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Referred: Health, Education & Social
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5-0183A

1 IN THE SENATE BY SZYMANSKI AND KERTTULA

2 SENATE BILL NO. 61 am H

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 reemploy-
29 ment benefits administrator of the division of workers' compensation

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

6 (c) If the reemployment benefits administrator or the director
7 of 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) "comparable wage" means a wage equivalent to at least
12 the state minimum wage under AS 23.10.065 or 75 percent of the
13 worker's gross hourly wage at the time of injury, whichever is
14 greater;

15 (3) "injured employee" or "employee" means a permanent,
16 probationary, or provisional employee of an agency in the classified
17 service whose injury is a compensable injury or condition under
18 AS 23.30.

19 * Sec. 3. Nothing in this Act modifies or terminates the terms of a
20 collective bargaining agreement in existence on the effective date of this
21 Act.