

AMENDMENT #2

OFFERED IN THE HOUSE
TO: HCS CSSB 147(L&C)

By Rep. Sumner

1 Page 1, line 1 (*title amendment*):

2 Delete "reemployment rights and benefits;"

3 Insert "workers' compensation reemployment rights and benefits; establishing a
4 workers' compensation stay-at-work program;"

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6 Page 1, following line 3:

7 Insert a new bill section to read:

8 "* **Section 1.** AS 23.30.005(h) is amended to read:

9 (h) The department shall adopt rules for all panels [,] and procedures for the
10 periodic selection, retention, and removal of both rehabilitation specialists and
11 physicians under AS 23.30.041, 23.30.043, and 23.30.095, and shall adopt regulations
12 to carry out the provisions of this chapter. The department may by regulation provide
13 for procedural, discovery, or stipulated matters to be heard and decided by the
14 commissioner or a hearing officer designated to represent the commissioner rather
15 than a panel. If a procedural, discovery, or stipulated matter is heard and decided by
16 the commissioner or a hearing officer designated to represent the commissioner, the
17 action taken is considered the action of the full board on that aspect of the claim.
18 Process and procedure under this chapter shall be as summary and simple as possible.
19 The department, the board, or a member of it may for the purposes of this chapter
20 subpoena witnesses, administer or cause to be administered oaths, and [MAY]
21 examine or cause to have examined the parts of the books and records of the parties to
22 a proceeding that relate to questions in dispute. The superior court, on application of
23 the department, the board, or any members of it, shall enforce the attendance and

1 testimony of witnesses and the production and examination of books, papers, and
2 records."

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4 Page 1, line 4:

5 Delete "Section 1"

6 Insert "Sec. 2"

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8 Renumber the following bill sections accordingly.

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10 Page 2, line 26:

11 Delete "."

12 Insert ";

13 (8) submit to the department, on or before October 1 of each year,
14 a report of stay-at-work benefits provided under AS 23.30.043 for the previous
15 calendar year; the report must include a general section, sections related to each
16 rehabilitation specialist employed under AS 23.30.043, and a statistical summary
17 of all stay-at-work cases, including

18 (A) the estimated and actual cost of each active stay-at-
19 work plan;

20 (B) the estimated and actual time of each stay-at-work
21 plan;

22 (C) a status report on all individuals requesting, beginning,
23 completing, or terminating a stay-at-work plan including

24 (i) reasons for denial or termination;

25 (ii) dates of completion and return to work; and

26 (iii) other information required by the director;

27 (D) the cost of stay-at-work benefits;

28 (E) status reports of all individuals who successfully
29 completed a stay-at-work plan that includes

30 (i) the plan's occupational goal and whether the
31 individual returned to work after completion of the stay-at-work

1 plan; and

2 (ii) the individual's employment status six months,
 3 one year, and two years after stay-at-work plan completion."

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 5 Page 2, line 27, through page 3, line 19:

6 Delete all material and insert:

7 **"* Sec. 3.** AS 23.30.041(c) is amended to read:

8 (c) An employee and an employer may stipulate to the employee's eligibility
 9 for reemployment benefits at any time. If an employee suffers a compensable injury
 10 and, as a result of the injury, the employee is totally unable, for 25 [45] consecutive
 11 days, to return to the employee's employment at the time of injury, the administrator
 12 shall notify the employee of the employee's rights under this section within 14 days
 13 after the 25th [45TH] day. Within 10 days after the employee receives the
 14 administrator's notification of the employee's rights, the employee shall elect, and
 15 notify the administrator and the employer of the election, whether to participate
 16 in the reemployment benefits process in accordance with this section or the stay-
 17 at-work benefits program established under AS 23.30.043. Except as provided in
 18 AS 23.30.043, if [IF] the employee is totally unable to return to the employee's
 19 employment for 90 [60] consecutive days as a result of the injury, the employee or
 20 employer may request an eligibility evaluation. The administrator may approve the
 21 request if the employee's injury may permanently preclude the employee's return to the
 22 employee's occupation at the time of the injury. Except as provided in AS 23.30.043,
 23 if [IF] the employee is totally unable to return to the employee's employment at the
 24 time of the injury for 120 [90] consecutive days as a result of the injury, the
 25 administrator shall, without a request, order an eligibility evaluation unless a
 26 stipulation of eligibility was submitted. If the administrator approves a request or
 27 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 28 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 29 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
 30 selected by the administrator to perform an eligibility evaluation under this subsection
 31 is performing any other work on the same workers' compensation claim involving the

1 injured employee, the administrator shall select a different rehabilitation specialist."
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3 Page 4, following line 20:

4 Insert a new bill section to read:

5 **"* Sec. 6.** AS 23.30.041(f) is amended to read:

6 (f) An employee is not eligible for reemployment benefits if

7 (1) the employer offers employment within the employee's predicted
 8 post-injury physical capacities at a wage equivalent to at least the state minimum wage
 9 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
 10 injury, whichever is greater, and the employment prepares the employee to be
 11 employable in other jobs that exist in the labor market;

12 (2) the employee previously declined the development of a
 13 reemployment benefits plan under (g) of this section, received a job dislocation benefit
 14 under (g)(2) of this section, and returned to work in the same or similar occupation in
 15 terms of physical demands required of the employee at the time of the previous injury;

16 (3) the employee has been previously rehabilitated in a former
 17 workers' [WORKER'S] compensation claim and returned to work in the same or
 18 similar occupation in terms of physical demands required of the employee at the time
 19 of the previous injury; [OR]

20 (4) at the time of medical stability, no permanent impairment is
 21 identified or expected;

22 (5) the employee fails to timely notify the administrator and the
 23 employer of the employee's election under (c) of this section, unless the parties
 24 submit to the administrator a stipulation to a reemployment benefits eligibility
 25 evaluation or to the employee's eligibility for reemployment benefits;

26 (6) the employee completed a stay-at-work plan under
 27 AS 23.30.043; or

28 (7) the employee has not cooperated with the stay-at-work benefits
 29 program under AS 23.30.043(l)."

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 31 Renumber the following bill sections accordingly.

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Page 6, following line 31:

Insert new bill sections to read:

"* **Sec. 11.** AS 23.30 is amended by adding a new section to article 1 to read:

Sec. 23.30.043. Stay-at-work benefits program. (a) The stay-at-work benefits program is established in the division. The division shall designate a member of the division staff as coordinator of the stay-at-work benefits program.

(b) Within 14 days after an employee's election under AS 23.30.041(c) to participate in the program, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under AS 23.30.041(b)(6) to develop a stay-at-work plan and provide services under the plan. In selecting a rehabilitation specialist, the administrator shall consider the rehabilitation specialist's ability to accept and promptly provide program services and the rehabilitation specialist's expertise and relevant experience relating to the employee's type of injury or challenges specific to returning the employee to work with the employer. If the person that employs a rehabilitation specialist selected by the administrator is performing any other work on the same workers' compensation claim involving the employee, the administrator shall select a different rehabilitation specialist.

(c) Within 60 days after the administrator selects the rehabilitation specialist, the rehabilitation specialist shall

(1) develop a stay-at-work plan and provide the plan, in a format prescribed by the director, to the employee, employer, program coordinator, and the employee's attending physician; or

(2) provide the employee, employer, and the administrator with a determination and findings supporting the determination, in a format prescribed by the director, that the rehabilitation specialist is unable to develop a stay-at-work plan.

(d) The board shall establish by regulation the standards and procedures a rehabilitation specialist must use in developing a stay-at-work plan and the contents that the plan must include.

(e) The employee's attending physician shall provide a written opinion of whether the employee has the permanent physical capacities to participate in a stay-at-

1 work plan. The failure of the employee's attending physician to provide an opinion
2 under this subsection constitutes grounds for a determination that the rehabilitation
3 specialist is unable to develop a stay-at-work plan under (c)(2) of this section.

4 (f) Within 14 days after the program coordinator receives a stay-at-work plan,
5 the program coordinator shall approve or deny the plan and notify the parties of the
6 decision. Within 30 days after the program coordinator notifies the parties under this
7 subsection, a party may request that the administrator review the plan. Within 14 days
8 after the administrator receives a request to review the plan, the administrator shall
9 issue a decision approving or denying the plan.

10 (g) Within 14 days after the administrator receives a determination under
11 (c)(2) of this section, the administrator shall decide whether the information in the
12 board's case file for the employee's workers' compensation claim supports the
13 rehabilitation specialist's determination and findings. If the administrator decides the
14 case file supports the rehabilitation specialist's determination and findings, the
15 administrator shall, within 10 days after the administrator's decision, notify the
16 employee and employer of the decision and notify the employee that the employee is
17 no longer eligible for stay-at-work benefits and may pursue reemployment benefits in
18 accordance with AS 23.30.041. If the administrator decides the case file does not
19 support the rehabilitation specialist's determination and findings, the administrator
20 shall, within 10 days after the administrator's decision, notify the employee, employer,
21 and rehabilitation specialist of the decision and

22 (1) notify the employee, employer, and rehabilitation specialist what
23 additional information is needed to develop a stay-at-work plan, who must submit the
24 information, and the date by which the information must be submitted; or

25 (2) select a different rehabilitation specialist in accordance with (b) of
26 this section to develop a stay-at-work plan and provide services under the plan.

27 (h) Within 10 days after the administrator notifies the parties of a decision
28 under (f) or (g) of this section, a party may seek review of the decision by requesting a
29 hearing under AS 23.30.110. The board shall uphold the decision of the administrator
30 unless evidence is submitted supporting an allegation of abuse of discretion on the part
31 of the administrator. The board shall render a decision within 30 days after completion

1 of the hearing.

2 (i) Only a rehabilitation specialist may develop a stay-at-work plan, provide
3 services under the plan, and make a determination and findings under this section. A
4 person who is not a rehabilitation specialist may perform work related to the stay-at-
5 work plan if the work is performed under the direct supervision of a rehabilitation
6 specialist employed in the same firm and location. The employer shall pay the fees
7 charged by the rehabilitation specialist or other person described in this subsection for
8 providing services under this section.

9 (j) The cost of the stay-at-work benefits incurred under this section shall be
10 the responsibility of the employer, shall be paid on an expense incurred basis, and may
11 not exceed \$3,000, exclusive of the fees charged by the rehabilitation specialist or
12 other person described in (i) of this section.

13 (k) Stay-at-work benefits terminate two years from the date the program
14 coordinator, administrator, or board approves the stay-at-work plan, whichever is later.

15 (l) After the employee has elected to participate in the program, and upon the
16 request of the employer, the administrator shall decide whether the employee has not
17 cooperated in the program. The administrator shall hold a hearing within 30 days after
18 the administrator receives a request from the employer for a hearing. The
19 administrator shall issue a decision within 14 days after the hearing. Within 10 days
20 after the administrator notifies the parties of the decision, either party may seek review
21 of the decision by requesting a hearing under AS 23.30.110. The board shall uphold
22 the decision of the administrator unless evidence is submitted supporting an allegation
23 of abuse of discretion on the part of the administrator. The board shall render a
24 decision within 30 days after completion of the hearing. If the employee is found to
25 have not cooperated with the program, the employer may terminate stay-at-work
26 benefits and disability benefits on the date on which a finding of noncooperation is
27 made under this subsection. Noncooperation means the employee's unreasonable
28 failure to

29 (1) maintain contact with the rehabilitation specialist;

30 (2) cooperate with the rehabilitation specialist in developing a stay-at-
31 work plan;

1 (3) comply with the employee's responsibilities outlined in the stay-at-
2 work plan; or

3 (4) participate in the stay-at-work plan or in a plan activity.

4 (m) An employee is not eligible for stay-at-work benefits if the employee fails
5 to timely notify the administrator and the employer of the employee's election under
6 AS 23.30.041(c), unless the parties submit to the administrator a stipulation that the
7 employee may participate in the program.

8 (n) An employer may elect not to participate or continue to participate in a
9 stay-at-work plan at any time before the employee completes the plan. If an employer
10 elects not to participate under this subsection, the employer shall notify the employee,
11 the program coordinator, and, if applicable, the rehabilitation specialist of the election.
12 The notice must be in the format prescribed by the director and inform the employee
13 that the employee is no longer eligible for stay-at-work benefits and may pursue
14 reemployment benefits in accordance with AS 23.30.041. The notice of the election is
15 effective the day after the notice is served on the employee, the program coordinator,
16 or, if applicable, the rehabilitation specialist, whichever is later. The employer is
17 responsible for the cost of the stay-at-work benefits incurred before the notice
18 becomes effective.

19 (o) In this section,

20 (1) "administrator" means the reemployment benefits administrator
21 employed under AS 23.30.041(a);

22 (2) "plan" or "stay-at-work plan" means a plan developed by a
23 rehabilitation specialist under this section to return an employee to work for the
24 employer;

25 (3) "program" means the stay-at-work benefits program established in
26 this section;

27 (4) "program coordinator" means the division staff member designated
28 as the coordinator of the program;

29 (5) "rehabilitation specialist" has the meaning given in
30 AS 23.30.041(r);

31 (6) "stay-at-work benefits" means benefits provided under the

1 program.

2 * **Sec. 12.** AS 23.30.100(a) is amended to read:

3 (a) Notice to an employer of an injury or death in respect to which
4 compensation is payable under this chapter shall be given within 15 [30] days after the
5 date of the [SUCH] injury or death [TO THE EMPLOYER].

6 * **Sec. 13.** AS 23.30.105(a) is amended to read:

7 (a) The right to compensation for disability under this chapter is barred unless
8 a claim for it is filed within two years after the employee has knowledge of the nature
9 of the employee's disability and its relation to the employment and after disablement.
10 However, the maximum time for filing the claim in any event other than arising out of
11 an occupational disease shall be four years from the date of injury, and the right to
12 compensation for death is barred unless a claim therefor is filed within one year after
13 the death, except that, if payment of compensation has been made without an award on
14 account of the injury or death, a claim may be filed within two years after the date of
15 the last payment of benefits under AS 23.30.041, 23.30.043, 23.30.180, 23.30.185,
16 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of
17 latent defects pertinent to and causing compensable disability, the injured employee
18 has full right to claim as shall be determined by the board, time limitations
19 notwithstanding."

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21 Renumber the following bill sections accordingly.

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23 Page 7, line 2:

24 Delete all material and insert:

25 "** **Sec. 15.** This Act takes effect January 1, 2025."