her own home. (*Skelly Oil Co.* v. *Jackson,* 194 Okla. 183, 148 P. 2d 182 (Okla. Sup. Ct. 1944; *Thompson* v. *Loring Oil Co.,* 50 F. Supp. 213 (W.D. La. 1943).)

PREPARATORY AND CONCLUDING ACTIVITIES

§785.24 Principles noted in Portal-to-Portal Bulletin.
In November 1947, the Administrator issued the Portal-to- Portal Bulletin (part 790 of this chapter). In dealing with this subject, §790.8(b) and (c) of this chapter said:
(b) The term "principal activities" includes all activities which are an integral part of a principal activity. Two examples of what is meant by an integral part of a principal activity are found in the report of the Judiciary Committee of the Senate on the Portal-to-Portal bill. They are the following:
(1) In connection with the operation of a lathe, an employee will frequently, at the commencement of his workday, oil, grease, or clean his machine, or install a new cutting tool. Such activities are an integral part of the principal activity and are included within such terms.
(2) In the case of a garment worker in a textile mill, who is required to report 30 minutes before other employees report to commence their principal activities, and who during such 30 minutes distributes clothing or parts of clothing at the workbenches of other employees and gets machines in readiness for operation by other employees, such activities are among the principal activities of such employee. Such preparatory activities, which the Administrator has always regarded as work and as compensable under the Fair Labor Standards Act, remain so under the Portal Act, regardless of contrary custom or contract.
(c) Among the activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance. If an employee in a chemical plant, for example, cannot perform his principal activities without putting on certain clothes, changing clothes on the employer's premises at the beginning and end of the workday would be an integral part of the employee's principal activity. On the other hand, if changing clothes is merely a convenience to the employee and not directly related to his principal activities, it would be considered as a “preliminary” or “postliminary” activity rather than a principal part of the activity. However, activities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities.

§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

§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;
(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.

§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.

§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.

§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.

§785.31 Special situations.
There are some special situations where the time spent 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.

§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

§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 in §§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.

§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.

§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 to 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.

§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 or example, an employee who works in Washington, DC, 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 mealtime would be deductible.

§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 workplace 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))

§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 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.

§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.

§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

§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.

§785.43 Medical attention.

Time spent by an employee 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.

§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.

§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

§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.

§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.
(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.

CODE OF FEDERAL REGULATIONS (CFRs)

The following sections of the CFRs are listed for your information only. Some federal provisions may conflict with Alaska law. In these cases, Alaska law prevails.

If you have any questions please contact the nearest Alaska Wage and Hour office for assistance.

Regulations Defining and Delimiting the Exemptions
Part 541: Executive, Administrative, Professional,
Outside Sales and Computer Employees

Title 29, Part 541 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Revised September 2019
Effective January 1, 2020

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Subpart A—General Regulations

§541.0 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act. Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

(b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions.

(c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are administered and enforced by the United States Equal Employment Opportunity Commission.

§541.1 Terms used in regulations.

Act means the Fair Labor Standards Act of 1938, as amended.

Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor Standards Act.

§541.2 Job titles insufficient.

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

§541.3 Scope of the section 13(a)(1) exemptions.

(a) The section 13(a)(1) exemptions and the regulations in this part do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill, and energy. Such nonexempt “blue collar” employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects, and archeologists. Thus, for

example, non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the Fair Labor Standards Act, and are not exempt under the regulations in this part no matter how highly paid they might be.

(b)

(1) The section 13(a)(1) exemptions and the regulations in this part also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the enterprise in which the employee is employed, or a customarily recognized department or subdivision thereof as required under §541.100. Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under §541.200.

(4) Such employees do not qualify as exempt professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as required under §541.300. Although some police officers, fire fighters, paramedics, emergency medical technicians and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in such occupations.

§541.4 Other laws and collective bargaining agreements.

The Fair Labor Standards Act provides minimum standards that may be exceeded but cannot be waived or reduced. Employers must comply, for example, with any Federal, State, or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the Act. Similarly, employers, on their own initiative or under a collective bargaining agreement with a labor union, are not precluded by the Act from providing a wage higher than the statutory minimum, a shorter workweek than the statutory maximum, or a higher overtime premium (double time, for example) than provided by the Act. While collective bargaining agreements cannot waive or reduce the Act's protections, nothing in the Act or the regulations in this part relieves employers from their contractual obligations under collective bargaining agreements.

Subpart B—Executive Employees

§541.100 General rule for executive employees.

(a) The term "employee employed in a bona fide executive capacity" in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary basis pursuant to § 541.600 at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

(b) The phrase "salary basis" is defined at §541.602; "board, lodging or other facilities" is defined at §541.606; "primary duty" is defined at §541.700; and "customarily and regularly" is defined at §541.701.

§541.101 Business owner.

The term "employee employed in a bona fide executive capacity" in section 13(a)(1) of the Act also includes any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The term "management" is defined in §541.102. The requirements of Subpart G (salary requirements) of this part do not apply to the business owners described in this section.

§541.102 Management.

Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

§541.103 Department or subdivision.

(a) The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal

employment opportunity, and personnel management, each of which has a permanent status and function.

(b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise.

(c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

§541.104 Two or more other employees.

(a) To qualify as an exempt executive under §541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase “two or more other employees” means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

(b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers.

(c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement.

(d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

§541.105 Particular weight.

To determine whether an employee's suggestions and recommendations are given “particular weight,” factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have “particular weight” even if a higher-level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

§541.106 Concurrent duties.

(a) Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements of §541.100 are otherwise met. Whether an employee

meets the requirements of §541.100 when the employee performs concurrent duties is determined on a case-by-case basis and based on the factors set forth in §541.700. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.

(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves, and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.

(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Subpart C—Administrative Employees

§541.200 General rule for administrative employees.

(a) The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(b) The term “salary basis” is defined at §541.602; “fee basis” is defined at §541.605; “board, lodging or other facilities” is defined at §541.606; and “primary duty” is defined at §541.700.

§541.201 Directly related to management or general business operations.

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase “directly related to the management or general business operations” refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the

business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet, and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

(c) An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

§541.202 Discretion and independent judgment.

(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term “matters of significance” refers to the level of importance or consequence of the work performed.

(b) The phrase “discretion and independent judgment” must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term “discretion and independent judgment” does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be

subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also §541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent, or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

§541.203 Administrative exemption examples.

(a) Insurance claims adjusters generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(b) Employees in the financial services industry generally meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. However, an employee whose primary duty is selling financial products does not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if such

employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret, or implement employment policies and management consultants who study the operations of a business and propose changes inorganization generally meet the duties requirements for the administrative exemption. However, personnel clerks who “screen” applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not meet the duties requirements for the administrative exemption. Such personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum standards are usually set by the exempt human resources manager or other company officials, and the decision to hire from the group of qualified applicants who do meet the minimum standards is similarly made by the exempt human resources manager or other company officials. Thus, when the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, generally do not meet the duties requirements for the administrative exemption. Such employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards does not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.

(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store does not qualify for the administrative exemption. However, the buyer who evaluates such reports on competitor prices to set the employer's prices generally meets the duties requirements for the administrative exemption.

(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health, or sanitation, environmental or soils specialists and similar employees, generally do not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. Such employees also do not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

§541.204 Educational establishments.

(a) The term "employee employed in a bona fide administrative capacity" in section 13(a)(1) of the Act also includes employees:

(1) Compensated on a salary or fee basis at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

(2) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

(b) The term "educational establishment" means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curriculums in secondary education. The term "other educational establishment" includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary, or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase "performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and other employees with similar responsibilities.

(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunchroom managers or dietitians do not perform academic administrative functions. Although such work is not considered academic

administration, such employees may qualify for exemption under §541.200 or under other sections of this part, provided the requirements for such exemptions are met.

Subpart D—Professional Employees

§541.300 General rule for professional employees.

(a) The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; and

(2) Whose primary duty is the performance of work:

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

(ii) Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

(b) The term "salary basis" is defined at §541.602; "fee basis" is defined at §541.605; "board, lodging or other facilities" is defined at §541.606; and "primary duty" is defined at §541.700.

§541.301 Learned professionals.

(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:

(1) The employee must perform work requiring advanced knowledge;

(2) The advanced knowledge must be in a field of science or learning; and

(3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

(b) The phrase "work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

(c) The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge

level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

(e)

(1) *Registered or certified medical technologists*. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption.

(2) *Nurses*. Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations.

(3) *Dental hygienists*. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption.

(4) *Physician assistants*. Physician assistants who have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants generally meet the duties requirements for the learned professional exemption.

(5) *Accountants*. Certified public accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(6) *Chefs*. Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work.

(7) *Paralegals*. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide

expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption.

(8) *Athletic trainers*. Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification of the National Athletic Trainers Association Board of Certification generally meet the duties requirements for the learned professional exemption.

(9) *Funeral directors or embalmers*. Licensed funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

(f) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in paragraphs (e)(1), (e)(3), (e)(4), (e)(8) and (e)(9) of this section also may be created in the future. Such organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

§541.302 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be “in a recognized field of artistic or creative endeavor.” This includes such fields as music, writing, acting and the graphic arts.

(c) The requirement of “invention, imagination, originality or talent” distinguishes the creative professions from work that primarily depends on intelligence, diligence, and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality, or talent exercised by the employee. Determination of exempt creative professional status, therefore, must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen-play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an “animator” of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality, or talent, as opposed to work which

depends primarily on intelligence, diligence, and accuracy. Employees of newspapers, magazines, television, and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters also do not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. However, journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television, or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns or other commentary; or acting as a narrator or commentator.

§541.303 Teachers.

(a) The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term "educational establishment" is defined in §541.204(b).

(b) Exempt teachers include but are not limited to: Regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

(d) The requirements of §541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

§541.304 Practice of law or medicine.

(a) The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act also shall mean:

(1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and

(2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).
(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.
(d) The requirements of §541.300 and subpart G (salary requirements) of this part do not apply to the employees described in this section.

Subpart E—Computer Employees

§541.400 General rule for computer employees.
(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.
(b) The section 13(a)(1) exemption applies to any computer employee who is compensated on a salary or fee basis at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities. The section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate of not less than $27.63 an hour. In addition, under either section 13(a)(1) or section 13(a)(17) of the Act, the exemptions apply only to computer employees whose primary duty consists of:
(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
(3) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.
(c) The term "salary basis" is defined at §541.602; "fee basis" is defined at §541.605; "board, lodging or other facilities" is defined at §541.606; and "primary duty" is defined at §541.700.

§541.401 Computer manufacture and repair.
The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters, and others skilled in computer-aided design software), but who are not primarily

engaged in computer systems analysis and programming, or other similarly skilled computer-related occupations identified in §541.400(b), are also not exempt computer professionals.

§541.402 Executive and administrative computer employees.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

Subpart F—Outside Sales Employees

§541.500 General rule for outside sales employees.

(a) The term "employee employed in the capacity of outside salesman" in section 13(a)(1) of the Act shall mean any employee:

(1) Whose primary duty is:

(i) making sales within the meaning of section 3(k) of the Act, or

(ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.

(b) The term "primary duty" is defined at §541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences.

(c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

§541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that "sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the

client or customer." Obtaining orders for "the use of facilities" includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

§541.502 Away from employer's place of business.

An outside sales employee must be customarily and regularly engaged "away from the employer's place or places of business." The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone, or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business. Similarly, an outside sales employee does not lose the exemption by displaying the employer's products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one or two weeks) should not be considered as the employer's place of business.

§541.503 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work. An employee who does not satisfy the requirements of this subpart may still qualify as an exempt employee under other subparts of this rule.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt outside sales work.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is not exempt outside sales work.

§541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of

drivers who sell, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving or delivering products, shall be regarded as exempt outside sales work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including, but not limited to: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

(1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

(2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

(3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods.

(4) A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include:

(1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

(3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G—Salary Requirements

§541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $684 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal Government, or $380 per week if employed in American Samoa by employers other than the Federal Government), exclusive of

board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

(b) The required amount of compensation per week may be translated into equivalent amounts for periods longer than one week. For example, the $684-per-week requirement will be met if the employee is compensated biweekly on a salary basis of not less than $1,368, semimonthly on a salary basis of not less than $1,482, or monthly on a salary basis of not less than $2,964. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in §541.204(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in §541.400(b).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (see §541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see §541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see §541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§541.601 Highly compensated employees.

(a)(1) Beginning on January 1, 2020, an employee with total annual compensation of at least $107,432 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee as identified in subparts B, C or D of this part.

(2) Where the annual period covers periods both prior to and after January 1, 2020, the amount of total annual compensation due will be determined on a proportional basis.

(b)

(1) ‘‘Total annual compensation’’ must include at least $684 per week paid on a salary or fee basis as set forth in §§ 541.602 and 541.605, except that § 541.602(a)(3) shall not apply to highly compensated employees. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in § 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

(2) If an employee’s total annual compensation does not total at least the amount specified in the applicable subsection of paragraph (a) by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, for a 52-week period beginning January 1, 2020, an employee may earn $90,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $17,432 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $12,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $5,432 to the employee. Any such final payment made after the end of the 52-week period may count only toward the

prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C, or D of this part.

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (b)(2) of this section within one month after the end of employment.

(4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee will qualify for exemption if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under §541.100.

(d) This section applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non-management production-line workers and non-management employees in maintenance, construction, and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section no matter how highly paid they might be.

§541.602 Salary basis.

(a) *General rule*. An employee will be considered to be paid on a "salary basis" within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

(2) An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(3) Up to ten percent of the salary amount required by § 541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives, and commissions, that are paid annually or more frequently. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance,

the calendar year will apply. This provision does not apply to highly compensated employees under § 541.601.

(i) If by the last pay period of the 52- week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by § 541.600(a), the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any such final payment made after the end of the 52-week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

(ii) An employee who does not work a full 52-week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established in paragraph (a)(3) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (a)(3)(i) of this section within one pay period after the end of employment.

(b) Exceptions. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a state disability insurance law or under a state workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an

employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

§541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions, if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in §541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.

(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§541.604 Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $684 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $684 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $684 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee’s earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee’s usual earnings at the assigned hourly, daily or shift rate for the employee’s normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $725 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $210 per shift without violating the $684-per-week salary basis requirement. The reasonable relationship requirement applies only if the employee’s pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store’s profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

§541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a “fee basis” within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its

completion. These payments resemble piecework payments with the important distinction that generally a “fee” is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least the minimum salary per week, as required by §§ 541.600(a) and 541.602(a), if the employee worked 40 hours. Thus, an artist paid $350 for a picture that took 20 hours to complete meets the $684 minimum salary requirement for exemption since earnings at this rate would yield the artist $700 if 40 hours were worked.

§541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in §541.600, “exclusive of board, lodging or other facilities.” The phrase “exclusive of board, lodging or other facilities” means “free and clear” or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes “board, lodging, or other facilities” are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term “other facilities” refers to items similar to board and lodging, such as 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; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

Subpart H—Definitions and Miscellaneous Provisions

§541.700 Primary duty.

(a) To qualify for exemption under this part, an employee's “primary duty” must be the performance of exempt work. The term “primary duty” means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time

alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.

(c) Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement.

§541.701 Customarily and regularly.

The phrase "customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

§541.702 Exempt and nonexempt work.

The term "exempt work" means all work described in §§541.100, 541.101, 541.200, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered "nonexempt."

§541.703 Directly and closely related.

(a) Work that is "directly and closely related" to the performance of exempt work is also considered exempt work. The phrase "directly and closely related" means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work "directly and closely related" to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

(1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

(2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties.

(3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

(4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases, the setup work, or adjustment of the machine

for a particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work may be a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work.

(5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions.

(6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such notetaking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign notetaking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption.

(7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under §541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

(8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work.

(9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants.

(10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

§541.704 Use of manuals.

The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial, or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under section 13(a)(1) of the Act or the regulations in this part. Such manuals and procedures provide guidance in

addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. The section 13(a)(1) exemptions are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

§541.705 Trainees.

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales, or computer employee.

§541.706 Emergencies.

(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.

(b) An “emergency” does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

(1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive.

(2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work.

(3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.

(4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

§541.707 Occasional tasks.

Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates; practicability of delegating the work to a nonexempt employee; whether the exempt employee performs the task frequently or occasionally; and existence of an industry practice for the exempt employee to perform the task.

§541.708 Combination exemptions.

Employees who perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees may qualify for

exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

§541.709 Motion picture producing industry.

The requirement that the employee be paid ‘‘on a salary basis’’ does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $1,043 per week (exclusive of board, lodging, or other facilities).Thus, an employee in this industry who is otherwise exempt under subparts B, C, or D of this part, and who is employed at a base rate of at least the applicable current minimum amount a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided, and the daily base rate would yield at least the minimum weekly amount if 6 days were worked; or

(b) The employee is in a job category having the minimum weekly base rate and the daily base rate is at least one-sixth of such weekly base rate.

§541.710 Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of §541.602 shall not be disqualified from exemption under §§541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

(1) Permission for its use has not been sought or has been sought and denied;

(2) Accrued leave has been exhausted; or

(3) The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

PART 778-OVERTIME COMPENSATION SUBPART D-SPECIAL PROBLEMS
CHANGE IN THE BEGINNING OF THE WORKWEEK

§778.301 Overlapping when change of workweek is made.

As stated in §778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the "old" workweek as previously constituted and the "new" workweek. Thus, if the workweek in the plant commenced at 7 a.m. on Monday and it is now proposed to begin the

workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

§778.302 Computation of overtime due for overlapping workweeks.

(a) *General rule*. When the beginning of the workweek is changed, if the hours which fall within both "old" and "new" workweeks as explained in §778.301 are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will assume that the overtime requirements of section 7 of the Act have been satisfied if computation is made as follows:

(1) Assume first that the overlapping hours are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime compensation due for each of the 2 workweeks on this basis and total the two sums.

(2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old and complete the total computation accordingly.

(3) Pay the employee an amount not less than the greater of the amounts computed by methods (1) and (2).

(b) *Application of rule illustrated*. Suppose that, in the example given in §778.301, the employee, who receives $5 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last "old" workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the "new" workweek at 7 a.m. on March 7. If in the "new" workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the Application of rule illustrated. Suppose that, in the example given in §778.301, the employee, who receives $5 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last "old" workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the "new" workweek at 7 a.m. on March 7. If in the "new" workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the 5 hours worked on Sunday, it is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid $237.50 (40 x $5+5x$7.50) for the period of March 1 through March 7, and $175 (35 x $5) for the period of March 8 through March 13.

(c) *Non-statutory obligations unaffected*. The fact that this method of compensation is permissible under the Fair Labor Standards Act when the beginning of the workweek is changed will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

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