

Amended: 4/25/90
Offered: 4/24/90
Referred: Rules

6-2068J

Original sponsor(s): Labor & Commerce Committee

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE
2 CS FOR SENATE BILL NO. 508 (L&C)(efd am)
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; and pro-
7 viding for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 23.30.041(b) is amended to read:
10 (b) The administrator shall [PERFORM THE FOLLOWING FUNCTIONS:]
11 (1) enforce regulations adopted by the board to implement
12 this section;
13 (2) recommend regulations for adoption by the board that
14 establish performance and reporting criteria for rehabilitation spe-
15 cialists;
16 (3) enforce the quality and effectiveness of reemployment
17 benefits provided for under this section;
18 (4) review on an annual basis the performance of rehabili-
19 tation specialists to determine continued eligibility for delivery of
20 rehabilitation services;
21 (5) submit to the department, on or before July 1 [JANU-
22 ARY 1] of each year, a report of reemployment benefits provided under
23 this section for the previous calendar [FISCAL] year; the report must
24 include a general section, sections related to each rehabilitation
25 specialist employed under this section, and a statistical summary of
26 all rehabilitation cases, including
27 (A) the estimated and actual cost of each active
28 rehabilitation plan;
29 (B) the estimated and actual time of each

1 rehabilitation plan;

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

5 (D) the cost of reemployment benefits;

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

8 (7) monitor the activities of medical managers assigned by
9 the carrier to an injured employee, including reviewing reports or
10 correspondence concerning the injured employee;

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

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

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

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

25 (2) other jobs that exist in the labor market that the
26 employee has held or received training for within 10 years before the
27 injury or that the employee has held following the injury for a period
28 long enough to obtain the skills to compete in the labor market,
29 according to specific vocational preparation codes as described in the

1 United States Department of Labor's "Selected Characteristics of
2 Occupations Defined in the Dictionary of Occupational Titles."

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

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

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

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

17 (3) if the employee's permanent impairment benefits are
18 exhausted before the completion or termination of the reemployment
19 plan, the employer shall pay, on a biweekly basis, an amount equal to
20 60 percent of the employee's spendable weekly wage as determined under
21 AS 23.30.220, not to exceed \$525, until the completion or termination
22 of the plan;

23 (4) if the employee reaches medical stability before an
24 impairment rating is given as provided in AS 23.30.190, except for the
25 first 30 days the employee shall be paid 60 percent of the employee's
26 spendable weekly wage until an impairment rating is given; benefits
27 paid more than 30 days after medical stability but before an impair-
28 ment rating is given shall be offset from the total sum of permanent
29 impairment benefits due to the employee; after the employee reaches

1 medical stability and an impairment rating is given, all benefits paid
2 shall be included as permanent impairment benefits;

3 (5) benefits related to the reemployment plan may not
4 extend past two years from the date of the initiation of the 60 per-
5 cent payment of the employee's spendable weekly wage, plan approval,
6 or plan acceptance, whichever date occurs first, at which time the
7 benefits expire;

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

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

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

1 * Sec. 5. AS 23.30.041(p) is amended to read:

2 (p) In this section

3 (1) "administrator" means the reemployment benefits admin-
4 istrator under (a) of this section;

5 (2) "employability" means possessing the ability but not
6 necessarily the opportunity to engage in employment that is consistent
7 with the employee's physical status imposed by the compensable injury;

8 (3) "labor market" means a geographical area that offers
9 employment opportunities in the following priority;

10 (A) area of residence;

11 (B) area of last employment;

12 (C) the state;

13 (D) other states;

14 (4) "medical manager" means a nurse, rehabilitation spe-
15 cialist, or other health care provider assigned by the carrier to
16 assist an employee in coordinating medical benefits, or to monitor the
17 employee's medical services;

18 (5) "physical capacities" means objective and measurable
19 physical traits such as ability to lift and carry, walk, stand or sit,
20 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, han-
21 dle, finger, feel, talk, hear or see;

22 (6) [(5)] "physical demands" means the physical require-
23 ments of the job such as strength, including positions such as stand-
24 ing, walking, sitting, and movement of objects such as lifting, carry-
25 ing, pushing, pulling, climbing, balancing, stooping, kneeling,
26 crouching, crawling, reaching, handling, fingering, feeling, talking,
27 hearing, or seeing;

28 (7) [(6)] "rehabilitation specialist" means a person who is
29 a certified insurance rehabilitation specialist, a certified

1 rehabilitation counselor, or a person who has equivalent or better
2 qualifications as determined under regulations adopted by the depart-
3 ment;

4 (8) [(7)] "remunerative employability" means having the
5 skills that allow a worker to be compensated with wages or other
6 earnings equivalent to at least 60 percent of the worker's gross
7 hourly wages at the time of injury; if the employment is outside the
8 state, the stated 60 percent shall be adjusted to account for the
9 difference between the applicable state average weekly wage and the
10 Alaska average weekly wage.

11 * Sec. 6. AS 23.30.041 is amended by adding a new subsection to read:

12 (q) After a medical manager has been assigned to an injured
13 employee, the medical manager shall send written notice to the employ-
14 ee, the employer, and the employee's physician explaining in what
15 capacity the medical manager is employed, who the medical manager
16 represents, and the scope of the services to be provided.

17 * Sec. 7. AS 23.30 is amended by adding a new section to read:

18 Sec. 23.30.047. COMPENSATION FOR HEALTH INSURANCE. (a) An
19 employer who pays compensation to an injured employee under this
20 chapter and who provided health insurance to the employee at the date
21 of injury shall also pay to the employee an amount equal to the amount
22 contributed by the employer to provide health insurance coverage for
23 the employee and covered dependents, or the amount paid by the employ-
24 ee for replacement health insurance coverage, whichever amount is
25 less. Compensation required under this section commences when the
26 employee's health insurance provided by the employer's contribution
27 ceases and shall continue until the employee is no longer receiving
28 compensation under this chapter, or for 18 months, whichever period is
29 shorter.

1 (b) Payment of compensation under this section is not required
2 if the employee fails to provide ongoing proof of health insurance
3 coverage.

4 (c) Compensation paid under this section is subject to the
5 provisions of AS 23.30.155.

6 * Sec. 8. AS 23.30.055 is amended to read:

7 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
8 employer prescribed in AS 23.30.045 is exclusive and in place of all
9 other liability of the employer and any fellow employee to the em-
10 ployee, the employee's legal representative, husband or wife, parents,
11 dependents, next of kin, and anyone otherwise entitled to recover
12 damages from the employer or fellow employee at law or in admiralty on
13 account of the injury or death. The liability of the employer is
14 exclusive even if the employee's claim is barred under AS 23.30.022.
15 However, if an employer fails to secure payment of compensation as
16 required by this chapter, an injured employee or the employee's legal
17 representative in case death results from the injury may elect to
18 claim compensation under this chapter [,] or to maintain an action
19 against the employer at law or in admiralty for damages on account of
20 the injury or death. In that action, the defendant may not plead as a
21 defense that the injury was caused by the negligence of a fellow
22 servant, or that the employee assumed the risk of the employment, or
23 that the injury was due to the contributory negligence of the employ-
24 ee. In this section, "employer" includes the employer's carrier, an
25 insurance service agent to a self-insured employer, or a trade asso-
26 ciation, if the carrier, insurance service agent, or trade association
27 provides or fails to provide safety inspections or safety advisory
28 services.

29 * Sec. 9. AS 23.30.190(b) is amended to read:

1 (b) All determinations of the existence and degree of permanent
2 impairment shall be made strictly and solely under the whole person
3 determination as set out in the American Medical Association Guides to
4 the Evaluation of Permanent Impairment, except that an impairment
5 rating may not be rounded to the next five percent. The board shall
6 adopt a supplementary recognized schedule for injuries that cannot be
7 rated by use of the American Medical Association Guides. An impair-
8 ment rating shall be determined by a licensed physician or if the
9 injury is related to muscular, skeletal, or neurological disabilities,
10 by a licensed physician or a licensed physical or occupational thera-
11 pist.

12 * Sec. 10. AS 23.30.195 is amended to read:

13 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)
14 Compensation to which a [ANY] claimant would be entitled under AS 23.-
15 30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding
16 death arising from causes other than the injury, be payable to and for
17 the benefit of the following persons [FOLLOWING]:

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

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

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

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

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

29 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS

1 EMPLOYEES. (a) A person who is injured during the course and within
2 the scope of providing service as a volunteer emergency medical tech-
3 nician is an employee of the state for purposes of this chapter if the
4 person

5 (1) is certified by the state under AS 18.08 as an emer-
6 gency medical technician;

7 (2) provides emergency medical service outside an incor-
8 porated city or borough; and

9 (3) is not otherwise covered for that injury by an employ-
10 er's workers' compensation insurance policy or self-insurance certifi-
11 cate.

12 (b) The gross weekly earnings for a person receiving benefits
13 under this section shall be the gross weekly earnings paid a full-time
14 emergency medical technician employed in the city or borough nearest
15 to the place where the injury occurred, or, if the nearest city or
16 borough has no full-time emergency medical technician, at a reasonable
17 figure previously set by the nearest city or borough to make this
18 determination, but in no case may the gross weekly earnings for cal-
19 culating compensation be less than the minimum wage computed on the
20 basis of 40 hours of work a week.

21 * Sec. 12. AS 23.30.265 is amended by adding a new paragraph to read:

22 (34) "volunteer emergency medical technician" means a person
23 who is certified by the state as an emergency medical technician under
24 AS 18.08 and who provides emergency medical services on a voluntary
25 basis.

26 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).