Byron Mallott Lieutenant Governor State Capitol Juneau, Alaska 99811 907.465.3520 WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700 Anchorage, Alaska 99501 907.269.7460 LT.GOVERNOR@ALASKA.GOV

OFFICE OF THE LIEUTENANT GOVERNOR ALASKA

MEMORANDUM

TO:	Tally Teal Department of Labor and Workforce Development
FROM:	Scott Meriwether, Office of the Lieutenant Governor
DATE:	May 30, 2018
RE:	Filed Permanent Regulations: Department of Labor and Workforce Development
	Department of Labor and Workforce Development regulations re: tip pooling arrangements (8 AAC 15.907)

Attorney General File:	2018200075
Regulation Filed:	5/30/2018
Effective Date:	6/29/2018
Print:	226, July 2018

cc with enclosures:

Linda Miller, Department of Law Judy Herndon, LexisNexis

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, BYRON MALLOTT, 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:

Claire Richardson, Special Assistant

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on January 7th 2015.



BYRON MALLOTT LIEUTENANT GOVERNOR

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

The attached 2 pages of regulations, dealing with tip pooling arrangements in 8 AAC 15.907, 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 23.05.010, AS 23.05.060, AS 23.10.050, AS 23.10.065, AS 23.10.085, and AS 23.10.095, 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.

Date: $\frac{4}{27}$

Heidi Drygas, Commission Department of Labor and Workforce Development

Claive Richardsonfor

FILING CERTIFICATION

I, Byron Mallot Lieutenant Governor for the State of Alaska, certify that on

IN 30 , 2018, at 3:350.m., I filed the attached regulations according to the

provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective: June 29, 2018 226, July 2018

Register:

Register <u>226</u>, <u>July</u> 2018 LABOR AND WORKFORCE DEV.

8 AAC 15.907(b) is amended to read:

(b) Except as provided in this section, an employer may not handle or take possession or control of an employee's tips. [HOWEVER, NOTHING IN THIS SECTION PRECLUDES A TIP POOLING ARRANGEMENT TO THE EXTENT ALLOWED UNDER 29 U.S.C. 201 -219 (FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED).]

8 AAC 15.907(c)(2) is amended to read:

(2) redistributing the tips to **<u>tipped</u>** employees under a tip pooling arrangement

8 AAC 15.907(e) is amended to read:

(e) For the purposes of this section,

(1) "tip pooling arrangement" means an agreement under which a portion of \underline{a}

tipped [AN] employee's tips is collected for distribution among other tipped [CERTAIN] employees; an employer shall provide written notice to all tipped employees of any such tip pooling arrangement; any change to a tip pooling arrangement must be provided in writing on the payday prior to the payday on which the change becomes effective; a tip pooling arrangement may not be retroactive : a two back/underlining the forward

(2) "tips" means 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; "tips" does not include a compulsory

Register 22	6. July_	_2018 LAB	OR AND WORK	FORCE DEV.			
charge for service that is part of the employer's gross receipts, such as a service charge of 15							
percent of a cu	ustomer's bill <u>:</u>	(PA)					
	(3) "tipped employee" means any employee engaged in an occupation in						
which the employee customarily and regularly receives more than \$30 a month in tips; this							
definition excludes employees whose primary duty is not direct customer service. (Eff.							
4/7/96, Regist	ter 138; am <u>6/2</u>	<u>9/2018</u> , Regist	er <u>226</u>)		W Kns. 20ld. or underline beneath f. 2riod III		
Authority:	AS 23.05.060	AS 23.10	.085	AS 23.10.095	forid II		

AS 23.10.065

MEMORANDUM

To: Hon. Byron Mallott Lieutenant Governor

From:

Steven C. Weaver

Sr. Assistant Attorney General

State of Alaska Department of Law

Date: May 30, 2018

File No.: 2018200075

Tel. No.: 465-3600

Re: Department of Labor and Workforce Development regulations re: tip pooling arrangements (8 AAC 15.907)

and Assistant Regulations Attorney Legislation and Regulations Section

We have reviewed the attached regulations from the Department of Labor and Workforce Development against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a general delegation dated May 23, 2018 from the Regulations Attorney. The regulations update requirements regarding tip pooling arrangements among tipped employees.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The January 25, 2018 public notice, the March 2, 2018 supplemental public notice, and the April 27, 2018 adoption order all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor Our file: 2018200075 May 30, 2018 Page 2

We have made some technical corrections to the regulations, in accordance with AS 44.62.125 and as shown on the attached copy.

SCW

cc w/enc: (via email)

Hon. Heidi Drygas, Commissioner Department of Labor and Workforce Development

Natalie "Tally" Teal, Special Assistant and Regulations Contact Department of Labor and Workforce Development

Deborah Kelly, Director Division of Labor Standards and Safety Department of Labor and Workforce Development

Becky Weimer, Regulations Specialist Division of Labor Standards and Safety Department of Labor and Workforce Development

April Simpson, Notary Administrator Office of the Lieutenant Governor

Rebecca H. Cain, Assistant Attorney General Labor and State Affairs Section

MEMORANDUM

- TO: The Honorable Byron Mallott Lieutenant Governor (via e-mail)
- FROM: Susan Pollard SRP Chief Assistant Attorney General and Regulations Attorney Legislation and Regulations Section

State of Alaska Department of Law

DATE:	May 23, 2018
TEL. NO.:	465-3600
SUBJECT:	Delegation of authority May 25 - June 5, 2018

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver during my absence May 25, 2018 through June 6, 2018. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct legal review under AS 44.62 and take necessary actions under AS 44.62.

SRP

cc: (via e-mail)

Scott C. Meriwether, AAC Coordinator Office of the Lieutenant Governor

April Simpson, Notary Administrator Office of the Lieutenant Governor

Steven C. Weaver Sr. Assistant Attorney General and Assistant Regulations Attorney Legislation and Regulations Section

NOTICE OF PROPOSED CHANGES TO TIP POOLING ARRANGEMENTS IN THE REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

BRIEF DESCRIPTION

The Department of Labor and Workforce Development, Division of Labor Standards and Safety, Wage and Hour Administration proposes to change its regulations to clarify when and how an employer can set up a tip pooling arrangement.

The Department of Labor and Workforce Development proposes to amend regulations in Title 8 of the Alaska Administrative Code, dealing with tip pooling arrangements, including the following:

(1) 8 AAC 15.907(b) will be amended to delete the reference to the U.S. Fair Labor Standards Act of 1938.

(2) 8 AAC 15.907(c)(2) will be amended to clarify that tip pooling arrangements apply to "tipped employees."

(3) 8 AAC 15.907(e) will be amended to clarify that tip pooling arrangements apply to "tipped employees," and to provide that an employer must provide notice in writing of a new or changed tip pooling arrangement, and to define "tipped employee."

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Becky Weimer, Department of Labor and Workforce Development, Labor Standards and Safety, P.O. Box 111149, Juneau, AK 99811-1149. Additionally, you may submit comments by facsimile at (907) 465-6012 and by electronic mail at <u>dol.lss.regulations@alaska.gov</u>. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 3:30 p.m. on February 26, 2018.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Becky Weimer at (907) 465-6002 not later than February 9, 2018 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System or by contacting Becky Weimer, Department of Labor and Workforce Development, Labor Standards and Safety, P.O. Box 111149, Juneau, AK 99811-1149 or dol.lss.regulations@alaska.gov or (907) 465-6002. After the public comment period ends, the Department of Labor and Workforce Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.

Statutory authority: AS 23.05.060; AS 23.10.065; AS 23.10.085; AS 23.10.095

Statutes being implemented, interpreted, or made specific: AS 23.05.010; AS 23.05.060; AS 23.10.050; AS 23.10.065

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

1/22/18 Date:

Greg Cashen, Acting Commissioner Department of Labor and Workforce Development

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES TO TIP POOLING ARRANGEMENTS IN THE REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

BRIEF DESCRIPTION

The Department of Labor and Workforce Development, Division of Labor Standards and Safety, Wage and Hour Administration proposes to change its regulations to clarify when and how an employer can set up a tip pooling arrangement. The department's proposed changes are set out in more detail in the notice of proposed regulations dated January 22, 2018.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES issued January 22, 2018 (Department of Law file number 2018200075). This SUPPLEMENTAL NOTICE is being issued to provide additional opportunity for members of the public and other interested parties that were not able to access the electronic mail provided, due to a technical error. This issue has now been corrected.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Becky Weimer, Department of Labor and Workforce Development, Labor Standards and Safety, P.O. Box 111149, Juneau, AK 99811-1149. Additionally, you may submit comments by facsimile at (907) 465-6012 and by electronic mail at <u>dol.lss.regulations@alaska.gov</u>. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 3:30 p.m. on April 2, 2018.

You may submit written questions relevant to the proposed action by electronic mail at <u>dol.lss.regulations@alaska.gov</u> or by mail to the Department of Labor and Workforce Development, Labor Standards and Safety, P.O. Box 111149, Juneau, AK 99811-1149. The questions must be received at least 10 days before the end of the public comment period. The Department will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Becky Weimer at (907) 465-6002 not later than March 23, 2018 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System or by contacting Becky Weimer, Department of Labor and Workforce Development, Labor Standards and Safety, P.O. Box 111149, Juneau, AK 99811-1149 or dol.lss.regulations@alaska.gov or (907) 465-6002.

After the public comment period ends, the Department of Labor and Workforce Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 23.05.060; AS 23.10.065; AS 23.10.085; AS 23.10.095

Statutes being implemented, interpreted, or made specific: AS 23.05.010; AS 23.05.060; AS 23.10.050; AS 23.10.065

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: 2/26/18

Greg Cashen, Acting Commissioner Department of Labor and Workforce Development

ADDITIONAL REGULATION NOTICE INFORMATION (AS 44.62.190(d))

- 1. Adopting agency: Department of Labor and Workforce Development, Division of Labor Standards and Safety
- 2. General subject of regulation: tip pooling arrangements
- 3. Citation of regulation (may be grouped): 8 AAC 15.907
- 4. Department of Law file number, if any:
- 5. Reason for the proposed action:
 - () Compliance with federal law or action (identify):
 - () Compliance with new or changed state statute:
 - () Compliance with federal or state court decision (identify):_____
 - (X) Development of program standards
 - () Other (identify):_____
- 6. Appropriation/Allocation: Labor Standards and Safety (113)/Wage and Hour Administration (345)
- 7. Estimated annual cost to comply with the proposed action to:

A private person:

This regulation change may impose very small costs on entities that employ tipped employees, such as restaurants, bars, and pubs. These employers will be required to provide written notice of tip pooling arrangements, which will require administrative and printing costs. These costs will vary by employer but will be very low. Another state agency: \$0 A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Yea	ar Subsequent
	FY 2019	Years
Operating Cost	\$0	\$0
Capital Cost	\$0	\$0

\$0	\$0
\$0	\$0
\$0	\$0
\$0	\$0
\$0	\$0
	\$0 \$0 \$0

9. The name of the contact person for the regulation:

Name: Becky Weimer Title: Regulations Specialist II Address: P.O. Box 111149 Juneau, AK 99811-1149 Telephone: (907) 465-6002 E-mail address: dol.lss.regulations@alaska.gov

- 10. The origin of the proposed action:
 - \underline{X} Staff of state agency
 - _____ Federal government
 - General public
 - Petition for regulation change

1

_____ Other (identify):____

11. Date: 1-22-18 Prepared by: Bedef Weinen [signature]

Name (printed): <u>Becky Weimer</u> Title (printed): <u>Regulations Specialist II</u> Telephone: (907) 465-6002

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, Becky Weimer, Regulations Specialist of the Department of Labor and Workforce Development, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Title 8 of the Alaska Administrative Code, dealing with tip pooling arrangements, has been given by being

- published in a newspaper or trade publication; (1)
- (2)furnished to interested persons;
- furnished to appropriate state officials; (3)
- (4)furnished to the Department of Law, along with a copy of the proposed regulation;
- furnished electronically to incumbent State of Alaska legislators; (5)
- furnished to the Legislative Affairs Agency, Division of Legal and Research (6)Services:
- posted on the Alaska Online Public Notice System as required by (7)AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- furnished electronically, along with a copy of the proposed regulation, to the (8) Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: <u>4-6-18</u>

4

Becky Weimer, Regulations Specialist

Subscribed and sworn to before me at Juneau, Alaska on April 4, 2018.



Juna StClair Notary Public in and for the State of Alaska My Commission Expires: with office

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Becky Weimer, Regulations Specialist for the Department of Labor and Workforce Development, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Labor and Workforce Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Labor and Workforce Development regulation on tip pooling arrangements.

Date: 4-6-18

-Becky Weimer, Regulations Specialist

Subscribed and sworn to before me at Juneau, Alaska on April 6, 2018.



Vina StClain

Notary Public in and for the State of Alaska My Commission Expires: with office

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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

January 25, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

"allegeti Signed

Subscribed and sworn to before me

this 25th day of January, 2018

Notary Public in and for The State of Alaska. Third Division Anchorage, Alaska MY COMMISSION EXPIRES 2019

JAN 31 2018 Administrative Services

NOTICE OF PROPOSED CHANGES TO TIP POOLING ARRANGEMENTS IN THE REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

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If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Becky Weimer at (907) 465-6002 not later than February 9, 2018 to ensure that any necessary accommodation can be provided.

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Statutory authority: AS 23.05.060; AS 23.10.065; AS 23.10.085; AS

Statutes being implemented, interpreted, or made specific: AS 23.05.010; AS 23.05.060; AS 23.10.050; AS 23.10.065

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Greg Cashen, Acting Commissioner Department of Labor and Workforce Development

Published: January 25, 2018

Notary Public BRITNEY L. THOMPSON State of Alaska My Commission Expires Feb 23, 2019

AFFIDAVIT OF PUBLICATION

MAR 08 2010

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

March 02, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Subscribed and sworn to before me this 2nd day of March, 2018

Notary Public in and for The State of Alaska. Third Division Anchorage, Alaska MY COMMISSION EXPIRES

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES TO TIP POOLING ARRANGEMENTS IN THE REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

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statutory authority: AS 23.05.060; AS 23.10.065; AS 23.10.085; AS

Statutes being implemented, interpreted, or made specific: AS 23.05.010; AS 23.05.060; AS 23.10.050; AS 23.10.065

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

> Date: 2/26/2018 Greg Cashen, Acting Commissioner Department of Labor and Workforce Development

Published: March 2, 2018

Notary Public BRITNEY L. THOMPSON State of Alaska My Commission Expires Feb 23, 2019