

Kevin Meyer
Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Becky Weimer
Department of Labor and Workforce Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: December 11, 2020

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

Department of Labor and Workforce Development wage-and-hour regulations re:
definition of independent contractor on public contract project (8 AAC 30.900)

Attorney General File:	2020200592
Regulation Filed:	12/11/2020
Effective Date:	01/10/2021
Print:	237, April 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

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

The attached 1 page of regulations, dealing with the definition of an independent contractor on public construction projects, 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 36.05.030 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: 11/13/2020

DocuSigned by:

AJA5443107654E7
Dr. Tamika L. Ledbetter, Commissioner

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

December 11, 2020, at 2:31 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

April Simpson
for Lieutenant Governor Kevin Meyer

Effective: January 10, 2021.

Register: 237, April 2021

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

8 AAC 30.900(13) is repealed and readopted to read:

(13) "owner/operator" as used in 8 AAC 30.020(d) means those independent contractors who by virtue of the duties they perform, or the manner in which they perform them, cannot be considered employees of the person or entity who has contracted for their services. ³
in this paragraph, "independent contractor" means a person who
person is an independent contractor for the purposes of this section only if the person

(A) has an express contract to perform the services;

(B) is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom, or entity for which, the services are provided to specify the desired results, completion schedule, or range of work hours, or to monitor the work for compliance with contract plans and specifications, or federal, state, or municipal law;

(C) incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services;

(D) has an opportunity for profit and loss as a result of the services performed for the other individual or entity; and

(E) is free to hire and fire employees to help perform the services for the contracted work. ²

(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; am 11/25/2018, Register 228; am 1 / 10 / 2021, Register 237)

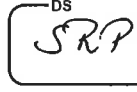
Authority: AS 23.05.060 AS 36.10.075 AS 36.95.010
AS 36.05.030 AS 36.10.140

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: December 7, 2020

Thru: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

File No.: 2020200592

Tel. No.: 465-3600

From: Steven C. Weaver *scw*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Department of Labor and Workforce
Development wage-and-hour
regulations re: definition of
independent contractor on public
contract project (8 AAC 30.900)

The Department of Law has reviewed the attached regulations of the Department of Labor and Workforce Development against the statutory standards of the Administrative Procedure Act. Based upon our review, 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. These wage-and-hour regulations were adopted by the Department of Labor and Workforce Development after the close of the public comment period. For purposes of submission by an "owner/operator" of a biweekly certified payroll under 8 AAC 30.020 for public construction contracts--a requirement modified in 8 AAC 30.020(d) for how owner/operators, if working as independent contractors, report their own pay--the regulations change the definition of "independent contractor," part of the definition of "owner/operator" in 8 AAC 30.900 for use in 8 AAC 30.020(d).

The September 25, 2020 public notice and the November 13, 2020 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/enc.: Dr. Tamika L. Ledbetter, Commissioner
Department of Labor and Workforce Development

Becky Weimer, Regulations Contact
Department of Labor and Workforce Development

Charles E. "Ned" Brasington, Assistant Attorney General
Labor and State Affairs Section

NOTICE OF PROPOSED CHANGES ON THE DEFINITION OF AN INDEPENDENT
CONTRACTOR ON PUBLIC CONSTRUCTION PROJECTS IN THE REGULATIONS OF
THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

BRIEF DESCRIPTION

The Department of Labor and Workforce Development, Wage and Hour Administration, proposes to change regulations on the definition of an independent contractor on public construction projects.

The Department of Labor and Workplace Development proposes to adopt regulation changes in 8 AAC of the Alaska Administrative Code, dealing with the definition of an independent contractor on public construction projects, including the following:

- (1) 8 AAC 30.900(13) is proposed to be changed as follows: Repeal and readopt the definition of an independent contractor on public construction projects.

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, PO Box 111149, Juneau, AK 99811-1149. Additionally, the Department of Labor and Workforce Development will accept comments by facsimile at 907-465-3584 and by electronic mail at dol.lss.regulations@alaska.gov. 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 4:00pm on October 29, 2020.

You may submit written questions relevant to the proposed action to Becky Weimer by e-mail at dol.lss.regulations@alaska.gov or by mail to the Department of Labor and Workforce Development, Labor Standards and Safety, PO 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 and agency website at <https://www.labor.alaska.gov/commish/regindex.htm>

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 October 16, 2020 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and 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 the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation

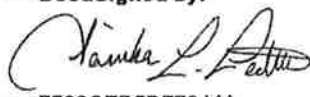
may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 18.60.020; AS 36.10.075

Statutes being implemented, interpreted, or made specific: AS 23.05.060; AS 36.05.030; AS 36.10.075; AS 36.10.140; AS 36.95.010

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

Date: 9/25/2020

DocuSigned by:

7562CFD5BF7944A...

Dr. Tamika L. Ledbetter, 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, Wage and Hour Administration
2. General subject of regulation: Definition of an independent contractor on public construction projects
3. Citation of regulation (may be grouped): 8 AAC 30.900
4. Department of Law file number, if any: 20202000592
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): _____
 - () Development of program standards
 - (X) Other (identify): Clarify the definition.
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: 0
 - Another state agency: 0
 - A municipality: 0
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2021</u>	Subsequent Years
Operating Cost	\$0	\$0
Capital Cost	\$0	\$0
1002 Federal receipts	\$0	\$0
1003 General fund match	\$0	\$0

1004 General fund	\$0	\$0
1005 General fund/ program	\$0	\$0
Other (identify)	\$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:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date: 09/25/2020 Prepared by: Becky Weimer Digitally signed by Becky Weimer
Date: 2020.09.25 13:10:22 -0800

Name (printed): Becky Weimer
 Title (printed): Regulations Specialist II
 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, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 8 AAC 30.900(13), definition of an independent contractor on public construction projects, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

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 (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 11/13/2020

Becky Weimer Digitally signed by Becky Weimer
Date: 2020.11.13 11:00:08 -09'00'

Becky Weimer, Regulations Specialist

State of Alaska
City and Borough of Juneau

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Becky Weimer, Regulations Specialist of the Department of Labor and Workforce Development, under penalty of perjury, 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, Wage and Hour Administration regulation on definition of an independent contractor on public construction projects.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 11/13/2020

Becky Weimer Digitally signed by Becky Weimer
Date: 2020.11.13 10:55:58 -09'00'

Becky Weimer, Regulations Specialist

State of Alaska
City and Borough of Juneau

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 391213 ST OF AK/DEPT OF LABOR AND WORKFORCE DEV
UNEMPLOYMENT INSURANCE TECHNICAL UNIT, JUNEAU, AK 99811

Order #: W0018060

Cost: \$378.52

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that 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

09/29/2020

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 30th day of September 2020.

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

MY COMMISSION EXPIRES

7/14/2024

NOTARY PUBLIC
JADA L. NOWLING
STATE OF ALASKA
MY COMMISSION EXPIRES July 14, 2024

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Statutory authority: AS 18.60.020; AS 36.10.075

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

Date: 9/25/2020

/s/ Dr. Tamika L. Ledbetter,
Commissioner
Department of Labor and Workforce Development

Published: September 29, 2020