



January 2, 2024

Dear Employer,

The Alaska Department of Labor and Workforce Development, Wage and Hour, is responding to an increase in complaints concerning misclassification of employees as independent contractors in the salon industry. For the purpose of education, this letter is being sent as an industry-wide notice to address multiple issues that appear to be subject to widespread misunderstanding throughout the industry. Among the issues that have been the focus of 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 being incorrectly classified as independent contractors; and
- Employees subjected to unlawful deductions from wages, the withholding of paychecks, or who are being compelled to reimburse employers without written authorization.

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 law, employers must provide all employees a written notice of their rate of pay, where they will be receiving payment, and the established pay day (weekly, bi-weekly, monthly) before the employee starts work. Any time the employer wants to make a change to any of these items, 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 pay period and cannot be retroactive¹.

¹ AS 23.05.160

Accurate Record of Hours Worked

An employer shall keep an accurate record of all the daily and weekly hours worked by each person.² A mere record of hours scheduled may not be sufficient to account for all the hours actually worked by the employee.

Minimum Wage and Overtime

Except as otherwise provided for in law, an employer shall pay to 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 current minimum wage is \$11.73 per hour as of January 1, 2024. Alaska's minimum wage is subject to annual adjustment using the Consumer Price Index for the previous calendar year. 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*³ of pay (this requirement of the law is referred to as "overtime").⁴ 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.

Time spent working is compensable time, even if an employee's license or other certifications have lapsed. If the work is directed by or allowed by the employer or if the employer has reason to suspect that the employee worked, the time spent working is compensable.⁵ An accurate record of all daily and weekly hours worked must be kept, and most importantly, the employee must be paid correctly for all these hours.

Commission

Alaska law does not require a commissioned employee to be paid a base wage in addition to their commission; however, an employee paid by commission must receive at least the equivalent of Alaska's minimum wage for each hour worked in a pay period.

Unless otherwise exempt, an employee is to be paid overtime for any hours worked in excess of 8 hours in a day and 40 straight time hours in a week. The average hourly rate, not less than the state minimum wage, is the basis for the calculation of the overtime and must include all wages earned in the week.

To be clear, the minimum wage is calculated for the pay period, whereas overtime is calculated weekly.

Deductions

An employer and employee may enter into a written agreement to provide for deductions of monetary obligations of an employee. An employer may not require compensation from an employee to which they are entitled through force, intimidation, or threat of dismissal from

² AS 23.05.080

³ 8 AAC 15.100

⁴ AS 23.10.060

⁵ 29 C.F.R. § 785.11

employment, or any other manner. A written agreement for deductions is not valid if it would reduce the employee's wage rate below the statutory minimum wage and overtime rates.

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

- Customer checks returned due to insufficient funds or any other reason;
- Non-payment for goods or services as a result of theft or credit default;
- Cash or cash register shortages, unless the employee admits willingly and in writing to having personally taken the specific amount of cash that is alleged to be missing;
- Lost, missing, or stolen property, unless the employee admits willingly and in writing to having personally taken the specific property alleged to be lost, missing or stolen;
- Damage or breakage costs, unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

An employer may deduct an amount from wages 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 deduction is based on a written agreement, total deposit does not exceed the cost of the item, and the 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.

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

- Rate of pay;
- Gross wages;
- Net wages;
- Beginning and end dates of the pay period;
- Federal income tax deductions;
- Federal Insurance Contribution Act deductions;
- Alaska Employment Security Act contributions;
- Board and lodging deductions;
- Advances;
- Straight time and overtime hours actually worked in the pay period;
- Other authorized deductions.⁶

Salary

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

Technicians are not specifically exempt from overtime requirements and must be paid time-and-a-half for work performed in excess of 8 hours per day and 40 straight-time hours in a work week.

Payment on a salary basis does not eliminate overtime pay obligations. If a fixed and recurring pay rate (salary) has been established, "the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation and a written

⁶ 8 AAC 15.160(h)

contract must be provided showing the hourly rate, the overtime rate, and the fixed number of hours worked each week to arrive at the specified, fixed salary amount. If the contract fails to establish a fixed number of daily and weekly hours that the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract without a corresponding adjustment in hourly pay, the salary will be considered to be compensation for an 8-hour workday and 40-hour workweek, and overtime will be computed on that basis.”⁷

Note: To determine if an employee meets the exemptions from Alaska’s minimum wage and overtime requirements, based on work in a bona fide executive, administrative, or professional capacity, consult the *Code of Federal Regulations 29 C.F.R. § 541, Alaska Statute 23.10.055, and Alaska Administrative Code 8 AAC 15.908*, or contact the Wage and Hour office in your region.

Independent Contractor, Volunteer, or Employee?

Frequent calls to the Wage and Hour office have also raised the issue of workers being treated as independent contractors rather than employees. When determining whether or not the relationship between the business and the alleged employee is subject to the *Alaska Wage and Hour Act*, it must be determined “whether the worker is dependent upon finding employment in the business of others. If the facts show such a dependency, the worker is an employee.”⁸ Employers are encouraged to review the factors established by the Alaska Supreme Court (*see* footnote #8). Technicians should be treated as employees unless the alleged employer can clearly demonstrate that a worker is an independent contractor.

Note: It is rare that a nail technician working at an establishment operated by someone else would be an independent contractor. The mere possession of an Alaska business license or the issuance of a 1099 form is not enough to substantiate independent contractor status.

Many factors are used to assist in determining whether a worker is an employee or an independent contractor. Wage and Hour looks at whether the work is an integral part of the business, if the worker is able to hire their own assistants, if the worker provides their own tools, the worker’s opportunity for profit or loss, if the worker is economically dependent on the business directing the work, the degree of control the business has over the worker, as well as the worker’s skill, among others. Factors reviewed are not isolated nor is any one criteria individually determinant of employment status. The factors are reviewed as a whole as they pertain to the work being performed.

With regard to volunteers, a for-profit business is barred from using volunteer labor.⁹

Final Paycheck

If the employment is terminated by the employee, payment is due at the next regular payday that is at least three days after the employer received notice of the employee’s termination of services. If employment is terminated by the employer, regardless of the cause for the termination, payment is due within three working days after the termination.¹⁰ The day of firing, weekends, and holidays, are not included in these three days. If an employer violates this statute, the employer may be required to pay the employee a penalty in the amount of the employee’s regular wage, salary or

⁷ 8 AAC 15.100

⁸ *Jeffcoat v. State, Dept. of Labor*, Sup. Ct. Op. No. 3162 (File No. S-1444), 732 P.2d 1073 (1987).

⁹ AS 23.10.055(6)

¹⁰ AS 23.05.140

other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount.

Unemployment Insurance Coverage

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

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 or contact the Alaska Division of Workers' Compensation at (907) 269-4002.

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>

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/for-lawyers/lawyer-referral-service/>