

BY THE LABOR & COMMERCE COMMITTEE

1 IN THE SENATE

2

SENATE BILL NO. 508

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to workers' compensation."

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

8 * Section 1. AS 23.30.041(b) is amended to read:

9

(b) The administrator shall [PERFORM THE FOLLOWING FUNCTIONS:]

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(1) enforce regulations adopted by the board to implement
11 this section;

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(2) recommend regulations for adoption by the board that
13 establish performance and reporting criteria for rehabilitation spe-
14 cialists;

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(3) enforce the quality and effectiveness of reemployment
16 benefits provided for under this section;

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(4) review on an annual basis the performance of rehabili-
18 tation specialists to determine continued eligibility for delivery of
19 rehabilitation services;

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(5) submit to the department, on or before July 1 [JANU-
21 ARY 1] of each year, a report of reemployment benefits provided under
22 this section for the previous calendar [FISCAL] year; the report must
23 include a general section, sections related to each rehabilitation
24 specialist employed under this section, and a statistical summary of
25 all rehabilitation cases, including

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(A) the estimated and actual cost of each active
27 rehabilitation plan;

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(B) the estimated and actual time of each rehabilita-
29 tion plan;

1 (C) a status report on all individuals completing or
2 terminating a reemployment benefits program including a return to
3 work date;

4 (D) the cost of reemployment benefits;

5 (6) maintain a list of rehabilitation specialists who meet
6 the qualifications established under this section;

7 (7) promote awareness among physicians, adjusters, injured
8 workers, employers, employees, attorneys, training providers, and
9 rehabilitation specialists of the reemployment program established in
10 this subsection.

11 * Sec. 2. AS 23.30.041(e) is amended to read:

12 (e) An employee is [SHALL BE] eligible for benefits under this
13 section upon the employee's written request and by having a licensed
14 physician or a licensed physical or occupational therapist predict
15 that the employee will have permanent physical capacities that are
16 less than the physical demands of the employee's job as described in
17 the United States Department of Labor's "Selected Characteristics of
18 Occupations Defined in the Dictionary of Occupational Titles" for

19 (1) the employee's job at the time of injury; or

20 (2) other jobs that exist in the labor market that the
21 employee has held or received training for within 10 years before the
22 injury or that the employee has held following the injury for a period
23 long enough to obtain the skills to compete in the labor market,
24 according to specific vocational preparation codes as described in the
25 United States Department of Labor's "Selected Characteristics of
26 Occupations Defined in the Dictionary of Occupational Titles."

27 * Sec. 3. AS 23.30.041(k) is repealed and reenacted to read:

28 (k) The employer shall pay compensation to an employee eligible
29 for reemployment benefits, as follows:

1 (1) until the employee reaches medical stability or the
2 reemployment plan is completed or terminated, whichever comes first,
3 temporary disability benefits shall be paid;

4 (2) if the employee reaches medical stability and has
5 requested reemployment benefits or has been found eligible for reem-
6 ployment benefits, temporary disability benefits shall cease and
7 permanent impairment benefits shall then be paid biweekly at the
8 employee's temporary total disability rate until plan completion,
9 termination, or exhaustion of permanent impairment benefits; permanent
10 impairment benefits remaining unpaid upon completion or termination of
11 the plan shall be paid to the employee in a single lump sum;

12 (3) if the employee's permanent impairment benefits are
13 exhausted before the completion or termination of the reemployment
14 plan, the employer shall pay, on a biweekly basis, an amount equal to
15 60 percent of the employee's spendable weekly wage as determined under
16 AS 23.30.220, not to exceed \$525, until the completion or termination
17 of the plan;

18 (4) if the employee reaches medical stability before an
19 impairment rating is given as provided in AS 23.30.190, the employee
20 shall be paid 60 percent of the employee's spendable weekly wage until
21 an impairment rating is given; benefits paid more than 30 days after
22 medical stability but before an impairment rating is given shall be
23 offset from the total sum of permanent impairment benefits due to the
24 employee; after the employee reaches medical stability and an impair-
25 ment rating is given, all benefits paid shall be included as permanent
26 impairment benefits;

27 (5) benefits related to the reemployment plan may not
28 extend past two years from the date of the initiation of the 60 per-
29 cent payment of the employee's spendable weekly wage, plan approval,

1 or plan acceptance, whichever date occurs first, at which time the
2 benefits expire;

3 (6) if the employer controverts the employee's claim or
4 appeals a ruling of the administrator or the board that is favorable
5 to the employee, the controversion or appeal delays completion of an
6 evaluation, development, commencement or completion of a plan, and the
7 employee is successful in the claim or appeal, the employer shall pay
8 the employee 60 percent of the spendable weekly wage during the period
9 of controversion or appeal, except that temporary disability benefits
10 shall be paid until the employee reaches medical stability; for pur-
11 poses of this paragraph the two-year limitation on payment of benefits
12 in (5) of this subsection does not begin to run or is tolled, and
13 payments made at 60 percent of the employee's spendable weekly wage
14 during controversion or appeal may not be offset from permanent im-
15 pairment benefits due to the employee.

16 * Sec. 4. AS 23.30.041(1) is amended to read:

17 (1) The cost of the reemployment plan incurred under this sec-
18 tion is [SHALL BE] the responsibility of the employer, shall be paid
19 on an expense incurred basis, and may not exceed \$10,000. The cost of
20 the rehabilitation specialist shall be paid by the employer, but may
21 not be included in determining the cost of the reemployment plan.
22 Fees charged by a rehabilitation specialist for services under a
23 reemployment plan must be usual, reasonable, and customary as compared
24 to fees for similar services in the community in which the services
25 are performed, as determined by the board.

26 * Sec. 5. AS 23.30.055 is amended to read:

27 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
28 employer prescribed in AS 23.30.045 is exclusive and in place of all
29 other liability of the employer and any fellow employee to the

1 employee, the employee's legal representative, husband or wife,
2 parents, dependents, next of kin, and anyone otherwise entitled to
3 recover damages from the employer or fellow employee at law or in
4 admiralty on account of the injury or death. The liability of the
5 employer is exclusive even if the employee's claim is barred under
6 AS 23.30.022. However, if an employer fails to secure payment of
7 compensation as required by this chapter, an injured employee or the
8 employee's legal representative in case death results from the injury
9 may elect to claim compensation under this chapter [,] or to maintain
10 an action against the employer at law or in admiralty for damages on
11 account of the injury or death. In that action, the defendant may not
12 plead as a defense that the injury was caused by the negligence of a
13 fellow servant, or that the employee assumed the risk of the employ-
14 ment, or that the injury was due to the contributory negligence of the
15 employee. In this section, "employer" includes the employer's car-
16 rier, an insurance service agent to a self-insured employer, or a
17 labor organization, if the carrier, insurance service agent, or labor
18 organization provides or fails to provide safety inspections or safety
19 advisory services.

20 * Sec. 6. AS 23.30.190(b) is amended to read:

21 (b) All determinations of the existence and degree of permanent
22 impairment shall be made strictly and solely under the whole person
23 determination as set out in the American Medical Association Guides to
24 the Evaluation of Permanent Impairment, except that an impairment
25 rating may not be rounded to the next five percent. The board shall
26 adopt a supplementary recognized schedule for injuries that cannot be
27 rated by use of the American Medical Association Guides. An impair-
28 ment rating shall be determined by a licensed physician or licensed
29 physical or occupational therapist.

1 * Sec. 7. AS 23.30.195 is amended to read:

2 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)
3 Compensation to which a [ANY] claimant would be entitled under AS 23.-
4 30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding
5 death arising from causes other than the injury, be payable to and for
6 the benefit of the following persons [FOLLOWING]:

7 (1) if there is [BE] a widow or widower, but [AND] no child
8 of the deceased, to the widow or widower;

9 (2) if there is [BE] a widow or widower and a surviving
10 child or children of the deceased, one-half to the widow or widower,
11 the other half to the surviving child or children, in equal shares;

12 (3) if there is [BE] a surviving child or children of the
13 deceased, but no widow or widower, then to the child or children, in
14 equal shares.

15 (b) An award for impairment [DISABILITY] may be made after the
16 death of the injured employee.