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Referred: Health, Education & Social  
Services, Labor and Commerce,  
Judiciary and Finance

5-0183A

1 IN THE SENATE BY SZYMANSKI AND KERTTULA  
2 SENATE BILL NO. 61  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to rights of injured state employ-  
7 ees."  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. AS 23.40 is amended by adding a new section to read:  
10 Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties  
11 may not negotiate terms contrary to the reemployment rights for in-  
12 jured state employees under AS 39.25.158.  
13 \* Sec. 2. AS 39.25 is amended by adding new sections to read:  
14 Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-  
15 nel, in consultation with the appropriate department or agency, shall  
16 require the preparation of and shall maintain a position description  
17 for each position in the classified service. The position description  
18 shall describe the essential functions of the position and the actual  
19 skills and abilities required to perform the tasks assigned to the  
20 position. A general requirement for physical abilities may not be  
21 imposed on a job classification unless each position within the class  
22 requires the use of the physical ability.  
23 Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.  
24 (a) An injured employee is eligible for reemployment rights under  
25 this section if the employee requests to return to work for the state  
26 within 30 days after receipt of a release from a physician indicating  
27 that the employee is able to return to full or modified work.  
28 (b) After an employee requests to return to work, the rehabili-  
29 tation administrator of the division of workers' compensation or the

1 director of vocational rehabilitation in the Department of Education  
2 shall review the request and certify that the employee is able to  
3 return to work under (c), (d), (e), or (f) of this section, or defer  
4 certification until the employee completes retraining under (f) of  
5 this section.

6 (c) If the rehabilitation administrator or the director of  
7 vocational rehabilitation certifies that the employee is able to  
8 perform the tasks assigned to the employee's former position, the  
9 agency shall reemploy the employee within 30 days after receipt of the  
10 certification unless the position no longer exists. If a permanent,  
11 probationary or provisional employee is currently employed in the  
12 position, the agency shall cause a vacancy under the layoff provisions  
13 of AS 39.25.150(13).

14 (d) If the employee is not eligible for reemployment under (c)  
15 of this section but is able to perform the essential functions of the  
16 position, then the agency shall reemploy the employee in the position  
17 after making a reasonable accommodation to the physical and mental  
18 limitations of the employee unless the position no longer exists.  
19 Reasonable accommodation may include imposing work restrictions on the  
20 tasks performed by the employee, making job or site modifications  
21 necessary to permit the employee to perform the tasks of the position,  
22 removing institutional and architectural barriers, and providing  
23 additional support services.

24 (e) If the employee is not eligible for reemployment under (c)  
25 or (d) of this section and if the agency has a vacant position for  
26 which the employee is qualified that is comparable in wage to the  
27 position the employee previously held, then the agency shall offer the  
28 employee the position. If the employee is unable to perform the  
29 essential functions of a comparable position within the agency, then

1 the employee is entitled to reemployment in a comparable position for  
2 which the employee is qualified with another agency if the position is  
3 vacant and the employee is able to perform the essential functions of  
4 that position.

5 (f) If the agency and other agencies in the state are unable to  
6 reemploy the employee in a position at a wage comparable to the em-  
7 ployee's previous wage, the employee may request reemployment at a  
8 lower wage or accept retraining under AS 23.30.041. After completing  
9 the training the employee may request reemployment in a position for  
10 which the employee has been retrained in the agency. If the agency  
11 cannot offer reemployment, the employee may request reemployment in a  
12 position for which the employee has been retrained with another agen-  
13 cy.

14 (g) An agency may refuse to reemploy or continue the employment  
15 of a former employee if reasonable accommodation imposes an undue  
16 hardship on the operation of the agency's program or if, after reason-  
17 able efforts at accommodation, the injured employee cannot perform the  
18 essential functions of the position in a manner that would not endan-  
19 ger the health or safety of

20 (1) the employee because the job imposes an imminent and  
21 substantial degree of risk to the employee; or

22 (2) others to a greater extent than if a nonhandicapped  
23 person performed the job.

24 (h) Factors an agency may consider in determining undue hardship  
25 under (g) of this section include the current number of employees in  
26 the section or office, number and type of facilities, size of budget,  
27 nature and cost of the accommodation needed, and the type, composi-  
28 tion, and structure of the work force.

29 (i) Notwithstanding any other provision of law, if an injured

1 employee requests reemployment under (e) or (f) of this section and if  
2 the employee is able to perform the essential functions of the posi-  
3 tion, the state may not hire another person for that position except  
4 an employee in layoff status for that job class.

5 (j) A collective bargaining agreement under AS 23.40.070 -  
6 23.40.260 may not include terms contrary to this section.

7 (k) In this section

8 (1) "agency" includes a department, division, office,  
9 agency, board, commission, authority, or other organizational unit of  
10 the executive branch of state government;

11 (2) "injured employee" or "employee" means a permanent,  
12 probationary, or provisional employee of an agency in the classified  
13 service whose injury is a compensable injury or condition under  
14 AS 23.30.

15 \* Sec. 3. Nothing in this Act modifies or terminates the terms of a  
16 collective bargaining agreement in existence on the effective date of this  
17 Act.