



January 2, 2024

Dear Employers and Employees,

The Alaska Department of Labor and Workforce Development, Wage and Hour office (Department) has developed this letter to provide clarity to some of the most common labor laws as they pertain to the shore-based fish processing industry. For the purpose of education, this letter is being made available as an industry-wide notice to inform employers and employees of these requirements. The issues that have been most frequently found in the complaints and subsequent enforcement activities are:

- The absence of written hiring agreements between the employer and the employee;
- Changes to the rate of pay without the required written notice;
- Payment of wages and overtime inconsistent with the *Alaska Wage and Hour Act*;
- Nonpayment of wages for all hours worked;
- Insufficient or non-existent records of all daily and weekly hours worked by every employee;
- Employees subjected to unlawful deductions from wages, the withholding of paychecks, or the reimbursement to employers for room and board above statutory limits and without written authorization;
- Employees not being fully paid within the required time frames after termination;
- Employees not being provided return transportation when the employer is required to do so;
- Employees exposed to amputation hazards from improperly de-energized or unguarded equipment (AKOSH);
- Inadequate safety training or safety training not presented in language understood by the employee (AKOSH).

To repeat, this letter has been developed for the purpose of education and addresses complaints and misunderstandings often found within the fish processing industry. We will address each of these issues in this letter and we are always available to discuss any follow-up questions you may have.

## **Written Hiring Agreements and Changes in the Rate of Pay**

Under Alaska Labor law employers must provide all employees with a written notice of three things: their rate of pay, where they will be receiving payment, and the established pay day of not less than once per month (weekly, bi-weekly, monthly). Any time the employer elects to make a change to any of the three items in this agreement, they must provide the employee with another written notification no later than on the payday before the time of change. The change cannot be made in the middle of a payperiod and cannot be retroactive.<sup>1</sup>

### **Minimum Wage and Overtime**

Except as otherwise provided for in law, an employer is required to pay each employee a minimum wage, for all hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise.

The Alaska minimum wage is currently \$11.73 per hour as of January 1, 2024 and is adjusted annually. Barring any allowable exemptions, an employee who works over 8 hours in a day and/or more than 40 straight-time hours in a week must be paid 1.5 times their *regular rate*<sup>2</sup> of pay. (This requirement of the law is referred to as “overtime”).<sup>3</sup> Furthermore, if an employee is paid at more than one rate of pay for work performed during a workweek, the overtime is to be calculated by using a *weighted average* formula.<sup>4</sup>

If the work is directed by *or allowed* by the employer or if the employer has reason to suspect that the employee performed work, the time spent working is compensable time.<sup>5</sup>

### **Accurate Record of Hours Worked**

An employer shall keep an accurate record of all the daily and weekly hours worked by each person.<sup>6</sup> A mere record of hours scheduled may not be sufficient to account for all the hours actually worked by the employee. As a best practice, employees should also keep a record of hours separately from their employer’s so they can check the employer’s accounting for accuracy at the time of payment. This record could also serve as evidence of hours worked in the event a dispute over wages occurs.

### **Breaks and Down Time**

If an employee is completely relieved from all duties for a period of 20 minutes or more during which the employee may use the time effectively for his/her own purpose, then the period can be classified as a break and need not be counted as time worked.<sup>7</sup> Again, the employer is expected to keep an accurate record of the daily and weekly hours worked by each employee to assure proper payment for all time worked. Taking deductions for meal periods that were provided but not taken by the employee, or wherein the employee was not completely relieved of all duties while eating is prohibited.

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<sup>1</sup> AS 23.05.160

<sup>2</sup> 8 AAC 15.100

<sup>3</sup> AS 23.10.060

<sup>4</sup> 29 C.F.R. §778.115

<sup>5</sup> 29 C.F.R. §785.11

<sup>6</sup> AS 23.05.080

<sup>7</sup> 29 C.F.R. §785.18

## Orientation and Training

Time spent in orientation and training that is directly related to the employee's job, given by or under the control of the employer is considered work time and is therefore compensable time.

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if all four of the following 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.<sup>8</sup>

However, it is not voluntary in fact, if the employee is led to believe that their present working conditions or the continuance of their employment would be adversely affected by nonattendance.

The training is considered to be directly related to the employee's job if it is designed to make the employee handle their job more effectively as distinguished from training him for another job, or to a new or additional skill. Time spent in such a course given by the employer or under his control is hours worked.<sup>9</sup>

## Deductions

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

An employer may deduct from an employee's wage for the following based on written agreement:

- A deduction from wages could be made based on a written agreement signed by the employee, directing the employer to provide wages for the employee's benefit to a creditor, donee, or other third party. An example of this type of deduction would be payments to an employee's medical insurance plan or retirement plan.
- Deductions, based on a written agreement signed by an employee, for charges for items which are made available for the employee's benefit, and are not sold to the public in the employer's usual course of business, and are purchased voluntarily by the employees. Examples of deductions include: pop, candy, cigarettes, magazines, books, etc., made available through the company's store. These types of deductions may be treated as an advance against wages and may be deducted from minimum wage or overtime. In order to be considered an advance the deducted charges must not extend beyond the pay period in which they were incurred. Charges that are split over multiple pay periods would be classified as a loan and may not reduce the employees wage rate below minimum wage or overtime rate.

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

- Lost, missing, or stolen property, unless the employee admits willingly and in writing to having

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<sup>8</sup> 29 C.F.R. §785.27

<sup>9</sup> 29 C.F.R. §785.29

- personally taken the specific property alleged to be lost, missing or stolen.
- Damage or breakage costs, unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.
- For a more thorough list of unlawful deductions see Alaska regulation 8 AAC 15.160.

### **Uniforms:**

An employer may not require an employee to purchase a uniform or equipment if its use is required by the federal, state, or local safety or health codes. Additionally, purchase cannot be required if the nature of the business requires the use of the uniform or equipment, and if the uniform is distinctive and advertises the products or services of the employer and cannot be worn or used during normal social activities of the employee. An employer may charge for clothing or equipment that constitutes a uniform and that advertises the products or services of the business if the item is customarily sold to the public by the employer<sup>10</sup> and can be worn or used during normal social activities of the employee.

### **Room and Board**

When an employee lives at the home, the employer is allowed to deduct an amount from the employee's wages for the reasonable cost of room and board. The amount of this deduction must be reasonable and without profit to the employer and based on a *written agreement signed by the employee*. Use of the facilities must be voluntarily, and no deduction for room and board is lawful in any situation in which an employer requires an employee to use the employer-provided facilities. Hiring or firing of employees based upon the employee's willingness to authorize deductions for room and board costs from their check is not considered voluntary.<sup>11</sup>

Furthermore, unless the employer and the employee have a *written agreement*, that meets the requirements of Alaska regulation 8 AAC 15.160, signed by the employee, before the deduction, the employer is prohibited from seeking to retroactively deduct the cost of room and board from their wages as an offset against wages due upon termination or wage deficiencies subject to collection by the department. An employer may deduct an amount from the minimum wage or overtime rates set out under AS 23.10 of an employee's earnings, to reimburse an employer for the reasonable cost of furnishing board or lodging based on a written agreement. A deduction of \$20 per day or less for board or lodging will not require a determination by the director unless evidence indicates that the deductions unreasonable for the board or lodging provided or results in a profit to the employer. Before an employer decides they will implement a room and board agreement, they should consult Alaska Regulation 8 AAC 15.160(d) for the full list of requirements.<sup>12</sup>

### **Right to Return Transportation and Subsistence**

An employer who provides, pays for, agrees to provide or pay for transportation for a person from the place of hire to a point inside or outside the state to employ the person shall, when the job comes to an end, provide the person with return transportation to the place of hire, or to a destination agreed upon by both parties.<sup>13</sup> This is defined as all transportation costs to return the employee only to the

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<sup>10</sup> 8 AAC 15.165

<sup>11</sup> 8 AAC 15.160

<sup>12</sup> 8 AAC 15.160

<sup>13</sup> AS 23.10.380

original place of hire.<sup>14</sup>

Return transportation is subject to the following conditions:

- Must be provided on or after termination of employment for a cause considered good and sufficient by the Department, or for reasons beyond the person's control, or after termination of the contract of employment or a renewal of the contract.
- Must be provided to the eligible employee when requested by the employee or the Department within 45 days after termination.

If an employer terminates an employee to whom return transportation *is due*, return transportation must be provided unless 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 working days.

Return transportation is not due if an employee voluntarily terminates their position *unless* the employee's reason for termination is one of the following:

- 1) Misrepresentation of wages, working hours, lodging, or other conditions of employment; or
- 2) Working conditions of employer-provided lodging that is unsafe or unhealthy.<sup>15</sup>

When an employee is owed return transportation and immediate transportation back to the point of hire is unavailable, the employee is entitled to subsistence. Subsistence is due from the date of termination until the date that transportation becomes available, or for 10 days, whichever occurs first.<sup>16</sup>

Subsistence is defined as board and lodging furnished by the employer or \$100 per day furnished by employer for living expenses.<sup>17</sup>

### **Proof of Earnings/Paycheck Stubs**

An employer must provide each employee a written or electronic statement of earnings and deductions for each pay period, otherwise known as a pay stub. The statement of earnings and deductions must contain the employee's:

- Rate of pay;
- Gross wages;
- Net wages;
- Beginning and end dates of the pay period;
- Federal income tax deductions;
- Federal Insurance Contribution Act deductions;
- Alaska Employment Security Act contributions;
- Board and lodging costs;
- Advances;

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<sup>14</sup> 8 AAC 20.030(1)

<sup>15</sup> 8 AAC 20.010

<sup>16</sup> 8 AAC 20.020

<sup>17</sup> 8 AAC 20.030(2)

- Straight time and overtime hours actually worked in the pay period;
- Other authorized deductions.<sup>18</sup>

### **Final Paycheck**

If the employment is terminated by the employee, payment is due at the next regular payday that is at least three days after the employer received notice of the employee's termination of services. If employment is terminated by the employer, regardless of the cause for the termination, *payment is due within three working days after the day of termination.*<sup>19</sup> The day of termination, weekends, and bank or state holidays, are not included in these three days. Where an employer violates this statute, the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount. Final paychecks are to be provided to the employee in the same manner that they normally receive them or an agreed upon manner. Employers should not take it upon themselves to mail final paychecks to the employee unless the employee agrees to this method. If final paychecks are mailed, we suggest that the employer verifies the address before sending the final paycheck and pay statement.

Employers may not hold an employee's final paychecks regardless of real or perceived debts owed to the employer. (*See section on deductions for lawful withholding from an employees paycheck.*)

### **Workers' Compensation Coverage**

Any business operating in Alaska with even one part-time employee is required to carry workers' compensation insurance under Alaska Statute 23.30.075. The policy must be bound in the State of Alaska; Alaska is not a reciprocal state and does not recognize coverage bound in any other state or country, even if the policy purports to cover an injury occurring in Alaska. There is no exemption for family members or friends for purposes of workers' compensation liability. Employee status is determined using the independent contractor definition found in Alaska Statute 23.30.230(a)(12). The criteria in this definition are all-inclusive. Penalties for not having workers' compensation coverage are severe. It is a crime under the Alaska Workers' Compensation Act for employers to misclassify employees or deduct all or any portion of workers' compensation premiums from an employee's paycheck. If you have questions regarding workers' compensation requirements, please download and review the Employer's Guide to the Alaska Workers' Compensation Act at [https://labor.alaska.gov/wc/publications/employer\\_guide\\_to\\_wc\\_act.pdf](https://labor.alaska.gov/wc/publications/employer_guide_to_wc_act.pdf) or contact the Alaska Division of Workers' Compensation at (907) 269-4002

### **Alaska Occupational Safety and Health**

All employees in Alaska have the right to a safe and healthy work environment under Alaska Statutes 18.60.10 through AS 18.60.105. Alaska Occupational Safety and Health (AKOSH) enforces these standards through inspections of workplaces. Some of the most commonly found serious hazards are unguarded or improperly guarded machinery, insufficient Lock-out Tag-out work practices and insufficient safety training. Often times, safety related training is not offered in all languages spoken by employees. AKOSH may inspect a workplace based on an employee complaint, report of a workplace injury, or through emphasis programs. Employees have the right to submit workplace safety concerns to the Occupational Safety and Health Administration (OSHA) or AKOSH by phone, online or in person. Names of complainants are confidential and are not disclosed to employers. Furthermore, both State and Federal law prohibit employers from retaliating or discriminating against

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<sup>18</sup> 8 AAC 15.160

<sup>19</sup> AS 23.05.140

employees who exercise their safety and health rights by filing complaints with management, AKOSH or OSHA (AS 18.60.089). Finally, employers are required to verbally report any workplace accident that results in a death, amputation, loss of eye or inpatient hospitalization within 8 hours to AKOSH (AS 18.60.58).

### **Anchorage Seafood Office**

Located within the Anchorage Job Center Midtown at 3301 Eagle Street, Room #102. The Seafood Office is the crossroads for Alaska's seafood workers and many seafood employers recruit directly from there. The following services are offered:

- Seafood Orientations - Learn about working in the Alaskan seafood industry.
- Referrals and job placements based on jobseeker skills.

Office Hours:

Monday – Friday, 8 a.m.- 5 p.m.

To reach the Anchorage Seafood Office, call (907) 269-4746. Their website can be found at:

<https://jobs.alaska.gov/seafood/processing.html>

### **Resources**

In conclusion, a business that is involved in practices that are not consistent with Alaska Wage and Hour laws must correct the discrepancies immediately to avoid future enforcement actions.

We hope that your organization will take this opportunity to conduct an internal review and voluntarily make any wage adjustments. We have noted several applicable statutes and regulations for your review. Employers are encouraged to conduct a complete review of Alaska's wage and hour laws and regulations as published in the *Pamphlet 100* publication, which can be found at:

<http://labor.alaska.gov/lss/forms/pam100.pdf>

The Wage and Hour office provides a cost-free counseling service to Alaska employers, and we invite you to take advantage of this service. A regular, monthly webinar is offered to employers and employees concerning wage and hour laws. Check our website for the webinar schedule and contact our office at (907) 269-4900 for registration. In addition, an investigator is on duty Tuesday, Wednesday, and Thursday from 8:30 a.m. to 4:30 p.m. excluding the noon hour, to answer any questions you may have.

Our website can be found at: <http://labor.alaska.gov/lss/whhome.htm>

Through AKOSH, employers can request on-site evaluation visits and/or training to fit specific needs of their companies by filling out and submitting the online request form located at

[https://labor.alaska.gov/lss/forms/consultation\\_training\\_form.pdf](https://labor.alaska.gov/lss/forms/consultation_training_form.pdf)

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

<https://alaskabar.org/>