

# STATE OF ALASKA

## Department Of Labor and Workforce Development

LABOR STANDARDS AND SAFETY DIVISION  
WAGE AND HOUR ADMINISTRATION

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February 10, 2004

Capt. George Capacci  
Alaska Marine Highway System  
3132 Channel Drive  
Juneau, AK 99801-7898

Regarding: Anonymous Complaints

Dear Capt. Capacci,

The Wage & Hour Administration of the Alaska Department of Labor and Workforce Development has recently received an anonymous complaint that the Alaska Marine Highway System is not paying people for hours worked during on-board fire drills when the employees are off duty.

Our office usually doesn't get involved when workers are represented by a union unless we have a letter from the union saying all avenues to resolve the issue through the union have been explored. In this case, however, we thought we'd relay our stance on the issue.

Alaska Statute 23.05.140 says that employers "shall pay all employees for all labor performed or services rendered." (Emphasis added).

The Alaska Supreme Court provided guidelines in *City and Borough of Sitka v. Construction and General Laborers Local 942, Alaska, 644 P. 2d 227*, that state when the state law and regulations are silent on a subject we should rely on federal precedent. The issue of participation in fire drills during off-duty time is discussed in Code of Federal Regulations §783.47:

**§783.47 Off-duty periods.** Off-duty periods include not only such periods as shore leave but also generally those hours spent by a seaman on the vessel outside his watch or normal or regular working hours and his standby periods during which hours he is not required to perform and does not perform work of any kind but is free to utilize his time for his own purpose. The fact that during such off-duty periods the employee is subject to call in case of emergency situations affecting the safety and welfare of the vessel upon which he is employed, or of its passengers, crew, or cargo or for participation in life boat or fire drills will not render such off-duty periods, excluded by employment agreement applicable to the employee, "hours worked." Responding to such calls, however, as well as the performance of

work in response thereto constitute compensable work time. For further and more detailed discussion on what generally are regarded as "hours worked" under the Act, See part 785 of this chapter. (Emphasis added).

The full text of AS 23.05.140 is as follows:

**Sec. 23.05.140. Pay periods.** (a) An employee and employer may agree in an annual initial contract of employment to monthly pay periods when the employer shall pay all employees for all labor performed or services rendered. Otherwise, the employer shall establish monthly or semi-monthly pay periods, at the election of the employee.

(b) If the employment is terminated, all wages, salaries, or other compensation for labor or services become due immediately and shall be paid within the time required by this subsection at the place where the employee is usually paid or at a location agreed upon by the employer and employee. If the employment is terminated by the employer, regardless of the cause for the termination, payment is due within three working days after the termination. If the employment is terminated by the employee, payment is due at the next regular pay day that is at least three days after the employer received notice of the employee's termination of services.

(d) If an employer violates (b) of this section by failing to pay within the time required by that subsection, the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary, or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount.

(e) In an action brought by the department under this section, an employer found liable for failing to pay wages within the time required by (b) of this section shall be required to pay the penalty set out in (d) of this section. The amount of the penalty shall be calculated based on the employee's straight time rate of pay for an eight-hour day.

(f) In an action brought for unpaid overtime under AS 23.10.060 that results in an award of liquidated damages under AS 23.10.110, the provisions of (d) of this section do not apply unless the action was brought by the department under (e) of this section.

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We understand that these complaints may be without merit. Please call our office if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Susan G. Erben". The signature is written in dark ink and is positioned above the typed name.

Susan G. Erben  
Wage & Hour Investigator  
Juneau Regional Office