



LAWS OF ALASKA

1977

Source

HCSSB 116

Chapter No.

122

AN ACT

Relating to unemployment insurance; and providing for an effective date.

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

* Section 1. AS 23.20.085(c) is amended to read:

(c) For purposes of this section, the terms "other state" and "another state" are considered as including any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Canada, and where applicable are considered as including the federal government.

* Sec. 2. AS 23.20.110 is amended by adding new subsections to read:

(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following information:

(1) whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter;

(2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;

(3) the individual's most recent address; and

(4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

(d) The department may require that an agency to which it provides information under this section reimburse the department for its costs of furnishing that information.

* Sec. 3. AS 23.20.277(b) and (e) are amended to read:

(b) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization, or group of nonprofit organizations, which has elected to make payments in place of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits and in the case of a government entity which has elected to make payments under this section an amount equal to the full amount of the regular benefits plus the full amount of the extended benefits paid during the quarter or other prescribed period that is attributable to service in the employ of the nonprofit organization.

(e) At the end of each taxable year, the department shall determine whether the total of payments for the year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during the taxable year based on wages attributable to service in the employ of the nonprofit organization; and in the case of a government entity who has elected to make payments under this section, whether the total of payments for the year is less than, or in excess of, the total amount of regular benefits plus the total amount of extended benefits as determined in this subsection. Each organization whose total payments for the taxable year are less than the amount so determined is liable for payment of the unpaid balance to the fund in accordance with (f) of this section. If the total payments exceed the amount so determined for the taxable year, all or part of the excess may, at the discretion of the department, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

* Sec. 4. AS 23.20.278 is amended to read:

Sec. 23.20.278. FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE AND ITS POLITICAL SUBDIVISIONS. A political subdivision or a department, division, or other agency of the state subject to this chapter, under sec. 525(a)(4) and (14) of this chapter, shall pay contributions under the provisions of sec. 165 of this chapter, unless it elects to reimburse the department for the unemployment compensation fund according to the provisions applicable to nonprofit organizations under secs. 276 and 277 of this chapter.

* Sec. 5. AS 23.20.325(a) is amended to read:

(a) A service performed for an employing unit which is

excluded under the definition of employment, and with respect to which no payments are required under the employment security law of another state or of the federal government, is considered employment for all purposes of this chapter if the department approves a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in the approval. The department may not approve an election unless it (1) includes all the service of the type specified in each establishment or place of business for which the election is made, and (2) is made for not less than two calendar years.

* Sec. 6. AS 23.20.375(c) is amended to read:

(c) Benefits based on service in employment defined in sec. 525(a)(4), (5), (6) and (14) of this chapter are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that, effective January 1, 1978, benefits based on service in an instructional, research or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in the same or a similar capacity for any educational institution in the second of those academic years or terms.

* Sec. 7. AS 23.20 is amended by adding a new section to read:

Sec. 23.20.381. OTHER DISQUALIFICATIONS. (a) Benefits are not payable to any individual on the basis of any services, substantially all of which consist of participation in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive seasons or similar periods of that sport or athletic event if that individual performed the services in the first of those seasons or similar periods and there is a reasonable assurance that the individual will perform the same or similar services in the second of those seasons or similar periods.

(b) Benefits are not payable on the basis of services performed by an alien unless that alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of sec. 203(a)(7) or sec. 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1153, 8 U.S.C.-1182).

(c) Benefits may not be refused under (b) of this section unless any data or information required of an individual to determine whether benefits are not payable to him because of his alien status is uniformly required of all

applicants for benefits and, in the case of an individual whose applications for benefits would otherwise be approved, determination that benefits to that individual are not payable because of his alien status are made only upon a preponderance of the evidence in the record.

(d) Notwithstanding the provisions of (b) or (c) of this section, any other conditions which may be required under any amendments to 26 U.S.C. 3304(a)(14) for allowing or denying benefits to aliens as a condition of approval of the unemployment insurance laws of this state under 26 U.S.C. 3304 shall be applied in determining eligibility for benefits under this chapter, commencing on the date on which those conditions are required by federal law to be in effect.

* Sec. 8. AS 23.20.408(d) is repealed and re-enacted to read:

(d) There is a national "on" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, seasonally adjusted for all states, as determined by the United States Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period, equaled or exceeded 4.5 per cent.

* Sec. 9. AS 23.20.408(e) is repealed and re-enacted to read:

(e) There is a national "off" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, seasonally adjusted for all states, as determined by the United States Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period, was less than 4.5 per cent.

* Sec. 10. AS 23.20.408(f) is repealed and re-enacted to read:

(f) There is a state "on" indicator for a week if the rate of insured unemployment under this chapter for the period consisting of that week and the immediately preceding 12 weeks either:

(1) equaled or exceeded 120 per cent of the average rate of insured unemployment for the corresponding 13-week period in each of the preceding two calendar years and equaled or exceeded four per cent; or

(2) equaled or exceeded five per cent.

* Sec. 11. AS 23.20.408(g) is repealed and re-enacted to read:

(g) There is a state "off" indicator for a week if neither (f)(1) nor (f)(2) of this section is satisfied.

* Sec. 12. AS 23.20.409(5)(A) is amended to read:

(A) has no right to unemployment benefits or

allowances, as the case may be, under the Railroad Unemployment Insurance Act or under other federal laws which are specified in regulations issued by the United States Secretary of Labor and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking these benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an exhaustee; and either

- * Sec. 13. AS 23.20.520(12) is amended to read:

(12) "employing unit" means one or more departments or other agencies of the state, a political subdivision of the state, an individual, or a type of organization, partnership, association, trust, estate, joint trust company, insurance company, or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has or, after January 1, 1937, had one or more individuals performing service for it in the state; an individual performing services in the state for an employing unit which maintains two or more separate establishments in the state is considered as employed by a single employing unit for the purposes of this chapter; notwithstanding any provision in this chapter, any employing unit which employs individuals whose services must be covered by the unemployment insurance laws of this state after December 31, 1971 as a condition of approval of the unemployment insurance laws of this state under sec. 3304(a) of the U.S. Internal Revenue Code of 1954, as amended, will be considered an employer as to those individuals and is subject to contributions on all wages paid after December 31, 1971, or reimbursement payments to cover benefits paid based on services performed after December 31, 1971, depending on the applicable law;

- * Sec. 14. AS 23.20.520(19) is amended to read:

(19) "state" includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

- * Sec. 15. AS 23.20.525(a)(4) is amended to read:

(4) service performed after December 31, 1971 and through December 31, 1977 by an individual in the employ of this state or any instrumentality of this state, or in the employ of this state and one or more states or their instrumentalities, for a hospital or institution of higher education in this state (except service described in sec. 526(d) of this chapter) if the service is excluded from the term "employment" solely by reason of sec. 3306(c)(7) of the Federal Unemployment Tax Act;

- * Sec. 16. AS 23.20.525(a)(5) is amended to read:

(5) service performed before January 1, 1978 in the employ of a political subdivision of this state or a wholly owned instrumentality of a political subdivision of this state, if coverage was elected under sec. 325 or sec. 326 of this chapter;

* Sec. 17. AS 23.20.525(a)(7) is amended to read:

(7) service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971 in the employ of an American employer, or of this state or of any of its instrumentalities or any of its political subdivisions, (other than service which is considered "employment" under the provisions of (11) or (12) of this subsection or the parallel provisions of the law of another state), if

(A) the employer's principal place of business in the United States is located in this state; or

(B) the employer has no place of business in the United States, but

(i) the employer is an individual who is a resident of this state; or

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria in (A) and (B) of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on service described in this paragraph, under the law of this state;

* Sec. 18. AS 23.20.525(a) is amended by adding new paragraphs to read:

(14) service performed after December 31, 1977 in the employ of this state or any of its instrumentalities or any political subdivision of this state or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions, if that service is excluded from "employment" as defined in sec. 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under sec. 526-(d)(8) of this chapter;

(15) domestic services performed after December 31, 1977 for an employer who paid wages of \$1,000 or more in any calendar quarter in the current or preceding calendar year for those services;

(16) service performed after December 31, 1977 by an individual in agricultural labor when that service is performed for a person who

(A) during any calendar quarter in either the current or the preceding year paid remuneration in

cash of \$20,000 or more to individuals employed in agricultural labor; or

(B) employed in agricultural labor 10 or more individuals for some portion of the day in each of at least 20 different calendar weeks in either the current or the preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same moment of time;

(C) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of that crew leader

(i) if that crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of that crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by that crew leader; and

(ii) if that individual is not an employee of that other person within the meaning of (A) of this paragraph;

(D) for the purposes of this paragraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under (C) of this paragraph,

(i) that other person and not the crew leader shall be treated as the employer of that individual; and

(ii) that other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader (either on his own behalf or on behalf of that other person) for the service in agricultural labor performed for that other person;

(E) for the purposes of this paragraph, the term "crew leader" means an individual who

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays (either on his own behalf or on behalf of that other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with that farm operator under which the

agricultural worker is designated as an employee of that farm operator.

* Sec. 19. AS 23.20.526(a)(1) is amended to read:

(1) domestic service in a private home, except as provided in sec. 525(a)(15) of this chapter;

* Sec. 20. AS 23.20.526(a)(15) is amended to read:

(15) service performed by an individual in agricultural labor, except as provided in sec. 525(a)(16) of this chapter; the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in sec. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business.

* Sec. 21. AS 23.20.526(d) is amended to read:

(d) For the purposes of sec. 525(a)(4), (5), (6) and (14) of this chapter, the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work;

(3) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision of the state, by an individual receiving work relief or work training;

(4) for a state hospital by an inmate of a prison or correctional institution;

(5) in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(6) by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this paragraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(7) in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in sec. 520 of this chapter.

* Sec. 22. AS 23.20.526(d) is amended by adding a new paragraph to read:

(8) in the employ of the state or a political subdivision of the state if the service is performed by an individual in the exercise of duties:

(A) as a "public official" as defined in AS 39.50.200(1) or any other elected official;

(B) as a member of the Alaska Army National Guard or Alaska Air National Guard or Alaska Naval Militia; or

(C) as an employee serving on only a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

* Sec. 23. AS 23.20.526(a) is amended by adding a new paragraph to read:

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

* Sec. 24. AS 23.20.530(b) is amended by adding a new paragraph to read:

(11) the amount of payment made to an individual for services performed on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

* Sec. 25. The following laws are repealed: AS 23.20.012, 23.20.015, 23.20.326, 23.20.408(c), and 23.20.526(a)(16) and (18).

* Sec. 26. AS 23.20.515 is repealed.

* Sec. 27. (a) Notwithstanding the provisions of AS 23.20.-350, benefits may be paid to an individual after December 31, 1977 on wages earned by that individual in a category of employment which was not covered under AS 23.20 at any time during calendar year 1975 and which was service which is covered under AS 23.20, effective January 1, 1978, as the result of enactment of sec. 19 of this Act.

(b) An employing unit which elects to make payments in place of contributions as provided in AS 23.20.278, as enacted by sec. 3 of this Act, is not liable to make those payments with respect to benefits paid to an individual as a result of the operation of (a) of this section to the extent that the unemployment compensation fund is reimbursed for those benefits under sec. 121 of P. L. 94-566.

* Sec. 28. Sections 8 and 9 of this Act take effect immediately in accordance with AS 01.10.070(c) and are retroactive to December 31, 1976.

* Sec. 29. Sections 10 and 11 of this Act take effect immediately in accordance with AS 01.10.070(c) and are retroactive to March 30, 1977.

* Sec. 30. Sections 1, 12, 14 and 17 of this Act take effect on the day after the day on which the United States Secretary of Labor approves for the first time under 26 U.S.C. 3304(a) an unemployment compensation law submitted to him by the Virgin Islands.

* Sec. 31. Sections 2 - 7, 13, 18 - 22, and 25 of this Act take effect on January 1, 1978.

* Sec. 32. Sections 4, 5, 13, 15, 16, 21 and 22 of this Act, AS 23.20.525(a)(14) as enacted by sec. 18 of this Act, and the repeal of AS 23.20.526(a)(16) and (18) enacted in sec. 25 of this Act, are suspended for the period in which an injunction issued by a federal court of competent jurisdiction prohibiting the enforcement of 26 U.S.C. 3304(a)(6) remains in effect.

* Sec. 33. Sections 4, 5, 13, 15, 16, 21 and 22 of this Act, AS 23.20.525(a)(14) as enacted in sec. 18 of this Act, and the repeal of AS 23.20.526(a)(16) and (18) enacted in sec. 25 of this Act, are repealed and the language of AS 23.20.278, 23.20.325(a), 23.20.520(12), 23.20.525(a)(4), (5), and (14), 23.20.526(a)(16) and (18) and 23.20.526(d), as it existed before January 1, 1978, is revived.

* Sec. 34. Section 33 of this Act takes effect upon the condition and at the time that:

(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without an appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law.

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* Sec. 35. Sections 23, 24, and 26 of this Act take effect immediately in accordance with AS 01.10.070(c) and are retroactive to April 1, 1977, except that secs. 23, 24 and 26 of this Act shall become inoperative and void if the United States Secretary of Labor, within 30 days after the effective date of this Act, finds that the provisions of this Act do not meet the requirements of section 1207(e) of the Tax Reform Act of 1976 (P.L. 94-455) and section 3306(c) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)).

Approved by the Governor: June 14, 1977
Actual Effective Dates: Sections 1, 12, 14 and 17 conditional (specified in Section 30); Sections 2 through 7, 13, 18 through 22 and 25, January 1, 1978; Sections 8 and 9, June 15, 1977 retroactive to December 31, 1976; Sections 10 and 11, June 15, 1977 retroactive to March 30, 1977; Sections 15, 16 and 27, June 15, 1977; Sections 23, 24 and 26, June 15, 1977 retroactive to April 1, 1977 conditional (specified in Section 35); Section 33 conditional (specified in Section 34)