

**THE 7/1/2015 REQUIREMENT TO HIRE 90 PERCENT ALASKANS - -
WHAT DOES IT MEAN FOR CONTRACTORS WORKING IN ALASKA?**

The attached 2015 Alaska's Employment Preference determination for State-funded projects will raise many questions and concerns for contractors. In order to provide more information, and to address and allay some of the more common concerns of contractors, the following are answers to some likely questions the Department anticipates contractors will have as a result of the implementation of the new determination. In any event, if you believe you are unable to meet Alaska's 90 percent Employment Preference requirement effective 7/1/2015, you must submit a waiver request following the process described below (8AAC 30.081(d)). If you have any questions, contact the Alaska Department of Labor and Workforce Development, Wage and Hour Administration, at the contact information given below and speak with an investigator about your concerns.

QUESTIONS AND RESPONSES:

- Does this requirement apply to all contractors currently working on public construction projects in Alaska that were bid on prior to July 1, 2015?

If the project is within one of the 15 boroughs and census areas that were previously determined to be Zones of Underemployment, and if the project has no federal monies funding the project, and if the contractor has any of the named classifications of workers working on the project, then yes. The new determination applies to them effective July 1, 2015. The 90% requirement must be met weekly on a craft-by-craft classification basis.

- I am a contractor currently working on a project that was originally excluded from the Department's 8/16/2013 employment preference determination. Do I have to meet the 90 percent Employment Preference determination to finish this project?

No, you don't. Any ongoing public construction project that was originally excluded by the 8/16/2013 determination will not be subject to the 90 percent Employment Preference determination that takes effect on 7/1/2015. In other words, if the 90 percent rule didn't apply to your project under the 8/16/2013 determination, then it won't apply after 7/1/2015, either.

- I am a contractor currently working on a project that was not excluded from the Department's 8/16/2013 employment preference determination. Do I have to meet the 90 percent Employment Preference determination to finish this project if it was started prior to 7/1/2015?

Yes, you do. Any ongoing public construction project that originally was subject to the 8/16/2013 Employment Preference determination will be subject to the determination that takes effect on 7/1/2015. The 90% requirement must be met weekly on a craft-by-craft classification basis.

- I am a contractor currently working on a project that was not excluded from the Department's 8/16/2013 employment preference determination. The old determination listed only Painters as the classification that required 90% Alaska residents. Do I have to comply with all these other classifications now?

Yes.

- I am a contractor employing out-of-state workers. We are currently working on a project requiring work of a highly-specialized nature, but no Alaska residents are trained or available to perform this work. What are my options?

If no Alaskan residents are available who are trained in the required specialty to perform the skilled work, then you must apply for a waiver through the established employment preference waiver process described below.

- I am a contractor employing out-of-state workers. We are almost complete with our contract and would rather not send them home and hire 90% Alaskans. What are my options?

You must request a waiver using the process described below.

- What are the penalties of being out of compliance with the 90% Employment Preference requirement?

The penalties are serious and are calculated weekly. If a contractor is found to be out of compliance while working on a covered project, an amount equal to the wages that should have been paid to the displaced resident can be withheld from the prime contractor from the total contract amount.

Alaska Wage and Hour Administration investigators are available to field your questions Monday through Friday, from 8 a.m. to 5 p.m. Contact Wage and Hour by email or telephone:

- Anchorage.LSS-WH@alaska.gov (907) 269-4900
- Juneau.LSS-WH@alaska.gov (907) 451-2886
- Fairbanks.lss@alaska.gov (907) 465-4842

8 AAC 30.081. Compliance With Preference Requirements.

(a) To comply with AS 36.10.150 - 36.10.175, an employer subject to a resident hiring reference shall meet the relevant resident hire percentage, prescribed under this chapter, for each separate workweek. If an area has been determined to be a zone of preference for more than one type of resident hiring preference, the requirements of each preference apply. An employer may count the hire of an eligible resident toward satisfaction of each preference for which the resident qualifies.

(b) An employer subject to a resident hiring preference shall certify that each person hired as a resident under the preference was eligible for the preference at the time of hiring. The employer's certification must be provided on the weekly certified payroll form filed with the department (Form 07-6058); must include the name and residence address of each employee on the project, including supervisory employees; and must include a statement of compliance with all resident hiring preferences in effect.

(c) A labor organization that dispatches members for work on a public-funded project subject to a resident hiring preference shall certify to the employer at the time of dispatch that each person dispatched as a resident to meet a preference was eligible for the preference at the time of dispatch. The labor organization's certification must be in writing and must include the name and residence address of each person dispatched to the project.

(d) An employer subject to a resident hiring preference who is unable to find enough eligible residents may request from the department a waiver to hire an ineligible person for a specific job. The waiver request must be submitted to the department at least seven calendar days before the waiver is required to be considered for approval. Within three working days, the department shall determine whether the contractor's proposed minimum qualifications for the position covered by the waiver request are acceptable. The employer must place an advertisement using at least one public form of statewide advertising, such as a newspaper with statewide circulation, and must request that the Alaska Employment Service post a statewide facilitated recruitment job order through the Alaska Job Center Network. The advertisement and the job order must run for at least three calendar days, and both must

- (1) state that the purpose of the request is to satisfy employment preference requirements of this state under AS 36.10 and that applicants must be residents of this state;
- (2) list the job title and minimum qualifications as accepted by the department;
- (3) identify the rate of pay including fringe benefits and other compensation, such as travel or room and board;
- (4) identify the job location, expected duration of the job, and the number of expected daily and weekly work hours; and
- (5) specify that all job seekers apply through the Alaska Job Center Network.

(e) An employer subject to a resident hiring preference who is unable to find enough eligible residents from either private sources or from the applicants referred by the state employment center under (d) of this section may request from the department a waiver to hire an ineligible person for a specific job. A request for a waiver under this subsection must contain

- (1) a description of the job for which a waiver is requested, to include the wages, benefits, expected start date, work schedule, and job duration;
- (2) the required qualifications for the job for which a waiver is requested;
- (3) the qualifications of the person for whom the waiver is requested;
- (4) the name and residence address of the person for whom the waiver is requested;
- (5) a description of the employer's efforts to obtain an eligible resident from private sources for the job for which a waiver is requested;
- (6) a copy of the recruitment report from the Alaska Job Center Network containing the following information and documentation:
 - (A) a copy of the job order, a listing of all applicants from the job order and other private recruitment efforts, and the listing of the applicants referred to the employer;
 - (B) the recruitment result report to show the number of individuals interviewed, hired or not hired; and,
 - (C) a statement from the Alaska Job Center Network that the employer did or did not comply with the recruitment requirements;
- (7) the name and location of the project for which the waiver is requested; and
- (8) an explanation of why each applicant referred was not hired.

(f) The department will grant a waiver to employ an ineligible person if the employer establishes, to the department's satisfaction, that there are no qualified eligible residents for a specific job. A waiver granted by the department expires six months from the approval date, at the completion of the specific job for which the ineligible person was hired, or at the time the ineligible person terminates, whichever occurs first. The department will either grant or deny the waiver within 20 working days after receiving the request for a waiver and the supporting evidence required under (e) of this section.

(g) A waiver granted under this section will be determined invalid unless the same benefits provided to the ineligible nonresident, such as housing and transportation to the work site, are also offered and provided to eligible resident applicants.