

Title 36

Public Contracts



Wage and Hour Administration Pamphlet 400

Statutes Regulations

November 2011

Alaska Department of Labor
and Workforce Development
Labor Standards and Safety Division



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The Alaska Department of Labor and Workforce Development is focused on putting Alaskans to work. An important part of that mission is to ensure that working conditions and wage payment practices are legal. This publication, *Pamphlet 400, Title 36, Public Contracts*, is designed to assist employers and employees by providing the applicable laws and regulations.

This pamphlet is set out in two sections. The first section contains the Alaska Statutes (pages 1-16), and the second section contains the Alaska Administrative Code or regulations (pages 17-40). The index of topics on page 41 should provide assistance in locating all of the places a particular topic is referenced.

When reviewing the subjects contained in this pamphlet, keep in mind that the statutes carry the greater weight. The regulations have been established to further clarify and interpret language used in the statutes.

Many wage and hour issues are complex. Please take advantage of the Wage and Hour Administration's cost-free counseling services to answer your questions regarding this pamphlet and Alaska's labor laws. You may call or come in to the nearest Wage and Hour Administration office, Monday through Friday, during regular business hours and a Wage and Hour Investigator will be happy to assist you. Addresses and phone numbers for these offices are listed on the first page of this pamphlet.

For additional copies of this pamphlet, contact the nearest Wage and Hour Administration office in Anchorage, Juneau, or Fairbanks, or you may download and print this pamphlet from our internet site at: labor.alaska.gov/lss/forms/Pam400.pdf

TITLE 36. Public Contracts

Wage and Hour Administration

Pamphlet 400 - Statutes and Regulations

November 2011

State of Alaska

Alaska Department of Labor and Workforce Development

Labor Standards and Safety Division

Table of Contents

Wage and Hour Administration Offices	i
Alaska Statutes – Title 36	
Chapter 05. Wages and Hours of Labor	1
Chapter 10. Employment Preference	3
Chapter 15. Alaska Product Preferences	8
Chapter 25. Contractors’ Bonds	8
Chapter 95. General Provisions	9
Alaska Administrative Code – Title 8	
Chapter 30 Public Contracts	10
Article 1. Wages and Hours	10
Article 2. Wage Scale	12
Article 3. Employment Preference	13
Article 4. Investigations and Hearings	17
Article 5. Debarment	18
Article 6. General Provisions	20
Index	23

Disclaimer:

Note to Readers: The statutes and administrative regulations listed in this publication were taken from the official codes, as of the effective date of the publication. However, there may be errors or omissions that have not been identified and changes that occurred after the publication was printed. **This publication is intended as an informational guide only and is not intended to serve as a precise statement of the statutes and regulations of the State of Alaska. To be certain of the current laws and regulations, please refer to the official codes.**

**ALASKA STATUTES
TITLE 36. PUBLIC CONTRACTS**

CHAPTER 05. WAGES AND HOURS OF LABOR.

Section:

- 05. Applicability
- 10. Wage rates on public construction
- 20. Basis for determining wage
- 30. Authority
- 35. Notification of contract awards
- 40. Filing schedule of employees, wages paid, and other information
- 45. Notice of work and completion; withholding of payment
- 60. Penalty for violation of this chapter
- 70. Wage rates in specifications and contracts for public works
- 80. Failure to pay agreed wages
- 90. Payment of wages from withheld payments and listing contractors who violate contracts
- 100. Effect of AS 36.05.070-36.05.110 on other laws
- 110. Contracts entered into without advertising

This chapter was modeled after the federal Davis-Bacon Act. 40 U.S.C. § 276a et seq. Fowler v. City of Anchorage, Sup. Ct.. Op. No.. 1699 (File No. 3586), 583 p.2d 817 (1978).

Sec. 36.05.005. Applicability.

This chapter applies only to a public construction contract that exceeds \$25,000.
(§ 1 ch 28 SLA 2011)

Sec. 36.05.010. Wage rates on public construction.

A contractor or subcontractor who performs work on a public construction contract in the state shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor and Workforce Development at least 10 days before the final date for submission of bids for the contract. The rate shall remain in effect for the life of the contract or for 24 calendar months, whichever is shorter. At the end of the initial 24-month period, if new wage determinations have been issued by the department, the latest wage determination shall become effective for the next 24-month period or until the contract is completed whichever occurs first. This process shall be repeated until the contract is completed.

(§ 14-2-1 ACLA 1949; am § 1 ch 142 SLA 1972; am § 1 ch 89 SLA 1976; am § 1 ch 69 SLA 1993; am § 1 ch 28 SLA 2011)

Sec. 36.05.020. Basis for determining wage.

A subcontract which is performed on public construction may be reduced to a basis of day labor for the purpose of determining whether or not the subcontractor or contractors have paid at not less than the prevailing scale of wage.

(§ 14-2-2 ACLA 1949)

Sec. 36.05.030. Authority.

(a) The Department of Labor and Workforce Development has the authority to determine the prevailing wage, and whether or not this chapter is being violated. The department may when necessary for the enforcement of this chapter

(1) conduct investigations and hold hearings concerning wages;

(2) compel the attendance of witnesses and the production of books, papers and documents;

(3) adopt regulations.

(b) If a person violates this chapter the attorney general shall, when requested by the Department of Labor and Workforce Development, enforce these provisions.

(§ 14-2-3 ACLA 1949; am § 2 ch 142 SLA 1972)

Sec. 36.05.035. Notification of contract awards.

Upon awarding a public construction contract, the state or a political subdivision of the state shall

(1) immediately notify the commissioner of labor of the amount of the contract, the effective date of the contract, the identity of the contractor and all subcontractors, the site or sites of construction and provide a project description; and

(2) verify that the bonding requirements of AS 36.25 have been met and that the requirements of AS 08.18 have been met.

(§ 3 ch 142 SLA 1972)

Sec. 36.05.040. Filing schedule of employees, wages paid, and other information.

All contractors or subcontractors who perform work on a public construction contract for the state or for a political subdivision of the state shall, before the Friday of every second week, file with the Department of Labor and Workforce Development a sworn affidavit for the previous reporting period, setting out in detail the number of persons employed, wages paid, job classification of each employee, hours worked each day and week, and other information on a form provided by the Department of Labor and Workforce Development.

(§ 14-2-4 ACLA 1949; am § 4 ch 142 SLA 1972; am § 1 ch 111 SLA 2003)

Sec. 36.05.045. Notice of work and completion; withholding of payment.

(a) Before commencing work on a public construction contract, the person entering into the contract with a contracting agency shall designate a primary contractor for purposes of this section. Before work commences, the primary contractor shall file a notice of work with the Department of Labor and Workforce Development. The notice of work must list work to be performed under the public construction contract by each contractor who will perform any portion of work on the contract and the contract price being paid to each contractor. The primary contractor shall pay all filing fees for each contractor performing work on the contract, including a filing fee based on the contract price being paid for work performed by the primary contractor's employees. The filing fee payable shall be the sum of all fees calculated for each contractor. The filing fee shall be one percent of each contractor's contract price. The total filing fee payable by the primary contractor under this subsection may not exceed \$5,000. In this subsection, "contractor" means an employer who is using employees to perform work on the public construction contract under the contract or a subcontract.

(b) Upon completion of all work on the public construction contract, the primary contractor shall file with the Department of Labor and Workforce Development a notice of completion together with payment of any additional filing fees owed due to increased contract amounts. Within 30 days after the department's receipt of the primary contractor's notice of completion, the department shall inform the contracting agency of the amount, if any, to be withheld from the final payment.

(c) A contracting agency

(1) may release final payment on a public construction contract to the extent that the agency has received verification from the Department of Labor and Workforce Development that

(A) the primary contractor has complied with (a) and (b) of this section;

(B) the Department of Labor and Workforce Development is not conducting an investigation under this title; and

(C) the Department of Labor and Workforce Development has not issued a notice of a violation of this chapter to the primary contractor or any other contractors working on the public construction contract; and

(2) shall withhold from the final payment an amount sufficient to pay the department's estimate of what may be needed to compensate the employees of any contractors under investigation on this construction contract, and any unpaid filing fees.

(d) The notice and filing fee required under (a) of this section may be filed after work has begun if

(1) the public construction contract is for work undertaken in immediate response to an emergency; and

(2) the notice and fees are filed not later than 14 days after the work has begun.

(e) A false statement made on a notice required by this section is punishable under AS 11.56.210.

(§ 2 ch 111 SLA 2003; am § 1 ch 28 SLA 2011)

Sec. 36.05.050. Hours to constitute day's work.

[Repealed by § 1 ch 3 SLA 1973.]

Sec. 36.05.060. Penalty for violation of this chapter.

A contractor who violates this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Each day a violation exists constitutes a separate offense.

(§ 14-2-6 ACLA 1949; am § 6 ch 142 SLA 1972)

Sec. 36.05.070. Wage rates in specifications and contracts for public works.

(a) The advertised specifications for a public construction contract that requires or involves the employment of mechanics, laborers, or field surveyors must contain a provision stating the minimum wages to be paid various classes of laborers, mechanics, or field surveyors and that the rate of wages shall be adjusted to the wage rate under AS 36.05.010.

(b) *Repealed by § 17 ch 142 SLA 1972.*

(c) A public construction contract under (a) of this section must contain provisions that

(1) the contractor or subcontractors of the contractor shall pay all employees unconditionally and not less than once a week;

(2) wages may not be less than those stated in the advertised specifications, regardless of the contractual relationship between the contractor or subcontractors and laborers, mechanics, or field surveyors;

(3) the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work;

(4) the state or a political subdivision shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the contractor or subcontractors the difference between

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work; and

(B) the rates of wages in fact received by laborers, mechanics or field surveyors.

(§ 1 ch 52 SLA 1959; am §§ 7, 8, 17 ch 142 SLA 1972; am § 2 ch 89 SLA 1976; am § 1 ch 28 SLA 2011)

Sec. 36.05.080. Failure to pay agreed wages.

Every contract within the scope of AS 36.05.070 shall contain a provision that if it is found that a laborer, mechanic, or field surveyor employed by the contractor or subcontractor has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the state or its political subdivision may, by written notice to the contractor, terminate the contractor's right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and the contractor's sureties are liable to the state or its political subdivision for excess costs for completing the work. (§2 Ch 52 SLA 1959)

Sec. 36.05.090. Payment of wages from withheld payments and listing contractors who violate contracts.

(a) The state disbursing officer in the case of a state public construction contract and the local fiscal officer in the case of a political subdivision public construction contract shall pay directly to laborers, mechanics, or field surveyors from accrued payments withheld under the terms of the contract the wages due laborers, mechanics, or field surveyors under AS 36.05.070.

(b) The state disbursing officer or the local fiscal officer shall distribute to all departments of the state government and to all political subdivisions of the state a list giving the names of persons who have disregarded their obligations to employees. A person appearing on this list and a firm, corporation, partnership or association in which the person has an interest may not work as a contractor or subcontractor on a public construction contract for the state or a political subdivision of the state until three years after the date of publication of the list. If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under AS 36.05.070, the laborers, the mechanics or field surveyors have the right of action or intervention or both against the contractor and the contractor's sureties conferred by law upon persons furnishing labor or materials, and in the proceedings it is not a defense that the laborers, mechanics or field surveyors accepted or agreed to accept less than the required rate of wages or voluntarily made refunds. (§ 3 ch 52 SLA 1959; am § 9 ch 142 SLA 1972; am § 1 ch 28 SLA 2011)

Sec. 36.05.100. Effect of AS 36.05.070 - 36.05.110 on other laws.

AS 36.05.070 - 36.05.110 do not supersede or impair authority granted by state law to provide for the establishment of specific wage rates. (§ 4 ch 52 SLA 1959; am § 10 ch 142 SLA 1972)

Sec. 36.05.110. Contracts entered into without advertising.

The fact that a public construction contract authorized by law is entered into upon a cost-plus-a-fixed-fee basis or otherwise, without advertising for proposals, does not make AS 36.05.070 - 36.05.110 inapplicable if those sections are otherwise applicable to the contract. (§ 5 ch 52 SLA 1959; am § 1 ch 28 SLA 2011)

APPLICABILITY.

This Act applies to public construction if the public construction is subject to AS 36.05 and if the contract for the public construction is entered into on or after the effective date of this Act. In this section, "public construction" has the meaning given in AS 36.95.010. (§ 1 ch 28 SLA 2011)

Sec. 36.05.120. Regulations governing contractors. [Repealed by § 17 ch 142 SLA 1972.]

ARTICLE 2. GENERAL PROVISIONS

Section:

900. Definition

Sec. 36.05.900. Definition.

In this chapter, "contracting agency" means the state or a political subdivision of the state that has entered into a public construction contract with a contractor. (§ 3 ch 111 SLA 2003)

CHAPTER 10. EMPLOYMENT PREFERENCE

Section:

- 05. Legislative Findings
- 06. Statement of purpose
- 07. State policy
- 20. Apprentices
- 30. Reduction of work force
- 40. Application to contracts involving federal funds
- 70. Unavailability of preferred workers
- 75. Duties of commissioner of Labor and Workforce Development
- 76. Duties of state or political subdivision
- 80. Chapter incorporated in contracts
- 90. Publication of list of violators
- 100. Penalty
- 120. Investigations and hearings 900. Effect of judicial decisions
- 125. Enforcement
- 130. Resident hire report
- 140. Eligibility for preference
- 150. Determination of zone of underemployment
- 160. Preference for residents of economically distressed zones (Deleted)
- 170. Preference for economically disadvantaged minority residents (Deleted)

- 175. Preference for economically disadvantaged female
(Deleted)
- 180. Projects subject to preference
- 190. Reporting provisions
- 200. Criminal penalties
- 210. Civil penalties
- 900. Effect of judicial decisions
- 990. Definitions

Sec. 36.10.005. Legislative findings.

(a) The legislature finds that

(1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

(3) the rate of unemployment among residents of the state is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresident to resident workers in the nation;

(5) the state has a compelling interest in reducing the level of unemployment among its residents;

(6) the construction industry in the state accounts for a substantial percentage of the available employment;

(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;

(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;

(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;

(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;

(11) the influx of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;

(12) non-resident workers displace a substantial number of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;

(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;

(14) the natural resources of land owned by the state belong to the citizens of the state;

(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;

(16) the vast majority of the state's revenue is derived from natural resource income rather than from other forms of taxation;

(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services; and

(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.

(b) The legislature further finds that

(1) the state and its political subdivisions, when acting as a market participant in funding public works projects, should give Alaska residents an employment preference to promote a more stable economy;

(2) the state and its political subdivisions have a duty of loyalty to their citizens and should fulfill this duty by giving residents preference for employment on public works projects they fund;

(3) there is a legitimate and compelling governmental interest and that the public health and welfare will suffer if state residents are not afforded employment preference in state funded construction related work.

(c) The legislature finds that the following factors are reasonable but not exclusive indicators of the ratio of nonresident to resident employees in the state:

(1) the ratio of applicants for unemployment insurance who list out-of-state residences to applicants who list residences in the state;

(2) the ratio of employees who are subject to unemployment insurance coverage and who did not apply for or were denied a permanent fund dividend to employees who were found eligible for a dividend.

(d) The legislature finds that

(1) the number of state residents who are unable to find work is considerably higher than is reflected by unemployment rates based on nationally accepted measures;

(2) many rural state residents who wish to work do not seek employment as frequently as necessary to meet federal definitions of unemployment because of continuing lack of employment opportunities in rural areas of the state.

(§ 1 ch 69 SLA 1985; am § 2 ch 33 SLA 1986)

Sec. 36.10.006. Statement of purpose.

The legislature adopted AS 36.10.010 in response to problems and concerns identified by the findings of facts in AS 36.10.005 to

(1) ensure that qualified resident workers do not remain unemployed while nonresident workers are employed on construction projects funded by the state or a political subdivision of the state if the purpose of the project includes reducing the unemployment of residents;

(2) ensure that qualified resident workers do not remain unemployed while nonresident workers are employed on construction projects funded by the state or a political subdivision of the state;

(3) reduce the level of unemployment among residents of the state.

(§ 1 ch 69 SLA 1985)

Sec. 36.10.007. State policy.

It is the policy of this state that, to fulfill the duty of loyalty owed to its citizens and to remedy social or economic problems, the state will grant an employment preference to residents when the state is acting as a market participant.

(§ 1 ch 69 SLA 1985)

Sec. 36.10.010. Employment preference.

[Repealed by § 11 ch 33 SLA 1986.]

Sec. 36.10.020. Apprentices.

Apprentices must be properly registered apprentices in their particular craft.

(§ 1c ch 177 SLA 1960)

Sec. 36.10.030. Reduction of work force.

When a work force is reduced, resident workers, except supervisory personnel, shall be terminated last.

(§ 1d ch 177 SLA 1960)

Sec. 36.10.040. Application to contracts involving federal funds.

In a contract involving expenditure of federal aid funds, this chapter may not be enforced in a manner that conflicts with federal statutes giving preference to veterans or prohibiting other preferences or discriminations among United States citizens.

(§ 2 ch 177 SLA 1960)

Sec. 36.10.050. Employment of aliens.

[Repealed by § 17 ch 142 SLA 1972.]

Sec. 36.10.060. Employment of prisoners.

[Repealed by § 6 ch 53 SLA 1982.]

Sec. 36.10.070. Unavailability of preferred workers.

(a) An employer subject to hiring requirements under this chapter may request the Department of Labor and Workforce Development to assist in locating qualified, eligible employees. After receiving a request for assistance, the department shall refer qualified, eligible, available residents to the employer to fill the employer's hiring needs. The employer shall cooperate with the department.

(b) If the department is unable to refer a sufficient number of qualified, eligible, available residents able to perform the work, the commissioner of labor may approve the hiring of residents who are not eligible for preference and nonresidents for the balance of the request.

(§ 5 ch 177 SLA 1960; am § 2 ch 208 SLA 1972; am § 3 ch 33 SLA 1986)

Sec. 36.10.075. Duties of commissioner of labor and workforce development.

(a) The commissioner of labor shall adopt regulations necessary to carry out the provisions of this chapter including but not limited to the method, time and content of reporting by employers covered by this chapter and reporting provisions permitting on-going supervision by the Department of Labor and Workforce Development on all public works projects covered by this chapter.

(b) The commissioner of labor and workforce development shall adopt regulations to encourage and require the hiring of residents to the maximum extent permitted by law.

(§ 3 ch 208 SLA 1972; am § 4 ch 33 SLA 1986)

Sec. 36.10.076. Duties of state or political subdivision.

An agency or political subdivision of the state covered by the provisions of this chapter shall notify the Department of Labor and Workforce Development periodically regarding planned public works. Notification shall be in the form and manner prescribed by the Department of Labor and Workforce Development.

(§ 3 ch 208 SLA 1972)

Sec. 36.10.080. Chapter incorporated in contracts.

The provisions of this chapter are considered to be a part of every public works contract let after April 24, 1960.

(§ 6 ch 177 SLA 1960)

Sec. 36.10.090. Publication of list of violators.

(a) The commissioner of labor shall distribute to all departments and agencies of the state government and to all political subdivisions of the state a list of the names of persons or firms convicted of a violation of this chapter. A person appearing on the list or a firm, corporation, partnership or association in which the person has an interest may not work as a contractor or subcontractor on a public construction contract for the state or a political subdivision until after three years from the date of publication of the list.

(b) A local government or school district covered by the provisions of this chapter which is found to be in violation of these provisions may be required to forfeit all or part of the state aid made available for the project in which the violation occurs and in addition may be denied up to 12 months of state revenue sharing or public school foundation money. A state department or agency head found to be in violation of this chapter may be required to forfeit the position of the department or agency head.

(c) A person or governmental entity covered by the provisions of (b) of this section who is not satisfied by a decision of the Department of Labor and Workforce Development may, as the final administrative process, appeal the decision to a committee consisting of the commissioners of transportation and public facilities, labor and administration.

The commissioner of transportation and public facilities is the chairman of the committee. A quorum for conducting business is three members and any decision made must be supported by a majority of the committee members. The committee may, upon a showing of hardship, waive all or any part of the penalty provisions of this chapter.

(§ 7 ch 177 SLA 1960; am § 12 ch 142 SLA 1972; am § 4 ch 208 SLA 1972; am Executive Order No. 39, § 11 (1977))

Sec. 36.10.100. Penalty.

(a) A contractor who violates a provision of this chapter shall have deducted from amounts due to the contractor under the contract the prevailing wages which should have been paid to a displaced resident, and these amounts shall be retained by the contracting agency.

(b) A contractor or the agent of a contractor who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. (§ 8 ch 177 SLA 1960)

Sec. 36.10.110. Definitions.

[Repealed by § 17 ch 142 SLA 1972.]

Sec. 36.10.120. Investigations and hearings.

The Department of Labor and Workforce Development may when necessary to enforce this chapter

(1) conduct investigations and hold hearings relating to employment preference;

(2) compel the attendance of witnesses and the production of books, papers and documents;

(3) *[Repealed by § 46 ch 53 SLA 1973.]*

(§ 13 ch 142 SLA 1972; am § 46 ch 53 SLA 1973)

Sec. 36.10.125. Enforcement.

(a) The attorney general shall, when requested by the Department of Labor and Workforce Development, enforce the provisions of this chapter. The attorney general may obtain a court order prohibiting a contractor or subcontractor violating this chapter from continuing to work on existing public construction contracts of the state or a political subdivision of the state. The state or political subdivision of the state may prosecute the work to completion by contract or otherwise, and the contractor or subcontractor and the sureties of the contractor or subcontractor are liable for excess costs for completing the work.

(b) A private person is entitled to bring an action in the superior court to enforce the provisions of this chapter if that private person first gives at least 20 days' notice to the commissioner of labor. The notice must set out

(1) the intent of the private person to bring an action under this subsection;

(2) the specific violation complained of; and

(3) the name of the person accused of the violation.

(c) In an action brought under (b) of this section the court may, in its discretion, order denial of state revenue sharing or public school foundation money, forfeiture of office or position, or injunctive or other relief. If the court finds for the plaintiff in an action brought under (b) of this section, it may award the plaintiff an amount equal to the actual costs and attorney fees incurred by the plaintiff.

(§ 13 ch 142 SLA 1972; am § 1 ch 183 SLA 1976)

Sec. 36.10.130. Resident hire report.

The attorney general and the commissioner of labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report shall be submitted by January 31 of each year.

(§ 5 ch 33 SLA 1986)

Sec. 36.10.140. Eligibility for preference.

(a) A person is eligible for an employment preference under this chapter if the person certifies eligibility as required by the Department of Labor and Workforce Development, is a resident, and

(1) is receiving unemployment benefits under AS 23.20 or would be eligible to receive benefits but has exhausted them;

(2) is not working and has registered to find work with a public or private employment agency or a local hiring hall;

(3) is underemployed or marginally employed as defined by the department; or

(4) has completed a job-training program approved by the department and is either not employed or is engaged in employment that does not use the skills acquired in the job-training program.

(b) In approving job-training programs under (a) of this section, the department shall use information and findings from other state and federal agencies as much as possible.

(c) An employer subject to a resident hiring requirement under this chapter shall certify that persons employed as residents under the preference were eligible for the preference at the time of hiring.

(d) A labor organization that dispatches members for work on a public works project under a collective bargaining agreement shall certify that persons dispatched as residents to meet a preference were eligible for the preference at the time of dispatch.

(e) An employer or labor organization may request assistance from the Department of Labor and Workforce Development in verifying the eligibility of an applicant for a hiring preference under this chapter.

(§ 5 ch 33 SLA 1986)

Sec. 36.10.150. Determination of zone of under-employment.

(a) Immediately following a determination by the commissioner of labor that a zone of underemployment exists, and for the next two fiscal years after the determination, qualified residents of the zone who are eligible under AS 36.10.140 shall be given preference in hiring for work on each project under AS 36.10.180 that is wholly or partially sited within the zone. The preference applies on a craft-by-craft or occupational basis.

(b) The commissioner of labor shall determine the amount of work that must be performed under this section by qualified residents who are eligible for an employment preference under AS 36.10.140. In making this determination, the commissioner shall consider the nature of the work, the classification of workers, availability of eligible residents, and the willingness of eligible residents to perform the work.

(c) The commissioner shall determine that a zone of underemployment exists if the commissioner finds that

(1) the rate of unemployment within the zone is substantially higher than the national rate of unemployment;

(2) a substantial number of residents in the zone have experience or training in occupations that would be employed on a public works project;

(3) the lack of employment opportunities in the zone has substantially contributed to serious social or economic problems in the zone; and

(4) employment of workers who are not residents is a peculiar source of the unemployment of residents of the zone. (§ 5 ch 33 SLA 1986)

Sec. 36.10.180. Projects subject to preference.

(a) The preferences established in AS 36.10.150 - 36.10.175 apply to work performed

(1) under a contract for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work, or any other retention of services necessary to complete a given project that is let by the state or any agency of the state, a department, office, state board, commission, public corporation, or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska and the Alaska Railroad Corporation, or by a political subdivision of the state including a regional school board with respect to an educational facility under AS 14.11.020;

(2) on a public works project under a grant to a municipality under AS 37.05.315;

(3) on a public works project under a grant to a named recipient under AS 37.05.316;

(4) on a public works project under a grant to an unincorporated community under AS 37.05.317; and

(5) on any other public works project or construction project that is funded in whole or in part by state money.

(b) If the governor has declared an area to be an area impacted by an economic disaster under AS 44.33.285, then the preference for residents of the area established under AS 44.33.285 - 44.33.310 supersedes the preference under AS 36.10.150 - 36.10.175 for contracts awarded by the state.

(c) The commissioner shall define the boundaries of a zone within which a preference applies. (§ 5 ch 33 SLA 1986)

Sec. 36.10.190. Reporting provisions.

An employer obligated to meet resident hire requirements under this chapter shall comply with the reporting provisions that the commissioner of labor determines are reasonably necessary to carry out this chapter. Except for statistical data, all information regarding specific employees is confidential and may not be released by the Department of Labor. However, confidential employee information may be shared between departments for purposes of this chapter. (§ 5 ch 33 SLA 1986)

Sec. 36.10.200. Criminal penalties.

(a) A person who makes a false sworn statement in connection with a certification of eligibility for an employment preference under this chapter is subject to criminal prosecution for perjury as provided in AS 11.56.200.

(b) A person who makes an unsworn falsification, with the intent to mislead a public servant in the performance of a duty, in connection with a certification of eligibility for an employment preference under this chapter, is subject to criminal prosecution as provided in AS 11.56.210.

(§ 5 ch 33 SLA 1986)

Sec. 36.10.210. Civil penalties.

(a) In addition to any criminal penalties imposed, after a hearing the department may impose a civil penalty on a person who, in connection with certification of eligibility for an employment preference under this chapter,

(1) made a false sworn statement; or

(2) made an unsworn falsification with intent to mislead a public servant in the performance of a duty.

(b) The amount of the civil penalty under (a) of this section for a person who falsely certifies that the person is eligible for an employment preference under this chapter is not more than \$400 for each false certification.

(c) The amount of the civil penalty under (a) of this section for an employer who falsely certifies that employees are residents eligible for a preference under this chapter is not more than \$2,000 for each of the first five false certifications. The penalty for the sixth false certification made by an employer and for each false certification thereafter is at least \$2,000 and not more than \$4,000.

(§ 5 ch 33 SLA 1986)

Sec. 36.10.900. Effect of judicial decisions.

If a provision of this chapter, or the application of a provision to a person or circumstance, is held invalid, the remainder of this chapter and the application to other persons or circumstances shall not be affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

(§ 5 ch 33 SLA 1986)

Sec. 36.10.990. Definitions.

In this chapter

(1) "qualified" means possesses the requisite education, training, skills, or experience to perform the work;

(2) "zone" includes a census area in the state, an economic region of the state, and the state as a whole.

(§ 5 ch 33 SLA 1986)

CHAPTER 15. ALASKA PRODUCT PREFERENCES.**ARTICLE 1. FOREST PRODUCTS PREFERENCE****Section:**

10. Use of local forest products required in projects financed by public money
20. Insertion of clause in calls for bids and in contracts

Sec. 36.15.010. Use of local forest products required in projects financed by public money.

In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber and manufactured lumber projects originating in this state from local forests shall be used wherever practicable. (§ 14-3-1 ACLA 1949)

Sec. 36.15.020. Insertion of clause in calls for bids and in contracts.

A clause containing the substance of AS 36.15.010 shall be inserted in all calls for bids and in all contracts awarded. (§ 14-3-2 ACLA 1949)

CHAPTER 25. CONTRACTORS' BONDS.**Section:**

10. Bonds of contractors for public buildings or works
20. Rights of persons furnishing labor or material
25. Optional municipal exemption

Sec. 36.25.010. Bonds of contractors for public buildings or works.

(a) Except as provided in AS 44.33.300, before a contract exceeding \$100,000 for the construction, alteration, or repair of a public building or public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or a political subdivision of the state

the following bonds, which become binding upon the award of the contract to that contractor:

(1) a performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond;

(2) a payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than \$1,000,000, the payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$1,000,000 and not more than \$5,000,000, the payment bond shall be in a sum of 40 percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$5,000,000, the payment bond shall be in sum of \$2,500,000.

(b) This section does not limit the authority of the contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in (a) of this section.

(c) When no payment bond has been furnished, the contracting department may not approve final payments to the contractor until the contractor files a written certification that all persons who supplied labor or material in the prosecution of the work provided for in the contract have been paid.

(§ 1 ch 49 SLA 1953; am § 1 ch 77 SLA 1964; am § 14 ch 142 SLA 1972; am §§ 1, 2 ch 180 SLA 1976; am § 8 ch 277 SLA 1976; am 34 ch 108 SLA 1982)

Sec. 36.25.020. Rights of persons furnishing labor or material.

(a) A person who furnishes labor or material in the prosecution of the work provided for in the contract for which a payment bond is furnished under AS 36.25.010 and who is not paid in full before the expiration of 90 days after the last day on which the labor is performed or material is furnished for which the claim is made, may sue on the payment bond for the amount unpaid at the time of the suit.

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 90 days from the last date on which the person performed labor or furnished material for which the claim is made.

The notice must state with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed. The notice shall be served by mailing it by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where the contractor maintains an office or conducts business, or the contractor's residence, or in any manner in which a peace officer is authorized to serve summons.

(c) A suit brought under this section shall be brought in the name of the state or the political subdivision of the state for the use of the person suing in the court with jurisdiction. A suit under this section is subject to AS 08.18.151. A suit may not be started after the expiration of one year after the date of final settlement of the contract. The state or political subdivision of the state is not liable for costs or expenses of the suit.

(§ 2 ch 49 SLA 1953; am § 15 ch 142 SLA 1972 am §58 ch 14 SLA 1987)

Sec. 36.25.025. Optional municipal exemption.

A municipality, by ordinance adopted by its governing body, may exempt contractors from compliance with the provisions as AS 36.25.010(a) if the estimated cost of the project does not exceed \$400,000, and

(1) the contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having its principal office in the state;

(2) the contractor certifies that it has not defaulted on a contract awarded to the contractor during the period of three years preceding the award of a contract for which a bid is submitted;

(3) the contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04, demonstrating that the contractor has a net worth of not less than 20 percent of the amount of the contract for which a bid is submitted; and

(4) the total amount of all contracts that the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this section by more than seven times.

(§ 1 ch 81 SLA 1978)

CHAPTER 95. GENERAL PROVISIONS

Section:

10. Definitions

Sec. 36.95.010. Definitions.

In this title unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(2) "laborer, mechanic, or field surveyor" means a person who engages in work which is basically physical or unskilled in nature; or who engages in work, requiring the use of tools or machines, which basically consists of the shaping and working of materials into some type of structure, machine or other object; or who engages in outdoor tasks related to the operation of findings and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board;

(4) "resident" means a person who establishes residency under AS 01.10.055;

(5) "retainage" means money withheld from a contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits.

(§ 16 ch 142 SLA 1972; am § 3 ch 89 SLA 1976; am § 16 ch 147 SLA 1978; am § 2 ch 85 SLA 1982; am § 92 ch 6 SLA 1984; am §§ 6, 11 ch 33 SLA 1986)

**ALASKA ADMINISTRATIVE CODE
TITLE 8. LABOR**

PART 2. RESIDENT EMPLOYMENT

CHAPTER 30. PUBLIC CONTRACTS.

Article:

1. Wages and Hours
(8 AAC 30.010 – 8 AAC 30.040)
2. Wage Scale
(8 AAC 30.050)
3. Employment Preference
(8 AAC 30.060 – 8 AAC 30.088)
4. Investigations and Hearings
(8 AAC 30.090 – 8 AAC 30.110)
5. Debarment
(8 AAC 30.200 – 8 AAC 30.240)
6. General Provisions
(8 AAC 30.900 – 8 AAC 30.920)

ARTICLE 1. WAGES AND HOURS.

Section:

10. Notification of contract awards
20. Certified payroll
25. Fringe benefit contributions
27. Notice of violation requiring withholding
30. Notification of withholding accrued payments
40. Notification of termination of contract

8 AAC 30.010. Notification Of Contract Awards.

(a) Within 20 days of awarding a public contract, the state or political subdivision of the state shall notify the commissioner in writing that the contract has been awarded. The writing shall conform to the requirements of AS 36.05.035.

(b) Verification of contractors bonding requirements shall be by certified statement furnished to the commissioner by the state or political subdivision of the state which awarded the contract.

(Eff. 7/8/73, Register 47)

Authority: AS 36.05.030 AS 36.05.035

8 AAC 30.020. Certified Payroll.

(a) Before Friday of every second week, each contractor, subcontractor, or owner/operator who performs work on a public construction contract for the state or political subdivision of the state shall file with the department a certified payroll (Form 07-6058) that covers the preceding reporting period.

(b) The certified payroll shall be submitted to the department's regional office in the judicial district in which the work is performed:

1st Judicial District - Department of Labor and Workforce Development, Juneau

3rd Judicial District - Department of Labor and Workforce Development, Anchorage
2nd and 4th Judicial Districts - Department of Labor and Workforce Development, Fairbanks

(c) Instead of submitting Form 07-6058, a contractor may submit the contractor's payroll form. However, the payroll form must contain the same information and statement of compliance required by Form 07-6058.

(d) Owner/operators who perform duties as laborers, mechanics, or field surveyors while working as contractors or subcontractors on a public work project shall be included on their certified payrolls in the same manner as any other laborer, mechanic or field surveyor. However, an owner/operator who performs duties as a laborer, mechanic, field surveyor is not required to pay themselves each reporting period, but shall report hours worked and actual payments received under the terms of the contract and the period covered by each payment. After deducting operating expenses, the actual payment received by an owner/operator performing duties as a laborer, mechanic, or field surveyor must meet or exceed the minimum prevailing rate of pay in the applicable classification for each hour worked on a public construction project.

(e) If a contractor is under contract to provide trucks on a public construction project and leases a truck to an individual truck driver or dispatches an owner/operator working on that same project, the contractor shall pay no less than the prevailing wage for each hour worked each certified payroll reporting period to that driver.

(Eff. 7/8/73, Register 47; am 7/30/82, Register 83; am 8/9/01; Register 159; am 3/2/2008, Register 185)

Authority: AS 36.05.030 AS 36.05.040
AS 36.10.075

Editor's Note:

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

Form 07-6058 (payroll form) required in 8 AAC 30.020 may be obtained from the Department of Labor and Workforce Development, Wage and Hour Administration, 1251 Muldoon Road, Suite 113, Anchorage, AK 99504; telephone: (907) 269-4900. The form is also available on the department's website at: <http://labor.state.ak.us/lss/lssforms.htm>

8 AAC 30.025. Fringe Benefit Contributions.

(a) Employers must remit contributions to union trusts, approved private pension plans, or other approved fringe benefit plans by the 15th of the month following the accrual of the contribution. If the plan itself has a more stringent remittance deadline, the plan deadline shall prevail. A copy of the actual deposit or other satisfactory proof shall be provided the department upon request.

(b) A private pension plan or other fringe benefit plan as referenced in (a) of this section must meet the following conditions in order to be approved as an offset against the prevailing wage rate requirement for fringe benefits:

(1) plan contributions must be

(A) irrevocable;

(B) deposited on a regular basis, not less than monthly, to a trustee or third-party administrator;

(C) free of administrative expense charges to employees, except reasonable and customary administrative fees charged to the plan as a whole, subject to approval of the plan trustee;

(D) non-discretionary;

(E) factored across all work performed by an employee in public construction and non-public construction with the exception of an automatic vesting 401(k) plan;

(2) plan contributions may not be made on behalf of employees who are not eligible to participate in the plan;

(3) except for an automatic vesting 401(k) plan, plan contributions must not be funded solely through hours worked on public construction projects.

(c) Except for an automatic vesting 401(k) plan which allows the actual hourly amount contributed to the plan during the public construction project to be directly credited against fringe benefit payment requirements, to establish an hourly rate for credit against prevailing wage requirements, the amount paid by the employer for the benefit shall be divided by the hours worked by the employee under the plan during the interval under which payments are due to the plan administrator. To allow for seasonal variations, the plan costs may be calculated on an annual basis.

(d) If the hourly rate established under (c) of this section does not meet the prevailing fringe benefit rate, the remainder must be paid to the employee.

(e) If a pension plan meets the requirements under 29 U.S.C. 1001 – 1461 (Employee Retirement Income Security Act of 1974) and includes a minimum vesting requirement, any forfeited amounts must remain in the trust, subject to the authority of the trustee and may not revert to the employer.

(f) The department may disallow an employer from taking credit for fringe benefit contributions as an offset to prevailing wage requirements if the provisions of this section are not met. Upon request, the employer shall provide the following to the department:

(1) a copy of the plan;

(2) a copy of the plan adoption agreement;

(3) the name, address, and telephone number of the plan broker;

(4) the name, address, and telephone number of the plan administrator;

(5) the United States Internal Revenue Service approval letter;

(6) the calculations of the hourly cost equivalent for the plan.

(g) An apprentice shall receive 100 percent of the prevailing fringe benefit rate established in the applicable *Laborers' and Mechanics' Minimum Rates of Pay*, unless another rate is specified in the apprentice training agreement approved by the United States Department of Labor, Bureau of Apprenticeship and Training.

(h) In this section, "automatic vesting 401(k) plan," means a 401(k) plan maintained in compliance with 29 U.S.C. 1001 – 1461 (Employee Retirement Income Security Act of 1974) that allows for immediate vesting in the plan to ensure that the employee will not be subject to any forfeiture of amounts contributed to the plan since it has no vesting requirements.

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

Authority: AS 23.05.060 AS 36.05.030
AS 36.05.070

8 AAC 30.027. Notice Of Violation Requiring Withholding.

When the department determines, under the authority of AS 36.05.030, that a violation has occurred, it shall notify the contracting agency as to the nature and estimated amount of the violation so that the contracting agency can fulfill its obligation to withhold funds under AS 36.05.070 (4). (Eff. 1/2/91, Register 116)

Authority: AS 23.05.060 AS 36.05.030
AS 36.05.070

8 AAC 30.030. Notification Of Withholding Accrued Payments.

(a) If the state or a political subdivision of the state withholds accrued payments under those provisions of its contracts required by AS 36.05.070(c)(4), the state or political subdivision shall notify the commissioner within three working days.

(b) Notification shall be in writing and contain the following information:

(1) name of state agency or political subdivision of the state that awarded the contract;

(2) name of state agency or political subdivision of the state that is withholding accrued payments;

(3) contractor's name and address;

(4) address of construction site;

(5) job classification being underpaid;

(6) wage rate required by contract; and

(7) wage rate actually being paid.

(Eff. 7/8/73, Register 47)

Authority: AS 36.05.030 AS 36.05.070

8 AAC 30.040. Notification Of Termination Of Contract.

(a) If the state or a political subdivision of the state terminates a contract under those provisions of its contract required under AS 36.05.080, the state or political subdivision of the state shall notify the department within three working days.

(b) Notification shall be in writing and contain the following information:

- (1) name of state agency or political subdivision of the state that awarded the contract;
- (2) name of state agency or political subdivision of the state that is terminating the contract;
- (3) contractor's name and address;
- (4) address of construction site;
- (5) job classification being underpaid;
- (6) wage rate required by contract;
- (7) wage rate actually being paid; and
- (8) proposed action to be taken to complete construction.

(Eff. 7/8/73, Register 47)

Authority AS 36.05.030 AS 36.05.080

ARTICLE 2. WAGE SCALE.**Section:**

50. Wage Scale

8 AAC 30.050. Wage Scale.

(a) The department will determine the prevailing wage rate to be paid laborers, mechanics, and field surveyors. This determination will be published by the department in the pamphlet *Laborers' and Mechanics' Minimum Rates of Pay*. Prevailing wage rates will be periodically revised by the department, on a regional basis, to correspond with the prevailing wage rate for similar work.

(b) The prevailing wage will be determined on a regional basis for two geographic regions of the state, north of North 63 degrees latitude and south of North 63 degrees latitude. A region may be subdivided into zones if the commissioner determines that the prevailing wage rate has local variations within the region. In determining the prevailing wage rate for a region or zone, the department will consider the prevailing wage that represents majority penetration for each work classification. If there is no majority penetration the department may set the prevailing wage rate in the following manner:

(1) If less than a majority of the persons employed at a particular skill level in a particular job class receive the same wage, the prevailing wage rate will be determined by taking the arithmetic mean (average) of the wages in the survey for the job class being considered.

(2) Prior to calculating the arithmetic mean, the survey will be adjusted by eliminating five percent of the extreme wage rates.

(3) For example, in a survey consisting of 75 different pay rates the rates will be arrayed in order of size. Five percent at both ends of the scale, the four highest and four lowest, will be eliminated. The remaining 67 rates will be the final survey from which the arithmetic mean will be determined to be the prevailing rate of pay.

(4) In determining the prevailing wage rate for a region or zone, the department will consider the prevailing union wage, local practice, and any other standard considered by the department to be appropriate.

(c) Special prevailing wage rate determinations may be requested for special projects or special worker classifications, if the work to be performed does not conform to traditional public construction for which a prevailing wage rate has been established under (a) of this section. Requests for special wage rate determinations must be in writing and filed with the commissioner at least 30 days before the award of the contract. An applicant for a special wage rate determination shall have the responsibility to support the necessity for the special rate. An application for a special wage rate determination filed under this section must contain

(1) a specification of the contract or project on which the special rates will apply and a description of the work to be performed;

(2) a brief narrative explaining why special wage rates are necessary;

(3) the job class or classes involved;

(4) the special wage rates the applicant is requesting, including survey or other relevant wage data to support the requested rates;

(5) the approximate number of employees who will be affected; and

(6) any other information which might be helpful in determining if special wage rates are appropriate.

(d) The prevailing wage rate established in (a) of this section shall be considered the minimum wage rate that shall be paid to various classes of laborers, mechanics, and field surveyors.

(e) This section shall be made part of every contract that falls within the scope of AS 36.05.010 and 36.05.070(a).

(Eff. 7/8/73, Register 47; am 7/30/82, Register 83; am 8/9/2001, Register 159; am 3/2/2008, Register 185)

Authority: AS 36.05.010 AS 36.05.030

AS 36.05.070

Editor's note:

The pamphlet titled *Laborers' and Mechanics' Minimum Rates of Pay* may be obtained from the Department of Labor and Workforce Development, Wage and Hour Administration, 1251 Muldoon Road., Suite 113, Anchorage, AK 99504; telephone: (907) 269-4900. The pamphlet is also available on the department's website at:

<http://labor.state.ak.us/lss/lssforms.htm>.

ARTICLE 3. Employment Preference.

Section:

- 60. *(Repealed)*
- 61. Contracting agency report requirements
- 62. Employer reporting requirements
- 64. Hiring preference for residents of zone of underemployment
- 65. *(Repealed)*
- 66. *(Repealed)*
- 67. *(Repealed)*
- 68. Determination that lack of employment opportunities has substantially contributed to serious social or economic problems
- 70. *(Repealed)*
- 71. *(Repealed)*
- 72. Determining residency
- 73. Determination of resident hiring preferences
- 78. Resident hiring preferences in overlapping or multiple zones
- 80. *(Repealed)*
- 81. Compliance with preference requirements
- 82. Department determination of eligibility for preference
- 84. Appeals of eligibility determinations
- 86. Approval of job training programs

8 AAC 30.060. *Resident Hiring.*
[Repealed 9/27/87.]

8 AAC 30.061. CONTRACTING AGENCY REPORTING REQUIREMENTS.

(a) Within 20 days after awarding a contract or grant covered by AS 36.10.180, a state agency or political subdivision of the state shall file with the department a notice containing

- (1) the name and address of the state agency or political subdivision awarding the contract or grant;
- (2) the name of the head of the state agency or political subdivision awarding the contract or grant;
- (3) the date of the contract or grant award;
- (4) the total amount of the contract or grant;
- (5) the location of the project; and
- (6) the name and address of each contractor and subcontractor performing work on the project.

(b) A state agency or political subdivision of the state shall report immediately to the department any changes or additions regarding the notice required in (a) of this section which involve either

- (1) a change in the identity of a contractor or subcontractor performing work on the project; or
- (2) a change in the total amount of the contract if the change exceeds \$10,000.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.076

8 AAC 30.062. Employer Reporting Requirements.

(a) Upon request by the department, an employer required to file a quarterly report of employment and wages under AS 23.20.105 - 23.20.535 shall include in

its quarterly report the following information for each employee:

(1) either the occupational title or the four-digit standard occupational classification code for the last position held by the employee; and

(2) the two-digit geographic area code of the employee's primary work location.

(b) The department will provide each employer required to submit information under (a) of this section with a list of occupational codes and titles applicable to its industry and a map showing the boundaries and code for each geographic area of the state.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.190

8 AAC 30.064. Hiring Preference For Residents Of Zone Of Underemployment.

(a) For purposes of AS 36.10.150, the commissioner will determine that an area is a zone of underemployment if

(1) the rate of unemployment within the area is at least 10 percent greater than the average national unemployment rate for the most recent 12-month period for which unemployment insurance figures are available, or a longer period determined appropriate by the commissioner to take into account unemployment trends exceeding a one-year period; for example, if the national unemployment rate is seven percent, the rate of unemployment in the area must be at least 7.7 percent for the area to be a zone of underemployment;

(2) at least 10 percent of the jobs in a particular craft or occupation that would be used on a particular public-funded project could be filled by residents of the area who are trained or experienced in that craft or occupation; a determination under this paragraph will be based on data for the quarter of highest employment for the most recent calendar year for which data is available;

(3) the lack of employment opportunities has substantially contributed to serious social or economic problems in the area, as determined under 8 AAC 30.068; and

(4) the employment of nonresidents is a peculiar source of unemployment for residents of the area, as determined under 8 AAC 30.069.

(b) For a public-funded project, the percentage of positions which must be reserved under AS 36.10.150 for eligible residents, in a craft or occupation subject to a hiring preference, is the percentage that would result in a determination under (a) of this section that the area was not a zone of underemployment. The department will compute the percentage for an occupation or craft and announce it after the determination under (a) of this section is made.

(Eff. 9/27/87, Register 103; am 6/8/11, Register 198)

Authority: AS 36.10.075 AS 36.10.150

8 AAC 30.065. *Hiring Preference For Residents Of Economically Distressed Zone.*

[Repealed.]

(Eff. 9/27/87, Register 103; repealed 08/9/01, Register 159)

8 AAC 30.066. *Hiring Preference For Economically Disadvantaged Minority Residents.*

[Repealed.]

(Eff. 9/27/87, Register 103; repealed 08/9/01; Register 159)

8 AAC 30.067. *Hiring Preference For Economically Disadvantaged Female Residents.*

[Repealed.]

(Eff. 9/27/87, Register 103; repealed 08/9/01; Register 159)

8 AAC 30.068. Determination That Lack of Employment Opportunities Has Substantially Contributed to Serious Social or Economic Problems.

For purposes of AS 36.10.150 - 36.10.175 and this chapter, the lack of employment opportunities has substantially contributed to serious social or economic problems if changes in indicators of social and economic problems are linked to changes in the number of people who want to work and are unable to obtain work. The commissioner will use correlation analysis, testimony, professional studies, or other evidence to establish the relationship between unemployment and social or economic problems.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.160
AS 36.10.175 AS 36.10.150
AS 36.10.170

8 AAC 30.069. Determination Of Peculiar Source Of Unemployment.

For purposes of AS 36.10.150 - 36.10.175, and 8 AAC 30.064, the commissioner will determine that employment of nonresidents is a peculiar source of unemployment if more than 10 percent of the residents of an area who are trained or experienced in a craft or occupation are unemployed and more than 10 percent of the total number of workers employed in that area in that craft or occupation are not residents of the area.

(Eff. 9/27/87, Register 103; am 08/9/01; Register 159)

Authority: AS 36.10.075 AS 36.10.160
AS 36.10.175 AS 36.10.150
AS 36.10.170

8 AAC 30.070. *Annual Report By Agency Or Political Subdivision Of The State.*

[Repealed 9/27/87.]

8 AAC 30.071. *Determination Of Past Economic Discrimination.*

[Repealed.]

(Eff. 9/27/87, Register 103; repealed 08/9/01; Register 159)

8 AAC 30.072. Determining Residency.

The department will consider the following information in determining whether a person is a resident:

(1) where the person, the person's spouse, and the person's dependent children maintain their principal place of abode;

(2) where the person's dependent children are enrolled in school;

(3) the person's address on driver's licenses;

(4) the person's address on motor vehicle registrations;

(5) where the person's bank, credit union, or other financial accounts are maintained;

(6) the person's address on hunting, fishing, trapping, or other licenses;

(7) where the person is registered to vote;

(8) the person's address as shown on Department of Revenue permanent fund dividend records; and

(9) any other relevant facts.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.14
AS 36.95.010(4)

8 AAC 30.073. Determination of Resident Hiring Preferences.

(a) The commissioner will, at least biennially, determine whether an area is a zone of preference under AS 36.10 and this chapter if enough data is available to make that determination.

(b) The commissioner will include, in the annual resident hire report required under AS 36.10.130, all resident preference determinations made during the previous calendar year.

(c) When an area has been determined to be a resident hiring zone of preference, the department will notify all contractors of record who are or will be performing work on public-funded projects in the zone, and will notify all state agencies and political subdivisions that have public-funded projects in the zone.

(d) Upon notification under (c) of this section, the resident hiring preference requirements are effective immediately and apply to all public-funded projects in the zone.

(Eff. 9/27/87, Register 103; am 3/2/2008, Register 185)

Authority: AS 36.10.075

8 AAC 30.078. Resident Hiring Preferences in Overlapping or Multiple Zones.

(a) If two areas are determined to be zones of preference under AS 36.10 and this chapter for the same resident hiring preference, and one of the zones is located entirely within the other, the preference requirements will apply to the larger zone.

(b) As provided in AS 36.10.150 - 36.10.175, if a public-funded project is located in more than one zone, the entire project is subject to the resident hiring preferences in effect in those zones.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075

8 AAC 30.080.

[Repealed 12/4/76.]

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.

(Eff. 9/27/87, Register 103; am 3/2/2008, Register 185)

Authority: AS 36.10.070 AS 36.10.140
AS 36.10.190 AS 36.10.075
AS 36.10.180

8 AAC 30.082. Department Determination Of Eligibility For Preference.

(a) Following a determination under this chapter that an area is a zone of preference, the department's assistance may be requested in determining a person's eligibility for a resident hiring preference in a craft or occupation on a public-funded project. Application for an eligibility determination must be made on a form available from the division or from any state employment center. An applicant may mail or deliver the completed application to the division or to any state employment center.

(b) A person will be determined to be eligible for a resident hiring preference if the person establishes, to the department's satisfaction, that he or she meets the eligibility criteria in AS 36.10.140 and 36.10.150 - 36.10.175. An applicant will be notified of the department's determination.

(c) The department will, in its discretion, request that an applicant provide additional information to the department. The additional information will be made a part of the application, and will, in the department's discretion, be used in determining the applicant's eligibility.

(d) If a person is determined under this section to be ineligible, a new application may be submitted if there are new or previously undisclosed facts bearing upon eligibility. The applicant shall note that the application is not an initial application and shall set out the new or previously undisclosed facts.

(e) An employer may rely on the department's determination of eligibility under this section in meeting the requirements of AS 36.10.140 (c) and 36.10.150 - 36.10.175.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.070 AS 36.10.075
AS 36.10.140

8 AAC 30.084. Appeals Of Eligibility Determinations.

(a) A determination by the department under 8 AAC 30.082 that a person is not eligible for a resident hiring preference is final unless the applicant, or the applicant's representative, files a written appeal with the department within 20 days after receipt of the determination.

(b) An appeal must contain the name and mailing address of the applicant, the reasons for the appeal, and any arguments or information in support of the appeal.

(c) The department will, in its discretion, consider any relevant evidence in deciding an appeal even if the

evidence is not admissible under Alaska rules of evidence. The department will, in its discretion, request additional information from the applicant. The applicant must respond in writing to a request for additional information within 10 days after receipt of the request. The department will, in its discretion, grant an extension of time to an applicant for good cause shown.

(d) Any notices or other documents in connection with an appeal will be mailed to the last address furnished by the applicant.

(e) The department will issue a written decision on the appeal within 30 days after receipt of the appeal or within 30 days after the submission of additional information requested under (c) of this section. The decision will include findings of fact and conclusions of law, and will be served on all parties to the appeal. The decision under this subsection is the final decision of the department.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.140

8 AAC 30.086. Approval Of Job Training Programs.

(a) For the purposes of AS 36.10.140 (a)(4), the following types of job training programs are approved:

(1) a program approved by the Alaska Commission on Postsecondary Education, or by an equivalent agency in another state if the program is located in another state; or

(2) a program approved by the federal bureau of apprenticeship and training.

(b) For the purposes of AS 36.10.140 (a)(4), the following types of training programs will, in the department's discretion, be approved:

(1) a program sponsored or conducted by an employer or union; or

(2) a program approved under 29 U.S.C. 1501 - 1781 (Job Training Partnership Act).

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.140

8 AAC 30.088. Computations Regarding Hiring Preference Requirements.

Computing the number of workers or positions for resident employment preference under AS 36.10 and this chapter might result in a number that contains a fraction. In such cases, the fraction is to be dropped. For example, a result of 4.8 workers should be shown as 4 workers.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075

ARTICLE 4. INVESTIGATIONS AND HEARINGS.**Section:**

90. Investigations, Conference, and Persuasion
 100. Hearings
 110. Decisions

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 the division finds after investigation that probable cause exists for believing that a violation of AS 36.05 or AS 36.10 has occurred, it will attempt to eliminate the unlawful practice by conference and persuasion as follows:

(1) the division will provide the respondent believed to have violated AS 36.05 or AS 36.10 with a copy of the complaint or a description of the alleged violation and inform the respondent of the results of the division's investigation; and

(2) the division will provide an opportunity for an informal conference with the respondent to discuss the matter and attempt to eliminate the alleged violations.

(c) *[Repealed 1/2/91.]*

(d) If an alleged violation is not rectified by the informal conference or if the respondent fails to attend the conference without good cause, the division will refer the matter to the attorney general for enforcement under AS 36.05.030(b) or schedule a hearing.

(Eff. 12/4/76, Register 60; am 7/30/82, Register 83; am 1/2/91, Register 116; am 8/9/01, Register 159; am 3/2/2008, Register 185)

Authority: AS 23.05.060 AS 36.10.075
 AS 36.10.120 AS 36.05.030

8 AAC 30.100. Hearings.

(a) Both respondent and complainant may be represented by counsel. If counsel for a party notifies the division, in writing, that counsel is appearing in the matter on behalf of the party, service of notices, memoranda, recommendations, or other papers will be considered sufficient if made on counsel.

(b) The division will give notice to the respondent and to the complainant, if any, of the time and place of the hearing on an alleged violation of AS 36.05 or AS 36.10 by certified mail, or by personal service at least 15 days before the hearing. Mailing to the last known address or the address listed with the division of occupational licensing for construction contractors shall be considered valid service. The notice will contain a copy of the complaint and a description of the alleged violation which will be considered at the hearing.

(c) The location of the hearing will be designated by the division with due regard for the convenience of all persons involved. All hearings are public.

(d) The director will appoint a wage and hour investigator or contract with an attorney licensed in this state to serve as hearing officer, to preside over the

hearing, and to make findings of fact and conclusions of law to be used as a basis for the director's decision. An investigator who has investigated the alleged violations or taken part in the informal conference under 8 AAC 30.090 will not be appointed hearing officer.

(e) The hearing officer has full authority to control the procedure of the hearing and to rule on all motions and objections.

(f) The hearing officer may admit any relevant evidence, regardless of the existence of any common law or statutory or court rule which might make improper the admission of such evidence over objection in civil actions, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(g) Oral evidence must be given under oath or affirmation. A record of the proceedings will be kept.

(h) The hearing officer, respondent, and complainant may

(1) call and examine witnesses;

(2) cross-examine opposing witnesses on any matter relevant to the issue at hand even though that matter was not covered in direct examination; and

(3) introduce exhibits.

(i) If the respondent or complainant does not testify in that person's own behalf, that person may be called and examined as if under cross-examination.

(j) The hearing officer may, for good cause shown, continue a hearing from day to day or recess it to a later date or to a different place by announcement at the hearing or by notice.

(Eff. 12/4/76, Register 60; am 1/2/91, Register 116; am 8/9/01; Register 159)

Authority: AS 23.05.060 AS 36.10.075
 AS 36.10.120 AS 36.05.030

8 AAC 30.110. Decisions.

(a) The hearing officer will prepare a written recommendation to the director containing findings of fact and conclusions of law. A copy of the recommendations will be mailed or otherwise delivered to the respondent and to the complainant, if any. The director will act upon the hearing officer's recommendation and render a final decision within 30 days.

(b) Upon making a decision, the director will serve it upon the respondent and complainant, if any, by personal service or certified mail, return receipt requested. If the director determines that the respondent has violated AS 36.05 or AS 36.10, the decision may contain such cease and desist orders and other orders and relief, including a recommendation that the respondent be placed on a list of violators who are barred from performing public contracts as provided under AS 36.05.090 and AS 36.10.090, as the director considers appropriate to correct the unlawful conduct.

(c) If, after the director's decision finding the respondent in violation of AS 36.05 or AS 36.10 is served on the respondent, the director determines that the respondent has not ceased or has failed to correct the unlawful conduct, the director will refer the matter to the attorney general for enforcement.

(Eff. 12/4/76, Register 60; am 8/9/01, Register 159)

Authority: AS 23.05.060 AS 36.10.075
AS 36.10.125 AS 36.05.030
AS 36.10.120

ARTICLE 5. DEBARMENT.

Section:

- 200. Review and Recommendations
- 210. Hearings
- 220. Decisions
- 230. Appeals
- 240. Request for Removal

8 AAC 30.200. Review and Recommendations.

(a) Contractors or subcontractors who have disregarded their obligations to employees as defined in 8 AAC 30.900 may be subject to debarment for three years.

(b) Debarment will be considered in those cases in which a contractor or subcontractor has committed willful, aggravated or repeated violations of the provisions of AS 36.05.

(c) The standards to be considered in determining if the contractor's or subcontractor's violations merit recommendation for debarment are

- (1) falsification or concealment of records;
- (2) refusal to pay prevailing wages;
- (3) failure to pay prevailing wages;
- (4) extent and seriousness of the violations; or
- (5) three or more violations on the same or separate contracts within a five-year period.

(d) A prime contractor may be considered for debarment in cases where the violations are committed by its subcontractors. Criteria considered in determining whether a prime should be debarred are:

- (1) a history of subcontractors violating under that prime;
- (2) failure of the prime contractor to notify its subcontractors of the requirements of AS 36.05; and
- (3) informing subcontractors how not to comply, or assisting a subcontractor in not complying with AS 36.05.

(e) At the completion of an enforcement action against a contractor or subcontractor for a violation of AS 36.05, the investigator will review the file to determine if a recommendation for debarment is warranted in accordance with (c) or (d) of this section. If it is determined that a recommendation for debarment is proper, the investigator will forward the recommendation citing specific statutes through his or her supervisor to the director. The director will review the

recommendation of the investigator and determine if the case will be referred for hearing.

(f) When, as a result of an investigation conducted by the department, the director finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of AS 36.05 which constitute a disregard of its obligations to employees under that chapter, the director shall notify by personal service or certified mail to the last known address, the contractor or subcontractor and its responsible officers, of the finding. The director shall afford the contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under AS 36.05.090. The director will furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified request a hearing, the request must be made by letter postmarked within 30 days of the date of the letter from the director. The request must set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised. Upon receipt of a request for a hearing, the director shall refer the case for hearing to determine the facts in dispute.

(g) Hearings under this section shall be conducted in accordance with 8 AAC 30.210. If no hearing is requested within 30 days of the date of the director's letter, the director's findings shall be final.

(Eff. 1/2/91, Register 116)

Authority: AS 23.05.060 AS 36.05.030
AS 36.05.090

8 AAC 30.210. Hearings.

(a) The respondent may be represented by counsel. If counsel for a party notifies the division, in writing, that counsel is appearing in the matter on behalf of the party, service of notices, memoranda, recommendations, or other papers will be considered sufficient if made on counsel.

(b) The division will give notice to the respondent of the time and place of the hearing on an alleged violation of AS 36.05 by certified mail or by personal service at least 15 days before the hearing. The notice will contain a summary of investigative findings that will be considered at the hearing. Service on the address a contractor or subcontractor has provided to the division of occupational licensing for the purpose of obtaining a contractor's license, or the last known address furnished by the contractor or subcontractor, shall be considered valid service.

(c) The location of the hearing will be designated by the division with due regard for the convenience of all persons involved. All hearings are public.

(d) The director will appoint a wage and hour investigator or contract with an attorney licensed in this state to serve as hearing officer to preside over the hearing and to make findings of fact and conclusions of law to be used as a basis for the director's decision. An investigator who has investigated the alleged violations or taken part in the informal conference under 8 AAC 30.090 will not be appointed hearing officer.

(e) The hearing officer has full authority to control the procedure of the hearing and to rule on all motions and objections.

(f) The hearing officer may admit any relevant evidence, regardless of the existence of any common law or statutory or court rule that might make improper the admission of such evidence over objection in civil actions, if the evidence is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible over objection in civil actions. The hearing officer may issue subpoenas at the request of either party or on the hearing officer's own motion.

(g) Oral evidence must be given under oath or affirmation. A record of the proceedings will be kept.

(h) The hearing officer, respondent, and complainant may

(1) call and examine witnesses;

(2) cross-examine opposing witnesses on any matter relevant to the issue at hand even though that matter was not covered in direct examination; and

(3) introduce exhibits.

(i) If the respondent does not testify in the respondent's own behalf, that person may be called and examined as if under cross-examination.

(j) The hearing officer may, for good cause shown, continue a hearing from day to day or recess it to a later date or to a different place by announcement at the hearing or by notice.

(k) The department has the burden of proving that the alleged violations have occurred. The standard of proof required is by a preponderance of the evidence.

(Eff. 1/2/91, Register 116; am 8/9/01, Register 159)

Authority: AS 23.05.060 AS 36.05.030

AS 36.05.090

8 AAC 30.220. Decisions.

(a) Within 90 days of concluding a hearing, the hearing officer will prepare a written recommendation to the director containing findings of fact and conclusions of law. A copy of the recommendations will be mailed or otherwise delivered to the respondent and to the complainant, if any. The director may accept the recommendations, in part or in whole, or may remand the matter for further hearing. The director must act upon the hearing officer's recommendation and render a decision within 30 days.

(b) Upon making a decision, the director will serve it upon the respondent by personal service or certified mail. If the director determines that the respondent has disregarded its obligations to employees under AS 36.05, the decision will order that the respondent be placed on a list of violators who are barred from performing public contracts as provided under AS 36.05.090.

(c) In the absence of or in addition to action of a state disbursing officer or local fiscal officer, the department will distribute a list reflecting the names of debarred contractors and the effective period of the debarment.

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

Authority: AS 23.05.060 AS 36.05.030

AS 36.05.090

8 AAC 30.230. Appeals.

The director's decision is final. Appeals must be filed in superior court in accordance with Alaska court Rules of Appellate Procedure.

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

Authority: AS 23.05.060 AS 36.05.030

AS 36.05.090

8 AAC 30.240. Request For Removal.

Any person or firm debarred under AS 36.05.090 and 8 AAC 30.220 may, in writing, request removal from the debarment list after six months from the date the debarment took effect. All requests should be directed to the director of labor standards and safety and must contain a full explanation of the reasons why such person or firm should be removed from the debarred list. In cases where the contractor or subcontractor failed to make full restitution of wages and fringe benefit contributions to all underpaid employees, a request for removal will not be considered until all underpayments, including appropriate interest, are made. In other cases, the director will examine the facts and circumstances surrounding the violative practices which caused the debarment and issue a decision as to whether or not the person or firm has demonstrated a current responsibility to comply with AS 36.05 and therefore should be removed from the ineligible list.

(Eff. 1/2/91, Register 116)

Authority: AS 23.05.060 AS 36.05.030

AS 36.05.090

ARTICLE 6. GENERAL PROVISIONS.**Section:**

900. General Definitions

910. Definition of "On-Site."

920. Definition of "Economic Region."

8 AAC 30.900. General Definitions.

In this chapter and in AS 36

(1) "commissioner" means the commissioner of labor and workforce development;

(2) "crafts" and "occupations" mean the occupations identified in the Standard Occupational Classification Manual (1980 edition);

(3) "debar" or "debarment" means being placed on a list of persons who are barred from performing public contracts under AS 36.05.090;

(4) "department" means the Alaska Department of Labor and Workforce Development;

(5) "director" means the director of the labor standards and safety division of the department;

(6) "disregarded their obligations to employees" (or a grammatical variant) as used in AS 36.05.090 and this chapter includes any of the following:

(A) failure or refusal to pay basic prevailing wages;

(B) failure or refusal to pay fringe benefits into the appropriate union trust, approved private pension plan, or other approved fringe benefit plan within applicable time limits;

(C) failure to pay at least once a week;

(D) failure to pay unconditionally; or

(E) failure to report wage payments to employees accurately and timely as required by AS 36.05.040;

(7) "division" means the labor standards and safety division of the department;

(8) "eligible resident" means a person who meets the requirements of AS 36.10.140(a) and AS 01.10.055 and who, under 8 AAC 30.072, would be determined to be a resident of an area that has been determined by the department under this chapter to be a resident hiring zone of preference;

(9) "hire" and its derivatives mean engaging an individual to work on a public-funded project, and includes the transfer of an existing employee from one location to another or from one craft or occupation to another;

(10) "interest" as used in AS 36.05.090 means more than five percent investment in a partnership or association, more than ten percent share in stock in a corporation, or holding any elected or appointed office in the business entity;

(11) "majority penetration" means that the majority of qualified laborers, mechanics, and field surveyors working at a particular skill level in a particular job class, as indicated by response to a department survey, receive a particular wage;

(12) "marginally employed" means that a person is employed for fewer than 30 hours a week and the person wishes to work 30 hours or more a week;

(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. In making this determination, the department will use the criteria established by the Alaska Supreme Court in *Jeffcoat v. State*, Dept. of Labor, Sup. Ct. Op. No. 3162 (File No. S-1444), 732 P.2d 1073 (1987). These criteria include

(A) the degree of the alleged employer's right to control the manner in which the work is to be performed;

(B) the alleged employee's opportunity for profit or loss depending upon their managerial skill;

(C) the alleged employee's investment in equipment or materials required for their task, or their employment of helpers;

(D) whether the service rendered requires a special skill;

(E) the degree of permanence of the working relationship; and

(F) whether the service rendered is an integral part of the alleged employer's business.

(14) *[repealed 8/9/01;]*

(15) "person" and "persons" as used in AS 36.05.090 means a person as that term is defined in AS 01.10.060 (8);

(16) "prevailing wage rate" means the total of the basic hourly rate, health and welfare, pension, legal service, apprentice training payments and other fringe benefits which inure to the benefit of the worker, as published by the department;

(17) "public-funded project" means a project described in AS 36.10.180 and AS 36.95.010 (3);

(18) "qualified" means having the education, training and experience necessary to perform the duties and satisfy the terms and conditions which are usual for the industry or profession or having the status specified in AS 36.95.010 (4);

(19) "state agency" means a state agency described in AS 36.10.180 (a)(1);

(20) "state employment centers" means those offices maintained by the department whose functions are to aid the unemployed in finding employment;

(21) "underemployed" means employed in a job that requires less skill or training than a job for which the employee is trained and qualified.

(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 8/9/01, Register 159)

Authority: AS 23.05.060 AS 36.10.075

AS 36.95.010 AS 36.05.030

AS 36.10.140

Editor's note:

Copies of the Standard Occupational Classification Manual adopted by reference in 8 AAC 30.900(2) are available for review at the Anchorage, Fairbanks, and Juneau offices of the department.

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

8 AAC 30.910. Definition Of "On-Site."

(a) In AS 36.95.010(3), "on-site" means at the physical place where the construction called for in a contract will remain when work on it has been completed and at other property used by the contractor or subcontractor in the construction which can reasonably be said to be included in the site because of proximity. The scope of "on-site"

(1) has the following exceptions:

(A) for a truck driver employee or truck driver owner/operator working for a contractor or subcontractor on the project, "on-site" encompasses all round-trip truck driving activity associated with delivering or hauling away materials, equipment, or supplies for the purposes of completing a public construction contract;

(B) for a truck driver employee or truck driver owner/operator who is working for a contractor or subcontractor on the project, and who, for the purposes of completing a public construction contract, hauls materials, equipment, or supplies away from a public construction project footprint, but does not return to the public construction project, "on-site" encompasses the haul-away activities until the truck is offloaded;

(C) a truck driver performing delivery as an employee of a bona fide material supplier or common carrier is not "on-site" when delivering materials from a location that is not "on-site," including that material supplier's home yard or warehouse, if that location is not dedicated exclusively or nearly so to performance of one or more public construction projects;

(2) is extensive for larger projects, including airports, dams and roads, and includes the whole area in which the contract construction activity will take place; work areas separate from the physical footprint of the construction activity, including fabrication plants, mobile factories, batch plants, borrow pits, rock quarries, job headquarters, tool yards, and similar work areas, are "on-site" if they are in close proximity and are dedicated exclusively or nearly so to performance of one or more public construction projects during the period of contract construction activity;

(3) for smaller projects, normally includes no more than the building itself and its grounds and other land or structures that are "down the block" or "across the street" that the contractor or subcontractor uses in performance of a particular public construction project.

(b) Laborers, mechanics, or field surveyors who perform duties within the limits of "on-site" are subject to the department's wage decision for all hours spent working "on-site." Workers who, under this subsection, are subject to the department's wage decision include

(1) flaggers;

(2) barricade suppliers who set up or move barricades or other traffic control devices;

(3) employees of bona fide material suppliers or common carriers who perform work "on-site," other than mere delivery, including drivers or delivery workers assisting in specific placement of asphalt or concrete during construction operations, stocking materials in rooms or on floors, or otherwise performing work in construction;

(4) workers who perform mobilization or demobilization activities;

(5) workers contracted or employed by material or equipment suppliers who erect, clean, repair, construct, or perform operational checks, other than contractually obligated warranty work, on equipment or material located "on-site"; and

(6) laborers, mechanics, or field surveyors who are engaged by a person or business that is hired or contracted by a prime construction contractor or subcontractor to provide services that are integral and necessary to the construction project; workers who are subject to this paragraph

(A) shall be considered to be "on-site" in the performance of those duties that the contractor or subcontractor was required to perform;

(B) include a trucking firm other than a common carrier whose services are engaged by a construction contractor or subcontractor on a public works job to pick up materials from a supplier's delivery point and transport them to the job site.

(c) Not included in "on-site" are permanent home offices, branch plants, fabrication plants, tool yards, and other establishments of a contractor or subcontractor whose locations and continuance are governed by its general business operations. This is so even though mechanics, laborers, and field surveyors working at these establishments may repair or maintain machinery used in contract performance or make doors, windows, frames, or forms called for by the contract while continuing normal commercial work. Regardless of the activities performed at these establishments, the department's wage decision does not apply, because they are not "on-site." However, if mechanics, laborers, or field surveyors are required to go to a place that is "on-site" to perform activities on the contract, the department's wage decision is applicable for the actual time so spent, not including travel.

(d) For purposes of this section, a location or work area, or the existence or continuing operation of an enterprise, is dedicated exclusively or nearly so to one or more public construction projects if

(1) the location, work area, or enterprise is established in conjunction with one or more public construction projects; and

(2) during the year before a public construction project and during the life of a public construction project, less than 10 percent of documented sales or other uses are attributed to non-public construction projects.

(e) For purposes of this section, a site is in proximity to a public construction project if it is nearby the public construction project footprint and used on a regular and recurring basis to complete the public construction contract. The department will determine whether a site is in proximity to a public construction project on a project-by-project basis, taking into account

(1) the type of project;

(2) whether the use of a nearby site is required for completion of the project;

(3) whether the area of contract operations is developed or undeveloped; and

(4) the geographical lay of the land.

(f) In this section,

(1) "bona fide material supplier"

(A) means a commercial enterprise that holds itself out to the public as offering to supply sand, gravel, ready-mixed concrete, hot asphalt, or other construction materials to multiple clients for both public and private jobs;

(B) does not include a commercial enterprise whose existence or continuing operation is dedicated exclusively or nearly so to one or more public construction projects;

(2) "common carrier"

(A) means a commercial enterprise that holds itself out to the public as offering to transport freight or passengers and delivers multiple types of materials to multiple clients for both public and private jobs on a recurrent basis over established routes; in this subparagraph, "freight"

(i) means materials, supplies, and equipment, other than materials described in (ii) of this subparagraph;

(ii) does not include dirt, sand, gravel, rock, or other naturally occurring earth materials;

(B) does not include a commercial enterprise whose existence or continuing operation is dedicated exclusively or nearly so to one or more public construction projects.

(1) includes work under a limited or full warranty; the services that are normally provided under that warranty to repair a defect or malfunction are not subject to AS 36 even if performed on-site; and

(2) does not include routine daily or periodic maintenance.

(Eff. 7/30/82, Register 83; am 1/2/91, Register 116; am 8/9/01, Register 159; am 3/24/11, Register 197)

Authority: AS 23.05.060 AS 36.05.030
AS 36.10.075

8 AAC 30.920. Definition Of "Economic Region."

In AS 36.10, "economic region" means a geographic area of the state sharing similar economic or demographic characteristics.

(Eff. 9/27/87, Register 103)

Authority: AS 36.10.075 AS 36.10.990

Editor's note:

Forms and any other assistance needed for compliance with 8 AAC 30 may be obtained by contacting any state employment center or the Department of Labor and Workforce Development, Wage and Hour Administration, Anchorage, Alaska 99504.

PAMPHLET NO. 400 - INDEX
TITLE 36 - PUBLIC CONTRACTS

<u>TOPIC</u>	<u>PAGE NO</u>
Apprentices	5
Contracting Agency	
Award/Notification (To DOL)	1, 10
Contract Specifications – Requirements	1
Withholding Accrued Payments	11
Withholding Final Payments.....	2
Contractor Bonds Requirements.....	1, 8, 10
Municipal Exemptions	9
Certified Payrolls Requirements.....	1, 10, 15
Computer Generated Forms	10
Filing.....	1, 10
Debarment	18-19
Definitions	6, 8-9, 20
"On-Site"	9, 21-22
Employment Preference/Local Hire	
Contracting Agency Notification	13
Computations - Rounding	16
Debarment.....	18-19
Definitions.....	8, 20
Eligibility for Employment Preference - (Employee).....	6
Employer Reporting Requirements	6, 13, 15-16
Federal Funds Involved	5
Investigations & Hearings	6, 17, 18-19
Projects Subject to Employment Preference	7
Residency - Determination/Eligibility	6, 14
Violations/Penalties.....	17-18
Waivers.....	14-16
Fringe Benefit Contributions	11
As Wages	9
Investigations & Hearings.....	6, 17, 18-19
Job Training Programs	16
Little Miller Act/Liens.....	8-9
Non-Competitive Contracts.....	3
Notice of Work.....	2
Notice of Completion	2
Owner/Operator.....	10, 20, 21
Filing Certified Payrolls.....	10
Wage Rates - Public Construction	1, 2
Authority to Determine.....	1
Definition (Prevailing Wage Rate).....	20
Determination of Wage Rates.....	1, 12
Required In Contracts & Specifications	2
Special Wage Rate Determinations	12
Wages - Definition	9
Wage Survey.....	12, 20
Withholding Funds.....	3

LABOR STANDARDS REGULATIONS NOTICE REQUEST

If you would like to receive Wage and Hour or Mechanical Inspection publications or regulations information, please indicate below which programs you would like, print your name and mailing address in the space provided, and mail this page to:

Alaska Department of Labor and Workforce Development
Wage and Hour Administration
1251 Muldoon Road, Suite 113
Anchorage, Alaska 99504

For REGULATIONS information relating to any of the following:

- Wage and Hour Title 23 Employment Practices
- Wage and Hour Title 36 Public Works
- Current Prevailing Wage Rates
- Employment Agencies
- Child Labor
- Employment Preference (Local Hire)
- Plumbing Code
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