

**Sec. 23.30.045. Employer's liability for compensation.**

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training, work readiness, work therapy experience, or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section.

(d) A contract may not be awarded by the state or a home rule or other political subdivision of the state unless the person to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The person to whom the contract is awarded shall keep the workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on behalf of the employer in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies that the state or political subdivision may have against the employer.

(f) In this section,

(1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;

(2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

#### History -

(Sec. 3 ch 193 SLA 1959; am Sec. 1 ch 46 SLA 1967; am Sec. 3 ch 166 SLA 1972; am Sec. 4, 5 ch 93 SLA 1982; am Sec. 1 - 3 ch 80 SLA 2004)

#### Revisors Notes -

Subsection (f) of this section was reorganized in 2004 to maintain alphabetical order.

#### Amendment Notes -

The 2004 amendment, effective September 15, 2004, in subsection (a), inserted "and fails to secure the payment of compensation to its employees" in the second sentence, deleted "unless the subcontractor secures the payment" from the end of that sentence, and added the last sentence; and, in subsection (f), inserted "but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property" in paragraph (1) and added paragraph (3).

#### AG Opinions -

An employee who is a resident of Alaska and is employed by an Alaska resident employer, but who is injured in the scope of his employment while on a temporary, emergency job in Canada, is entitled to compensation under the Alaska Workmen's Compensation Act, and the Alaska Workmen's Compensation Board has jurisdiction over the case. 1960 Op. Att'y Gen., No. 35.

Generally, services voluntarily performed for another are not covered by the Workmen's Compensation Act. 1963 Op. Att'y Gen., No. 8.

Volunteer civil defense workers are not covered by the Alaska Workmen's Compensation Act because they are not "employees" under that Act. 1963 Op. Att'y Gen., No. 8.

#### Decisions -

This section sets out scope of employer's liability and his responsibility to be insured, or a self-insurer. *Stafford v. Westchester Fire Ins. Co.*, 526 P.2d 37 (Alaska 1974), overruled on other grounds, *Cooper v. Argonaut Ins. Cos.*, 556 P.2d 525 (Alaska 1976).

Liability under subsection (a). - Under the clear language of subsection (a), employer is liable for all payments made pursuant to AS 23.30.180 through AS 23.30.215. *Alaska Pac. Assurance Co. v. Julian*, 513 P.2d 1097 (Alaska 1973).

Subsection (a) is referred to as the "contractor-under" provision. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

Origin. - The Alaska "contractor-under" statute was taken from the text of the federal Longshoremen's and Harbor Workers' Compensation Act. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

Purpose of subsection (a) is to protect employees of irresponsible and uninsured subcontractors by imposing ultimate liability on the presumably responsible principal contractor, who has it within his power, in choosing subcontractors, to pass upon their responsibility and insist upon appropriate compensation protection for their workers. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

Subsection (a) aims to forestall evasion of the act by those who might be tempted to subdivide their regular operations among subcontractors, thus escaping direct employment relations with the workers and relegating them for compensation protection to small contractors who fail to carry compensation insurance. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

"Contractor". - The most appropriate definition of the term "contractor," as it is used in subsection (a), is: a person who undertakes, by contract, the performance of certain work for another, including the furnishing of goods and services. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

A person who has not incurred a contractual duty cannot properly be deemed a contractor under our statute. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

"Project owner." - Pipeline operator met the statutory definition of "project owner" where, in the course of its business, it engaged the services of a contractor, which undertook performance of work for the operator; because of its contract with the contractor, the operator did not need to hire its own employees to perform the work done by the contractor. The operator was covered by the exclusivity provisions of this section, and the superior court correctly dismissed the employee's lawsuit. *Anderson v. Alyeska Pipeline Serv. Co.*, 234 P.3d 1282 (Alaska 2010).

"Subcontractor". - The proper definition of "subcontractor" under subsection (a) is: a person to whom a contractor sublets all or part of his initial contractual undertaking. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970) (decided prior to 2004 amendment defining "subcontractor").

If a person enters into a contract to perform work, he cannot be construed to be a subcontractor unless the duty which he undertakes is at the same time part of a contractual duty of the party with whom he contracted. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970) (decided prior to 2004 amendment defining "subcontractor").

Department of Fish and Game cannot be considered as contractor for the purposes of the "contractor-under" provision. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

Department of Administration not liable as principal contractor. - Any argument that the Department of Administration, in acting to secure a contract for the Department of Fish and Game, and other departments of the state, becomes liable as a principal contractor pursuant to subsection (a) is rejected. *Thorsheim v. State*, 469 P.2d 383 (Alaska 1970).

Present rule only requires that employer exercise reasonable care to select competent contractor. *Matanuska Elec. Ass'n v. Johnson*, 386 P.2d 698 (Alaska 1963).

He has no affirmative duty to determine compliance with act by such contractor. - An employer need not himself take affirmative steps to determine that an independent contractor is financially responsible and has complied with the Workmen's Compensation Act. *Matanuska Elec. Ass'n v. Johnson*, 386 P.2d 698 (Alaska 1963).

Due process rights held not infringed by amendments to section. - Oil rig worker, who was employed by a contractor, brought a third-party suit against an oil company for work-related injuries; the worker's due process rights were not infringed by the 2004 amendments to this section and AS 23.30.055 because the worker still had access to the courts, and the worker still had a worker's compensation claim. The worker's equal protection rights were also not violated by the amendments because the worker's interests were economic; therefore, a minimum scrutiny level of review was applied. *Schiel v. Union Oil Co.*, 219 P.3d 1025 (Alaska 2009).

And may assume contractor will provide compensation where employee used. - The employer of an independent contractor has a legal right to assume that his contractor will abide by the law and provide for compensation where an employee is used. *Matanuska Elec. Ass'n v. Johnson*, 386 P.2d 698 (Alaska 1963).

The employer does not have the affirmative duty of requiring that a contractor produce for inspection an effective policy of workers' compensation insurance which would be applicable in the event he employed others. *Matanuska Elec. Ass'n v. Johnson*, 386 P.2d 698 (Alaska 1963).

Medical benefits included in "compensation". - Subsection (a) of this section and AS 23.30.010 use the word "compensation" so that the only reasonable reading of the word would include medical benefits. *Williams v. Safeway Stores*, 525 P.2d 1087 (Alaska 1974).

Employee not entitled to recover future expenses relating to injury. - Alaska Workers' Compensation Act attempts to replace an employee's lost wage-based income; it does not provide an employee with benefits covering any future expenses that might conceivably have some relation to his or her injuries. *Gunter v. Kathy-O-Estates*, 87 P.3d 65 (Alaska 2004).

Employee's remedies. - When an employer fails to comply with the Alaska Workers' Compensation Act's requirement to secure payment of compensation to its injured employees, either through procurement of a workers' compensation insurance policy or through self-insurance, the statute offers an injured employee two options for seeking recovery: (1) claiming compensation through the procedures of the workers' compensation statute, or (2) maintaining a tort action against the employer at law for damages on account of the injury or death under AS 23.30.055; failure to provide workers' compensation insurance does not create a separate contract cause of action. *Nickels v. Napolilli*, 29 P.3d 242 (Alaska 2001).

Reimbursement of certain financial expenses not allowed. - Alaska Workers' Compensation Board properly denied an injured employee's reimbursement claims for a court-imposed fine, court-ordered alcohol treatment and testing, theft, unpaid rent, an interest in a boat, and an interest in his employer's business, where claims were not compensable under the workers' compensation act, because they did not involve medical treatment, rehabilitation, or disability benefits. *Gunter v. Kathy-O-Estates*, 87 P.3d 65 (Alaska 2004).

Set-off. - If a general contractor who by operation of the contractor-under clause contained in subsection (a) has been required to pay workers' compensation benefits to the employee of an uninsured subcontractor is also found liable for damages at common law, he may set-off from that award the amount of compensation benefits he has previously paid to the subcontractor's employee. *Miller v. Northside Danzi Constr. Co.*, 629 P.2d 1389 (Alaska 1981).

Instruction. - Absent any evidence that the employer failed to secure payment of compensation to the injured employee, there was no error in the trial court's instruction in a tort action that the employee's only remedy was under the Workmen's Compensation Act. *Searfus v. Northern Gas Co.*, 472 P.2d 966 (Alaska 1970).

Applied in *Everette v. Alyeska Pipeline Serv. Co.*, 614 P.2d 1341 (Alaska 1980); *Exxon Corp. v. Alvey*, 690 P.2d 733 (Alaska 1984).

Quoted in *Doyon Universal Servs. & Alaska Nat'l Ins. Co. v. Allen*, 999 P.2d 764 (Alaska 2000); *Temple v. Denali Princess Lodge*, 21 P.3d 813 (Alaska 2001).

Stated in *City of Seward v. Wisdom*, 413 P.2d 931 (Alaska 1966); *Wilson v. Erickson*, 477 P.2d 998 (Alaska 1970); *Fenner v. Municipality of Anchorage*, 53 P.3d 573 (Alaska 2002).

Cited in *Wien Consol. Airlines v. Commissioner*, 528 F.2d 735 (9th Cir. 1976); *Ehredt v. DeHavilland Aircraft Co.*, 705 P.2d 446 (Alaska 1985); *Lake v. Construction Mach., Inc.*, 787 P.2d 1027 (Alaska 1990); *Norcon, Inc. v. Kotowski*, 971 P.2d 158 (Alaska 1999); *Alaska Nat'l Ins. Co. v. Northwest Cedar Structures, Inc.*, 153 P.3d 336 (Alaska 2007).

Collateral Refs -

82 Am. Jur. 2d, Workers' Compensation, Sec. 228-241.

101 C.J.S., Workmen's Compensation, Sec. 918-935.

Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 ALR2d 407.

Workers' compensation: liability of successive employers for disease or condition allegedly attributable to successive employments. 34 ALR4th 958.

Right to workers' compensation for emotional distress or like injury suffered by claimant as result of sudden stimuli involving nonpersonnel action - Compensability under particular circumstances. 84 ALR5th 249.