

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: Rebecca Weimer
Department of Labor and Workforce Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: July 13, 2018

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

Department of Labor and Workforce Development Regulation re: 8 AAC 05.040 (apprenticeship) 8 AAC 05.315 (studio teachers minor employment), 8 AAC 15.100 (overtime), 8 AAC 15.190 (nurse overtime investigation), 8 AAC 30.025 (apprentice), 8 AAC 30.090 (investigations) (8 AAC 05.040; 8 AAC 05.315; 8 AAC 15.100; 8 AAC 15.190; 8 AAC 30.025; 8 AAC 30.090)

Attorney General File:	2018200112
Regulation Filed:	7/13/2018
Effective Date:	8/12/2018
Print:	227, October 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

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

The attached 7 pages of regulations, dealing with employment of minors in entertainment, overtime rates, and AS 18.40 and AS 36 violation investigation and resolution in 8 AAC 05.315(f), 8 AAC 15.100(e)(4)(B), 8 AAC 15.160(d), 8 AAC 15.190, and 8 AAC 30.090, 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 18.20.400, AS 18.20.430, AS 23.05.010, AS 23.05.060, AS 23.10.050, AS 23.10.060, AS 23.10.065, AS 23.10.085, AS 23.10.095, AS 23.10.325, AS 23.10.330, AS 23.10.360, AS 36.05.010, AS 36.05.030, AS 36.10.075, AS 36.10.120, 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.

Although no public comments were received, 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: 4/24/18



Heidi Drygas, Commissioner
Department of Labor and Workforce Development

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on July 13, 2018, at 9:30 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: August 12, 2018.

Register: 27th, October 2018.

Register 227, October 2018 LABOR AND WORKFORCE DEV.

8 AAC 05.040(b)(4) is amended to read:

(4) the apprentice is registered by the United States Department of Labor, Office of Apprenticeship [BUREAU OF APPRENTICESHIP AND TRAINING OF THE UNITED STATES DEPARTMENT OF LABOR], or is registered by a state agency as employed in accordance with the standards of state apprenticeship and training approved by the commissioner of labor and workforce development, or is employed under a written apprenticeship agreement and conditions that are found by the commissioner of labor and workforce development to conform substantially with those federal or state standards.

(Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151; am 8 / 12 / 2018, Register 227)

Authority: AS 23.10.332 AS 23.10.350 AS 23.10.360

Editor's note: Information on apprentices registered by the Office of Apprenticeship as specified in 8 AAC 05.040 is available from the United States Department of Labor, Office of Apprenticeship, 605 West 4th Avenue, Room G-30, Anchorage, Alaska 99501 [BUREAU OF APPRENTICESHIP AND TRAINING AS SPECIFIED IN 8 AAC 05.040 IS AVAILABLE FROM THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIP AND TRAINING, ROOM 629, FEDERAL BUILDING, 1220 S.W. THIRD AVENUE, PORTLAND, OREGON 97204].

8 AAC 05.115(2) is amended to read:

Register 227, October 2018 LABOR AND WORKFORCE DEV.

(2) 17 years [OLD] of age and is enrolled in or has successfully completed a health care career program approved by the commissioner that is offered by a training facility other than a school. (Eff. 7/30/99, Register 151; am 3/2/2008, Register 185; am 8 / 12 / 2018, Register 227)

Authority: AS 23.10.350 AS 23.10.360

8 AAC 05.315(f) is amended to read:

(f) A studio teacher is not required if the employment of a minor in the entertainment industry does not conflict with the schooling of the minor, the employment occurs in or near the minor's home, school, or from a fixed location used by the employer in the employer's regular course of business, and the employment does not pose recognized serious hazards to the minor, such as employment in:

- (1) dinner shows;
- (2) cultural dance exhibitions; [AND]
- (3) theatrical productions; and [.]

(4) television, film, and photography productions where the total time of
minor's employment is less than 24 hours. (Eff. 7/2/95, Register 135; am 7/30/99, Register 151; am 3/2/2008, Register 185; am 8 / 12 / 2018, Register 227)

Authority: AS 23.10.330 AS 23.10.360

8 AAC 15.100(e)(4)(B) is amended to read:

(B) the employer must pay one-half of the straight time rate established under **(A) of this paragraph** [(1) OF THIS SUBSECTION] 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. (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 23.10.095
AS 23.10.060

8 AAC 15 is amended by adding a new section to read:

8 AAC 15.190. Nurse overtime investigations, conferences and persuasion. (a) The labor standards and safety division will investigate potential violations of AS 18.20.400 - 18.20.499 on its own motion, or on the complaint of any person.

(b) A complaint alleging a violation of AS 18.20.400 - 18.20.499 must be filed with the division within 30 days after the date of the alleged violation. The division shall provide a copy of the complaint to the health care facility named in the filing within three business days after receiving the complaint. Mailing to the health care facility last known address or the address on file with the health facilities licensing and certification unit in the division of health care services, Department of Health and Social Services, ^{is} ~~shall be considered~~ valid service for the purposes of this section.

(c) If, after an investigation, the division finds that a health care facility has knowingly violated an overtime provision of AS 18.20.400 - 18.20.499, the division shall issue a decision containing the division's investigative findings and assessing the appropriate civil penalty under AS 18.20.430(c).

(d) A health care facility may request a hearing on the division's decision. Any request not later than 15 days of the division's decision. The request must be in writing and postmarked identifying the findings which are in dispute and the reasons therefor on the basis of the dispute. A hearing requested under this section shall be conducted in accordance with the provisions of AS 44.64.010 - 44.64.200. (Eff. 8/12/2018, Register 227)

Authority: AS 18.20.430

8 AAC 30.025(g) is amended to read:

(g) An apprentice shall receive one hundred ~~{100}~~ percent of the prevailing fringe benefit rate established in the applicable *Laborers' and Mechanics' Minimum Rates of Pay*, unless **a bona fide fringe benefit plan** [ANOTHER RATE] is specified in the **applicable Standards of Apprenticeship approved by the United States Department of Labor, Office of Apprenticeship.** [APPRENTICE TRAINING AGREEMENT APPROVED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF APPRENTICESHIP AND TRAINING].

(Eff. 1/2/91, Register 116; am 3/2/2008, Register 185; am 8/12/2018, Register 227)

Authority: AS 23.05.060 AS 36.05.030 AS 36.05.070

Register 227, October 2018 LABOR AND WORKFORCE DEV.

8 AAC 30.086(a)(2) is amended to read:

(2) a program approved by the United States Department of Labor, Office of Apprenticeship [FEDERAL BUREAU OF APPRENTICESHIP AND TRAINING].

8 AAC 30.086(b)(2) is amended to read:

(2) a program approved under the Workforce Innovation and Opportunity Act (WIOA) 2014, Pub. L. No. 113-128 [29 U.S.C. 1501 - 1781 (JOB TRAINING PARTNERSHIP ACT)]. (Eff. 9/27/87, Register 103;

am 8/12/2018, Register 227)

Authority: AS 36.10.140

8 AAC 30.090 is repealed and readopted to read:

8 AAC 30.090. Investigations, conference, and persuasion. (a) The division will investigate potential violations of AS 36 (Public Contracts), on its own motion or on the complaint of any person.

(b) If, after preliminary investigation, the division finds that probable cause exists to believe that a violation of AS 36.05 or AS 36.10 has occurred, the division will provide the respondent believed to have violated AS 36.05 or AS 36.10 with a copy of the complaint or description of the alleged violation by personal service or certified mail to the last known address of the respondent and to the respondent's registered agent, if any. If respondent is a subcontractor, the

division will also provide the prime contractor with a copy of the complaint or ^adescription of the alleged violation by personal service or certified mail to the prime contractor's registered agent.

(c) The division will attempt to eliminate the alleged violation through conference and persuasion by providing the respondent and prime contractor an opportunity for an informal conference to discuss the matter and attempt to eliminate the alleged violations.

(d) If an alleged violation is not rectified by the informal conference, or if the respondent or prime contractor fails to attend the conference without good cause, the division will notify the respondent and the prime contractor in writing of the failure of the informal conference. The division will include in its notification a summary of the division's investigative findings.

^{written request} (e) The respondent or the prime contractor may request a hearing by sending the division a ~~letter~~ postmarked ^{not later than} within 30 days of the date of the division's ~~letter giving~~ notification of the failure of the informal conference ~~conducted~~ under (d) of this section. The ~~letter requesting a~~ hearing must ^{request} set forth any investigative findings ^{identify} which are in dispute and the ^{basis for the dispute,} reasons therefor, including any affirmative defenses. Upon receipt of a request for a hearing, the division will refer the case for hearing ~~to determine the facts in dispute~~. Hearings under this section ^{will} shall be conducted in accordance with 8 AAC 30.100.

(f) If no timely request for hearing is received, the division's investigative findings ^{will} shall be final. (Eff. 12/4/76, Register 60; am 7/30/82, Register 83; am 1/2/91, Register 116; am 8/9/2001, Register 159; am 3/2/2008, Register 185; am 8/12/2018, Register 227)

Authority: AS 23.05.060 AS 36.10.075 AS 36.10.120
AS 36.05.030

Register 227, October 2018 LABOR AND WORKFORCE DEV.

8 AAC 30.900(2) is amended to read:

(2) “crafts” and “occupations” mean the occupations identified in the *Standard Occupational Classification Manual* **(2018 edition)** [(1980 EDITION)];

...

(Eff. 7/8/73, Register 47; am 12/4/76, Register 60; am 7/30/82, Register 83; am 9/27/87, Register 103; am 1/2/91, Register 116; am 8/9/2001, Register 159; am 8 / 12 / 2018, Register 227)

Authority: AS 23.05.060 AS 36.10.075 AS 36.95.010
AS 36.05.030 AS 36.10.140