

**SENATE BILL NO. 219**

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/20/91

Referred: Labor and Commerce

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation; and providing for an effective date."

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

3 \* Section 1. PURPOSE OF SECTIONS 16, 18, AND 19. (a) It is the purpose of sec. 16 of this Act  
4 to amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety  
5 inspections or safety advisory services; this amendment would decide a public policy question concerning  
6 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
7 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

8 (b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to include prior temporary  
9 total disability payments within the definition of gross wages.

10 (c) It is the purpose of sec. 19 of this Act to amend AS 23.30.265(21) to clarify that medical  
11 stability results from a condition from which objectively measurable improvement or deterioration is not  
12 expected from further medical treatment, and that medical stability is presumed in the absence of  
13 improvement or deterioration after 45 days.

14 \* Sec. 2. AS 23.30.041(b) is amended to read:

1 (b) The administrator shall

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

3 (2) recommend regulations for adoption by the board that establish performance  
4 and reporting criteria for rehabilitation specialists;

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

7 (4) review on an annual basis the performance of rehabilitation specialists to  
8 determine continued eligibility for delivery of rehabilitation services;

9 (5) submit to the department, on or before July 1 [JANUARY 1] of each year,  
10 a report of reemployment benefits provided under this section for the previous calendar  
11 [FISCAL] year; the report must include a general section, sections related to each rehabilitation  
12 specialist employed under this section, and a statistical summary of all rehabilitation cases,  
13 including

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

15 (B) the estimated and actual time of each rehabilitation plan;

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

18 (D) the cost of reemployment benefits;

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

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

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

27 \* Sec. 3. AS 23.30.041(c) is amended to read:

28 (c) If an employee suffers a compensable injury that may permanently preclude an  
29 employee's return to the employee's occupation at the time of injury, the employee or employer  
30 may request an eligibility evaluation for reemployment benefits. The employee shall request an  
31 eligibility evaluation within 90 days after the employee gives the employer notice of injury unless

1 the administrator determines the employee has an unusual and extenuating circumstance that  
2 prevents the employee from making a timely request. If, after a review of the board's case file,  
3 the administrator determines the employee is unlikely to be able to return to the employee's  
4 occupation at the time of injury, the [THE] administrator shall, on a rotating and geographic  
5 basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to  
6 perform the eligibility evaluation.

7 \* Sec. 4. AS 23.30.041(e) is amended to read:

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

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

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

21 \* Sec. 5. AS 23.30.041(h) is amended to read:

22 (h) Within 90 days after the rehabilitation specialist's selection under (g) of this section,  
23 the reemployment plan must be formulated and approved. The reemployment plan must include  
24 at least the following:

25 (1) a determination of the occupational goal in the labor market;

26 (2) an inventory of the employee's technical skills, physical and intellectual  
27 capacities, academic achievement, emotional condition, and family support;

28 (3) a plan to acquire the occupational skills to be employable;

29 (4) the cost estimate of the reemployment plan, including provider fees; the  
30 amount of tuition, books, tools, and supplies; transportation; temporary lodging; or job  
31 modification devices;

- 1 (5) the estimated length of time that the plan will take;  
2 (6) the date the plan will commence;  
3 (7) the estimated time of medical stability as predicted by the physician;  
4 (8) a detailed description and plan schedule; [AND]  
5 (9) a finding by the rehabilitation specialist that the inventory under (2) of this  
6 subsection indicates that the employee can be reasonably expected to satisfactorily complete the  
7 plan and perform in a new occupation within the time and cost limitations of the plan; and  
8 (10) a certification by the rehabilitation specialist that the plan meets all the  
9 requirements of this subsection; if the administrator determines that the plan does not meet  
10 one or more of the requirements of this subsection, the administrator shall require the  
11 rehabilitation specialist to amend the plan to meet the requirements of this subsection; a  
12 rehabilitation specialist may not charge a fee for an amendment to a reemployment plan  
13 required under this paragraph.

14 \* Sec. 6. AS 23.30.041(k) is repealed and reenacted to read:

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

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

19 (2) if the employee reaches medical stability or has been found eligible for reem-  
20 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
21 shall then be paid biweekly at the employee's temporary total disability rate until plan  
22 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
23 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
24 employee in a single lump sum;

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

29 (4) if the employee reaches medical stability before an impairment rating is given  
30 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
31 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more

1 than 30 days after medical stability but before an impairment rating is given shall be offset from  
2 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
3 medical stability and an impairment rating is given, all benefits paid shall be included as  
4 permanent impairment benefits;

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

8 (6) if the employer controverts the employee's claim or appeals a ruling of the  
9 administrator or the board and the controversion or appeal delays completion of an evaluation,  
10 development, commencement or completion of a plan

11 (A) the employer shall pay the employee 60 percent of the spendable  
12 weekly wage during the period of controversion or appeal, except that temporary  
13 disability benefits shall be paid until the employee reaches medical stability;

14 (B) the two-year limitation on payment of benefits in (5) of this subsection  
15 does not begin to run or is tolled; and

16 (C) payments made at 60 percent of the employee's spendable weekly  
17 wage during controversion or appeal may not be offset from permanent impairment  
18 benefits due to the employee.

19 \* Sec. 7. AS 23.30.041(l) is amended to read:

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

26 \* Sec. 8. AS 23.30.041(p) is amended to read:

27 (p) In this section,

28 (1) "administrator" means the reemployment benefits administrator under (a) of  
29 this section;

30 (2) "employability" means possessing the ability but not necessarily the  
31 opportunity to engage in employment that is consistent with the employee's physical status

1 imposed by the compensable injury;

2 (3) "labor market" means a geographical area that offers employment opportunities  
3 in the following priority:

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

8 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
9 health care provider assigned by the carrier to assist an employee in coordinating medical  
10 benefits, or to monitor the employee's medical services;

11 (5) "physical capacities" means objective and measurable physical traits such as  
12 ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl,  
13 reach, handle, finger, feel, talk, hear, or see;

14 (6) [(5)] "physical demands" means the physical requirements of the job such as  
15 strength, including positions such as standing, walking, sitting, and movement of objects such as  
16 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
17 reaching, handling, fingering, feeling, talking, hearing, or seeing;

18 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
19 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or  
20 better qualifications as determined under regulations adopted by the department;

21 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
22 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
23 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60  
24 percent shall be adjusted to account for the difference between the applicable state average  
25 weekly wage and the Alaska average weekly wage.

26 \* Sec. 9. AS 23.30.041 is amended by adding a new subsection to read:

27 (q) After a medical manager has been assigned to an injured employee, the medical  
28 manager shall send written notice to the employee, the employer, and the employee's physician  
29 explaining in what capacity the medical manager is employed, who the medical manager  
30 represents, and the scope of the services to be provided.

31 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

1           Sec. 23.30.047. **BENEFITS FOR HEALTH INSURANCE.** (a) An employer who pays  
2 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
3 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
4 shall also reimburse the employee for health insurance coverage for the employee and covered  
5 dependents, as provided in this section.

6           (b) Payment required under this section is equal to the employer's current contribution  
7 for health insurance or the amount paid by the employee for replacement coverage, whichever  
8 amount is less. Payment required under this section commences when the employee's health  
9 insurance provided by the employer's contribution ceases and shall continue until the employee  
10 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
11 period is shorter.

12           (c) Payment is not required under this section until the employee provides proof of health  
13 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
14 insurance, or a notice of self-payment or continuance of coverage under a union health or welfare  
15 trust agreement.

16           (d) If benefits required under this section are not paid within 30 days after the employer  
17 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
18 amount due.

19 \* **Sec. 11.** AS 23.30.075(b) is amended to read:

20           (b) If an employer fails to insure and keep insured employees subject to this chapter or  
21 fails to obtain a certificate of self-insurance from the board, upon conviction, the court shall  
22 impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one  
23 year. **In addition, the board may impose a civil penalty equal to three times the manual**  
24 **rate that would have been charged for the employer's insurance premium during the period**  
25 **the employer failed to obtain insurance.** If an employer is a corporation, all persons who, at  
26 the time of the injury or death, had authority to insure the corporation or apply for a certificate  
27 of self-insurance [,] and the person actively in charge of the business of the corporation shall be  
28 subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally  
29 liable together with the corporation for the payment of all compensation or other benefits for  
30 which the corporation is liable under this chapter if the corporation at that time is not insured or  
31 qualified as a self-insurer.

1 \* Sec. 12. AS 23.30.155(d) is amended to read:

2 (d) If the employer controverts the right to compensation, the employer shall file with  
3 the board and send to the employee a notice of controversion on or before the 21st day after the  
4 employer has knowledge of the alleged injury or death. If the employer controverts the right to  
5 compensation after payments have begun, the employer shall file with the board and send to the  
6 employee a notice of controversion within seven days after an installment of compensation  
7 payable without an award is due. When payment of temporary disability benefits is controverted  
8 solely on the grounds that another employer or another insurer of the same employer may be  
9 responsible for all or a portion of the benefits, the most recent employer or insurer who is party  
10 to the claim and who may be liable shall make the payments during the pendency of the dispute.  
11 When a final determination of liability is made, any reimbursement required, including interest  
12 at the statutory rate, and all costs and reasonable attorneys' fees incurred by the prevailing  
13 employer, shall be made within 14 days of the determination.

14 \* Sec. 13. AS 23.30.175(a) is amended to read:

15 (a) The weekly rate of compensation for disability or death may not exceed \$700 and  
16 initially may not be less than \$154 when the employee has furnished documentary proof of  
17 the employee's wages, or less than \$110 when the employee has not furnished documentary  
18 proof of the employee's wages. However, if [THE BOARD DETERMINES THAT] the  
19 employee's spendable weekly wage is [WAGES ARE] less than [\$110 A WEEK AS  
20 COMPUTED UNDER AS 23.30.220, OR LESS THAN] \$154 a week as computed under  
21 AS 23.30.220, the employee's weekly compensation rate shall [IN THE CASE OF AN  
22 EMPLOYER WHO HAS FURNISHED DOCUMENTARY PROOF OF THE EMPLOYEE'S  
23 WAGES, IT SHALL ISSUE AN ORDER ADJUSTING THE WEEKLY RATE OF  
24 COMPENSATION TO A RATE] equal [TO] the employee's spendable weekly wage [WAGES].  
25 The employer may not pay compensation at the employee's spendable weekly wage without  
26 a board order except as provided under regulations established by the board. [IF THE  
27 EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGES ARE  
28 LESS THAN \$154, THE EMPLOYER MAY ADJUST THE WEEKLY RATE OF  
29 COMPENSATION TO A RATE EQUAL TO THE EMPLOYEE'S SPENDABLE WEEKLY  
30 WAGES WITHOUT AN ORDER OF THE BOARD.] If the employee's spendable weekly wage  
31 is [WAGES ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage

1 [WAGES] is less than \$154, the employee's weekly rate of compensation shall be \$154. Prior  
2 payments made in excess of the adjusted rate shall be deducted from the unpaid compensation  
3 in the manner the board determines. In any case, the employer shall pay timely compensation.

4 \* **Sec. 14.** AS 23.30.190(b) is amended to read:

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

13 \* **Sec. 15.** AS 23.30.195 is amended to read:

14 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)  
15 Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING  
16 (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the  
17 injury, be payable to and for the benefit of the following persons [FOLLOWING]:

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

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

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

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

27 \* **Sec. 16.** AS 23.30 is amended by adding a new section to read:

28 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
29 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
30 for civil damages as a result of an act or omission in performing or failing to perform a  
31 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or

1 association's act or failure to act constitutes intentional misconduct.

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

3 **Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS**  
4 **EMPLOYEES.** (a) A person who is injured during the course and within the scope of providing  
5 service as a volunteer emergency medical technician is an employee of the state for purposes of  
6 this chapter if the person

7 (1) is certified by the state under AS 18.08 as an emergency medical technician;

8 (2) provides emergency medical service outside an incorporated city or borough;

9 and

10 (3) is not otherwise covered for that injury by an employer's workers'  
11 compensation insurance policy or self-insurance certificate.

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

19 \* **Sec. 18.** AS 23.30.265(15) is amended to read:

20 (15) "gross earnings" means periodic payments [,] by an employer to an employee  
21 for employment before any authorized or lawfully required deduction or withholding of money  
22 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the  
23 employee and temporary disability compensation for an occupational injury or illness, and  
24 excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or  
25 payment to the employee that is not fully taxable to the employee during the pay period, except  
26 that the total amount of contributions made by an employer to a qualified pension or profit  
27 sharing plan during the two plan years preceding the injury, multiplied by the percentage of the  
28 employee's vested interest in the plan at the time of injury, shall be included in the determination  
29 of gross earnings; the value of room and board if taxable to the employee may be considered in  
30 determining gross earnings; however, the value of room and board that would raise an  
31 employee's gross weekly earning above the state average weekly wage at the time of injury may

1 not be considered;

2 \* **Sec. 19.** AS 23.30.265(21) is amended to read:

3 (21) "medical stability" means the date after which further objectively measurable  
4 improvement or deterioration from the effects of the compensable injury is not reasonably  
5 expected to result from additional medical care or treatment, notwithstanding the possible need  
6 for additional medical care or the possibility of improvement or deterioration resulting from the  
7 passage of time; medical stability shall be presumed in the absence of objectively measurable  
8 improvement or deterioration for a period of 45 days; this presumption may be rebutted by clear  
9 and convincing evidence;

10 \* **Sec. 20.** AS 23.30.265 is amended by adding a new paragraph to read:

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

14 \* **Sec. 21.** REPORT. The division of insurance shall prepare a report on the feasibility of  
15 implementing a contracting classification premium adjustment program to provide premium credits for  
16 employers who purchase workers' compensation insurance. The report must include comments and  
17 recommendations from labor and management representatives in the state. The division of insurance  
18 shall submit the report to the Second Session of the Seventeenth Alaska State Legislature by January 31,  
19 1992.

20 \* **Sec. 22.** TRANSITION. Notwithstanding AS 23.30.041(b), as amended by sec. 2 of this Act, the  
21 first report of reemployment benefits due under that section as amended is to be filed on or before  
22 July 1, 1992, and must include the period of July 1, 1990, through December 31, 1990, and calendar year  
23 1991.

24 \* **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).