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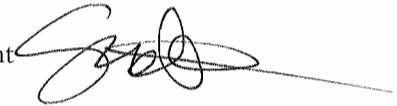


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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Sharon Busch, AAC Contact
Department of Labor and Workforce Development

FROM: Scott Clark
Special Assistant 
907.465.4081

DATE: February 22, 2011

RE: Filed Permanent Regulations: Department of Labor and Workforce Development

Regulations re: wages and hours, overtime rates for certain truck drivers, the definition of "provision of medical services" by an employee for purposes of overtime rates, and the definition of "on-site" for purposes of public construction and public work: 8 AAC 15.101(a); 8 AAC 15.910(a)(23); 8 AAC 30.910

Attorney General File:	JU2010201999
Regulation Filed:	2/22/2011
Effective Date:	3/24/2011
Print:	197, April 2011

cc with enclosures: Linda Miller, Department of Law
Kristen Peterson, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS OF
THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

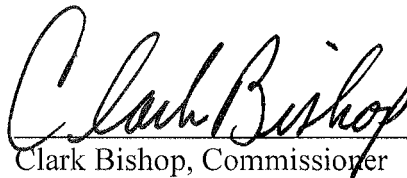
The attached 6 pages of regulations, dealing with alternative rates of overtime, adding a definition for the term "provision of medical services," and clarifying, defining or re-defining various terms and phrases related to the trucking industry, are adopted and certified to be a correct copy of the regulation changes that the Department of Labor and Workforce Development adopts under the authority of AS 23.05.060; AS 23.10.060; AS 23.10.085; AS 23.10.095; AS 23.10.100; AS 36.05.030; AS 36.10.075; and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Labor and Workforce Development paid special attention to the cost to private persons of the regulatory action being taken.

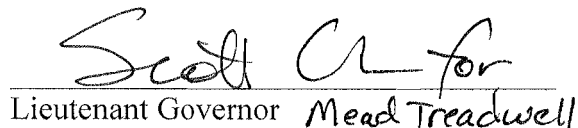
The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 2-9-2011
Juneau, Alaska


Clark Bishop, Commissioner

FILING CERTIFICATION

✓ Scott Clark for
I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on February 22, 2011, at 12:58pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor Mead Treadwell

Effective: March 24, 2011
Register: 197, April 2011

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, MEAD TREADWELL, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

Scott Clark, SPECIAL ASSISTANT



IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 8, 2010.

A handwritten signature in black ink, appearing to read "Mead Treadwell", is written over a horizontal dotted line.

**MEAD TREADWELL
LIEUTENANT GOVERNOR**

Chapter 15. Alaska Wages and Hours.

Article 2. Minimum Wages and Overtime.

8 AAC 15.101(a) is amended to read:

(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.**

(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 23.10.100
AS 23.10.060

Article 6. General Provisions.

8 AAC 15.910(a) is amended by adding a new paragraph to read:

(23) "provision of medical services," as used in as 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.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 10/4/90, Register 115; am 2/10/93,

Register 197, April 2011 LABOR AND WORKFORCE DEV.

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)

Authority: AS 23.05.060 AS 23.10.085 AS 23.10.430

AS 23.10.060

Chapter 30. Public Contracts.

Article 6. General Provisions.

8 AAC 30.910 is repealed and readopted to read:

8 AAC 30.910. Definition of "on-site." (a) In AS 36.95.010(3), "on-site" means at the physical place where the construction called for in a contract will remain when work on it has been completed and at other property used by the contractor or subcontractor in the construction, which can reasonably be said to be included in the site because of proximity. The scope of "on site"

(1) has the following exceptions:

(A) for a truck driver employee or truck driver owner/operator working for a contractor or subcontractor on the project, "on-site" encompasses all round-trip truck driving activity associated with delivering or hauling away materials, equipment, or supplies for the purposes of completing a public construction contract;

(B) for a truck driver employee or truck driver owner/operator who is working for a contractor or subcontractor on the project, and who, for the purposes of completing a public construction contract, hauls materials, equipment, or supplies away

from a public construction project footprint, but does not return to the public construction project, "on-site" encompasses the haul-away activities until the truck is offloaded;

(C) a truck driver performing delivery as an employee of a bona fide material supplier or common carrier is not "on-site" when delivering materials from a location that is not "on-site," including that material supplier's home yard or warehouse, if that location is not dedicated exclusively or nearly so to performance of one or more public construction projects;

(2) is extensive for larger projects, including airports, dams, and roads, and includes the whole area in which the contract construction activity will take place; work areas separate from the physical footprint of the construction activity, including fabrication plants, mobile factories, batch plants, borrow pits, rock quarries, job headquarters, tool yards, and similar work areas, are "on-site" if they are in close proximity and are dedicated exclusively or nearly so to performance of one or more public construction projects during the period of contract construction activity;

(3) for smaller projects, normally includes no more than the building itself and its grounds and other land or structures that are "down the block" or "across the street" that the contractor or subcontractor uses in performance of a particular public construction project.

(b) Laborers, mechanics, or field surveyors who perform duties within the limits of "on-site" are subject to the department's wage decision for all hours spent working "on-site."

Workers who, under this subsection, are subject to the department's wage decision include

(1) flaggers;

(2) barricade suppliers who set up or move barricades or other traffic control

devices;

(3) employees of bona fide material suppliers or common carriers who perform work "on-site," other than mere delivery, including drivers or delivery workers assisting in specific placement of asphalt or concrete during construction operations, stocking materials in rooms or on floors, or otherwise performing work in construction;

(4) workers who perform mobilization or demobilization activities;

(5) workers contracted or employed by material or equipment suppliers who erect, clean, repair, construct, or perform operational checks, other than contractually obligated warranty work, on equipment or material located "on-site"; and

(6) laborers, mechanics, or field surveyors who are engaged by a person or business that is hired or contracted by a prime construction contractor or subcontractor to provide services that are integral and necessary to the construction project; workers who are subject to this paragraph

(A) shall be considered to be "on-site" in the performance of those duties that the contractor or subcontractor was required to perform;

(B) include a trucking firm other than a common carrier whose services are engaged by a construction contractor or subcontractor on a public works job to pick up materials from a supplier's delivery point and transport them to the job site.

(c) Not included in "on-site" are permanent home offices, branch plants, fabrication plants, tool yards, and other establishments of a contractor or subcontractor whose locations and continuance are governed by its general business operations. This is so even though mechanics, laborers, and field surveyors working at these establishments may repair or maintain machinery

used in contract performance, or make doors, windows, frames, or forms called for by the contract while continuing normal commercial work. Regardless of the activities performed at these establishments, the department's wage decision does not apply, because they are not "on-site." However, if mechanics, laborers, or field surveyors are required to go to a place that is "on-site" to perform activities on the contract, the department's wage decision is applicable for the actual time so spent, not including travel.

(d) For purposes of this section, a location or work area, or the existence or continuing operation of an enterprise, is dedicated exclusively or nearly so one or more public construction projects to if

(1) the location, work area, or enterprise is established in conjunction with one or more public construction projects; and

(2) during the year before a public construction project and during the life of a public construction project, less than 10 percent of documented sales or other uses are attributed to non-public construction projects.

(e) For purposes of this section, a site is in proximity to a public construction project if it is nearby the public construction project footprint and used on a regular and recurring basis to complete the public construction contract. The department will determine whether a site is in proximity to a public construction project on a project-by-project basis, taking into account

(1) the type of project;

(2) whether the use of a nearby site is required for completion of the project;

(3) whether the area of contract operations is developed or undeveloped; and

(4) the geographical lay of the land.

(f) In this section,

(1) "bona fide material supplier"

(A) means a commercial enterprise that holds itself out to the public as offering to supply sand, gravel, ready-mixed concrete, hot asphalt, or other construction materials to multiple clients for both public and private jobs;

(B) does not include a commercial enterprise whose existence or continuing operation is dedicated exclusively or nearly so to one or more public construction projects;

(2) "common carrier"

(A) means a commercial enterprise that holds itself out to the public as offering to transport freight or passengers and delivers multiple types of materials to multiple clients for both public and private jobs on a recurrent basis over established routes; in this subparagraph, "freight"

(i) means materials, supplies, and equipment, other than materials described in (ii) of this subparagraph;

(ii) does not include dirt, sand, gravel, rock, or other naturally occurring earth materials;

(B) does not include a commercial enterprise whose existence or continuing operation is dedicated exclusively or nearly so to one or more public construction projects. (Eff. 7/30/82, Register 83; am 1/2/91, Register 116; am 8/9/2001, Register 159; am 3/24/2011, Register 197)

Authority: AS 23.05.060 AS 36.05.030 AS 36.10.075