



# LAWS OF ALASKA

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Chapter No.

72

## AN ACT

Relating to the establishment and enforcement of occupational safety and health standards.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- \* Section 1. AS 18.60.010 is repealed and re-enacted to read:

#### ARTICLE 1. PREVENTION OF ACCIDENT AND HEALTH HAZARDS

Sec. 18.60.010. LEGISLATIVE INTENT. (a) The legislature finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments.

(b) For these reasons it is found and declared necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state.

- \* Sec. 2. AS 18.60.020 is amended to read:

Sec. 18.60.020. REGULATIONS. (a) The Department of Labor shall issue the orders and adopt the rules and regulations necessary to carry out the purposes of secs. 10 - 100 of this chapter.

(b) When the commissioner promulgates any standard, makes any rule or order, grants any exemption or extension of time under this chapter, he shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board and cause a copy to be published in newspapers in the state so as to receive statewide coverage.

- \* Sec. 3. AS 18.60.030 is amended by adding new paragraphs

to read:

(6) establish and enforce occupational safety and health standards that prescribe requirements for safe and healthful working conditions for all employment, including state and local government employment, and the requirements are to be at least as effective as those requirements promulgated by the United States Secretary of Labor under sec. 6 of Public Law 91-596;

(7) require an employer to maintain records and submit reports to the department which records and reports are necessary or appropriate for the enforcement of secs. 10 - 100 of this chapter and to maintain records and submit reports to the United States Secretary of Labor in the same manner and to the same extent as set out in federal law and regulations;

(8) require an employer to maintain records and submit reports appropriate for use in developing information regarding the causes and prevention of occupational accidents and illnesses;

(9) require an employer to make periodic inspections when necessary to carry out the record and reporting requirements of (7) and (8) of this section;

(10) participate in occupational safety and health programs if it finds they are necessary to meet the occupational health and safety needs of the state;

(11) execute on behalf of the state agreements or contracts necessary or desirable to enable the state to participate in occupational safety and health programs, and to receive and expend funds made available for programs of the state.

\* Sec. 4. AS 18.60 is amended by adding new sections to read:

Sec. 18.60.055. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH. There is established in the department a division of occupational safety and health to be administered by a director responsible to the commissioner. Minimum qualifications shall be established for employees of the department acting as safety inspectors. Such qualifications shall include, as a minimum requirement, at least five years general work experience in the field they are assigned to inspect.

Sec. 18.60.057. OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD. (a) There is created the Occupational Safety and Health Review Board within the Department of Labor, referred to in this chapter as the OSHA Review Board. The board shall consist of three members appointed by the governor and confirmed by the legislature in joint session. One member of the board shall represent labor, one member shall represent industry, and the other shall represent the public. Each appointee shall have adequate experience in the area of his appointment. No member of the board may be an employee of the state in another capacity nor may he be a member or officer of another board or commission for

which compensation other than per diem and travel expenses are paid.

(b) The terms of members of the board shall be four years except that (1) the members of the board first taking office shall serve, as designated by the governor at the time of appointment, one for a term of one year, one for a term of two years, and one for a term of four years, and (2) a vacancy caused by the death, resignation, or removal of a member before the expiration of the term for which he was appointed shall be filled only for the remainder of the unexpired term. A member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office.

(c) The governor shall designate one member of the board as chairman. This member shall serve as chairman for a term of one year, but may be appointed for successive terms.

(d) Members of the board are entitled to compensation in the amount of \$50 a day for each day or portion of each day spent in actual meeting or on authorized official business incident to their duties and, in addition, they are entitled to all other transportation and per diem as provided by law for members of other state boards and commissions.

(e) The board may employ persons, subject to legislative appropriation, as it considers necessary for the purpose of performing its duties under this chapter.

Sec. 18.60.059. LEGAL COUNSEL. (a) The attorney general is legal counsel for the OSHA Review Board. He shall advise the board on legal matters arising in the discharge of its duties and represent the board in actions to which it is a party. If, in the opinion of the board, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the board, shall represent the public interest.

(b) Subject to the approval of the attorney general, the board may employ temporary legal counsel from time to time in matters in which the board is involved.

\* Sec. 5. AS 18.60.075(a) is repealed and re-enacted to read:

(a) An employer shall do everything necessary to protect the life, health and safety of employees including:

(1) complying with all occupational safety and health standards and regulations promulgated by the department;

(2) furnishing and prescribing the use of suitable protective equipment, safety devices and safeguards as are prescribed for the work and work place; and

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees.

\* Sec. 6. AS 18.60.075(b) is repealed and re-enacted to read:

(b) An employee shall comply with occupational safety and health standards and all rules and regulations issued under secs. 10 - 100 of this chapter that are applicable to his own actions and conduct.

\* Sec. 7. AS 18.60 is amended by adding new sections to read:

Sec. 18.60.077. VARIANCE OF A STANDARD. (a) An employer who is affected by secs. 10 - 100 of this chapter may apply to the commissioner for a variance from a provision of the safety and health standards promulgated by the department. Employees who are affected by an application for variance shall be given notice of the application for variance and an opportunity to participate in the hearing. The commissioner shall issue the variance if he determines on the basis of the hearing record, after opportunity for an inspection where appropriate, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and as healthful as those which would prevail if he complied with the provisions of the safety and health standards promulgated by the department. The variance shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. The variance may be modified or revoked upon application by an employer, by employees, or by motion of the commissioner, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(b) When the commissioner grants a variance, he shall include in this grant a statement of the reasons for the action, and the statement shall be published in a newspaper of statewide circulation and in a newspaper of local circulation in the area where the variance will be implemented. A copy of the statement shall be sent to the OSHA Review Board.

Sec. 18.60.081. TEMPORARY VARIANCE. (a) An employer who is affected by secs. 10 - 100 of this chapter may apply to the commissioner for a temporary variance from a provision of the safety and health standards promulgated by the department. A temporary variance shall be issued only if the employer files an application fulfilling the requirements of (b) of this section and the employer establishes

(1) he is unable to comply with a standard by its effective date because of unavailability of the professional or technical personnel or of the materials and equipment needed to come into compliance or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) he is taking all available steps to safeguard his employees against the hazards covered by the standard;

(3) he has an effective program for coming into compliance with the standard as quickly as practicable.

(b) An application for a temporary variance shall contain

(1) a specification of the standard from which the employer seeks a temporary variance;

(2) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply and a detailed statement of the reasons for this inability;

(3) a statement of the steps he has taken and will take, including specific dates, to protect employees against the hazard covered by the standard;

(4) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, including specific dates, to come into compliance;

(5) a certification that he has informed his employees of the application for temporary variance and of their right to request a hearing by giving a copy of the application and a written statement of the right to a hearing to the employees' authorized representative, by posting a statement giving a summary of the application and stating the employees' right to a hearing and specifying where a copy of the application and notice of right to a hearing may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

(c) A temporary variance issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the variance is in effect and state in detail the employer's program for coming into compliance with the standard. A temporary variance may be granted only after notice to affected employees and an opportunity for hearing. However, the commissioner may issue one interim order to be effective until a decision is made on the basis of a hearing. A temporary variance may not be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that a temporary variance may be renewed not more than twice if the requirements of (a) and (b) of this section are met and the application for renewal is filed at least 90 days before the expiration date of the variance. No interim renewal of an order may remain in effect for longer than 180 days.

Sec. 18.60.083. RIGHT OF ENTRY AND INSPECTION. (a) A representative of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to

(1) enter without delay and at reasonable times a factory, plant, establishment, construction site, or

other area, work place or environment where work is performed by an employee of an employer; and

(2) inspect and investigate during regular working hours and at other reasonable times, and with reasonable limits and in a reasonable manner, a place of employment and all pertinent conditions, structures, machines, devices, equipment and materials, and to question privately an employer, owner, operator, agent or employee.

(b) In making inspections and investigations under (a) of this section the department may issue subpoenas compelling the attendance of witnesses and the production of papers and records. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the state. If a person fails to grant a right of entry and inspection, the department may seek an order from the superior court compelling the person to submit to entry and inspection. If a person fails to comply with a subpoena or a witness refuses to testify to a matter regarding which he may be lawfully interrogated, a superior court may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify before it.

Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. No unauthorized notice of a department safety or health inspection may be given. A person who gives unauthorized notice of a safety or health inspection, upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than 180 days, or by both.

Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and he shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

Sec. 18.60.088. EMPLOYEE REQUESTS FOR SPECIAL INSPECTION. (a) An employee or a representative of employees who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists, may request an inspection by giving notice of the violation or danger to the department. The notice shall be in writing and set out with reasonable particularity the grounds for the notice and be signed by the employee or the representative of the employees. If, upon receipt of the notice, the department determines that there are reasonable grounds to believe that a violation or danger exists, the department shall make a special inspection as soon as practicable. If the department determines there are no reasonable grounds to believe that a violation exists, the department shall notify in writing the employee or the representative of the employees of that determination.

(b) If the department makes a special inspection, or an inspection under sec. 83 of this chapter, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Upon request of the person giving the notice, his name and the name of employees referred to in the notice may not appear in the copy provided the employer or in any record available to the employer.

(c) The department shall furnish the notifying person a written explanation of why a citation was not issued after a special inspection.

(d) The department shall, by regulation, establish a review procedure for a failure to issue a citation after a special inspection and shall provide the employees requesting a review a written statement of the final disposition of the case.

Sec. 18.60.089. PROHIBITION AGAINST RETRIBUTION. (a) No person may discharge or discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised on behalf of himself or others a right afforded under secs. 10 - 100 of this chapter.

(b) An employee who believes he has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as he considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of his determination under (b) of this section.

Sec. 18.60.091. CITATIONS. (a) If, upon inspection or investigation, the department believes that an employer has violated a provision of secs. 10 - 100 of this chapter that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including reference to the provisions of the chapter or any order, rule or regulation alleged to have been violated, and shall fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations which have no direct or immediate relationship to safety or health.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation, shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

(c) No citation may be issued for a particular violation under this section after the expiration of 180 days following the discovery of the violation by the department or correction of a violation.

Sec. 18.60.093. ENFORCEMENT PROCEDURES. (a) If, after an inspection or investigation, the department issues a citation, the commissioner shall, at a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the penalty proposed to be assessed and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board that he wishes to contest the citation or proposed assessment of penalty. If, within 15 working days from the receipt of the notice issued by the commissioner, the employer fails to notify the OSHA Review Board that he intends to contest the citation, or proposed assessment of penalty, the citation and the assessment, as proposed, shall be considered final and not subject to review by any court.

(b) If the commissioner has reason to believe that an employer has failed to correct, within the period allowed, a violation for which a citation has been issued, the commissioner shall notify the employer by certified mail of the failure, of the penalty proposed to be assessed because of the failure, and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board that he wishes to contest the commissioner's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of the notification issued by the commissioner, the employer fails to give notice that he intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be considered a final order and not subject to review by any court.

(c) If an employer gives notice that he intends to contest the citation or notification issued under (a) or (b) of this section, the OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the original citation or proposed penalty, or directing other appropriate relief, and the order is final 30 days after its issuance.

(d) The OSHA Review Board shall notify the authorized representative of the affected employees that an employer is contesting a citation or notification issued under (a) or (b) of this section and afford the representative an opportunity to participate in the hearing on the matter. When there is no authorized employee representative, the OSHA Review Board shall notify a reasonable number of the affected employees of the contest and afford them an opportunity to participate in the hearing on the matter.

(e) An employer, an affected employee or a representative of affected employees has 15 working days from the

receipt of a citation within which to notify the commissioner and the OSHA Review Board that the period of time fixed in the citation for the abatement of a violation is unreasonable. The OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming or modifying the original period for abatement, and the order is final 30 days after its issuance. If the contest is initiated by the employer, the OSHA Review Board shall notify the employees in the same manner as provided by (d) of this section. If the contest is initiated by the employees, the OSHA Review Board shall notify the employer and afford the employer an opportunity to participate in the hearing on the matter.

Sec. 18.60.095. PENALTIES. (a) An employer who wilfully or repeatedly violates a provision of secs. 10 - 100 of this chapter that is applicable to the employer or a standard, rule or regulation promulgated under secs. 10 - 100 of this chapter may be assessed by the commissioner a civil penalty of not more than \$10,000 for each violation.

(b) An employer who receives a citation for a serious violation of a provision of secs. 10 - 100 of this chapter that is applicable to the employer or of a standard, rule or regulation promulgated under secs. 10 - 100 of this chapter shall be assessed by the commissioner a civil penalty of up to \$1,000 for each violation. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of secs. 10 - 100 of this chapter that is applicable to the employer of a standard, rule or regulation promulgated under secs. 10 - 100 of this chapter, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to \$1,000 for each violation.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than \$1,000 for each day during which the failure to correct the violation continues.

(e) An employer who wilfully or repeatedly violates a provision of secs. 10 - 100 of this chapter that is applicable to the employer or a standard, rule or regulation promulgated under secs. 10 - 100 of this chapter, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both.

(f) A person who knowingly makes a false statement,

representation, or certification in an application, record, report, plan or other document filed or required to be maintained under secs. 10 - 100 of this chapter, upon conviction, is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to \$1,000 for each violation.

(h) In assessing a civil penalty, the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

Sec. 18.60.096. IMMINENT DANGERS. (a) The commissioner, or his designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger which could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department concludes that conditions or practices described in (a) of this section exist in any place of employment, he shall inform the affected employees and employer of the danger and that he is recommending to the commissioner, or his designated agent as authorized by the commissioner, the issuance of a restraining order.

(c) The attorney general shall, when requested by the commissioner, seek an injunction in superior court to enforce a restraining order issued under this section.

(d) If the commissioner arbitrarily or capriciously fails to issue a restraining order under this section, an employee who may be injured by reason of the failure, or the representative of the affected employees, may bring an action against the commissioner in superior court for a writ of mandamus to compel the commissioner to issue a restraining order and for further relief as may be appropriate.

Sec. 18.60.097. JUDICIAL REVIEW. (a) A person affected by an order of the OSHA Review Board issued under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter may obtain a review of the order by filing a complaint challenging the order in superior court. The affected person must file the complaint within 30 days from the date of the issuance of the order by the commissioner or the OSHA Review Board. After 30 days from the date of the issuance of the order by the commissioner or the OSHA Review Board, the order becomes final and is not subject to review by any court.

(b) An employer seeking judicial review of an order of

the OSHA Review Board or the commissioner must inform his affected employees of the fact that he is seeking judicial review.

(c) The court shall review an order of the OSHA Review Board or the commissioner on a substantial evidence basis.

Sec. 18.60.098. EMPLOYEE COMPENSATION FOR APPEARANCES.

(a) The employer shall compensate any of his employees who appear at a board hearing under secs. 10 - 100 of this chapter for loss of wages if the employee appears at the hearing as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(b) The employer shall compensate any of his employees who appear at a judicial proceeding under secs. 10 - 100 of this chapter for loss of wages if the employee appears at the proceeding as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(c) An employee who appears at a board hearing under secs. 10 - 100 of this chapter as the result of a request of the state or the OSHA Review Board or as the result of a subpoena issued at the request of the state or the OSHA Review Board shall be compensated at the rate of \$30 a day and transportation costs.

Sec. 18.60.099. CONFIDENTIALITY OF TRADE SECRETS.

Information obtained by the department in connection with an inspection or proceeding related to enforcement of occupational safety and health standards which contains or which might reveal a trade secret referred to in 18 U.S.C., sec. 1905 is confidential. However, the information may be disclosed to other officers or employees concerned with carrying out occupational safety and health enforcement activities. In a proceeding, the commissioner or the court as may be applicable shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

\* Sec. 8. AS 18.60.105 is repealed and re-enacted to read:

Sec. 18.60.105. DEFINITIONS. In secs. 10 - 100 of this chapter

- (1) "commissioner" means the commissioner of labor;
- (2) "department" means the Department of Labor;
- (3) "employee" means a person who works for an employer;
- (4) "employer" means a person, including the state and political subdivisions of the state, who has one or more employees;
- (5) "suitable protective equipment" includes such personal protective equipment as is required by regulation issued under this chapter.

\* Sec. 9. AS 18.60.050, 18.60.090 and 18.60.075(c) are repealed.