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COMMITTEE REPORT
HOUSE

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(7)

FURTHER: FINANCE

4/15/85

Date: _____

The Committee on LABOR & COMMERCE has had SSHB 318

"An Act relating to rights of injured state employees."

under consideration and recommends:

do pass do not pass

do pass with attached amendments(s)

replace with CS for SSHB 318 (A)C same title
 new title

and recommends it do pass

AND attaches a "Letter of Intent" New Fiscal Note
 reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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[Signature]
VICE CHAIRMAN



Finance Committee
Oil and Gas Committee

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V

State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

April 24, 1985

TO: Representative Mike Navarre
Chair, House Labor and Commerce Committee

FROM: Representative Mike *M. Szymanski*

RE: Sectional Analysis Proposed CS HB 318

The purpose of this memo is to advise you of the differences between HB 318 and the proposed committee substitute before you.

Although the intent and essence of the bill remains the same in both versions, there is sufficient difference to warrant independent consideration. The differences reflect amendments made at the suggestion of experts in the field. Mostly technical in nature, the amendments strengthen the legislation and I would strongly recommend that the committee adopt the proposed committee substitute for purposes of discussion.

To aid that process, the attached sectional analysis outlines the intent of each subsection of the proposed Committee Substitute.

Thank you for your consideration of this important matter.

Sectional Analysis
Proposed Committee Substitute For Sponsor Substitute HB 318

Section 1.

Subsection 39.25.157. Requires the division of personnel, in consultation with the appropriate department or agency, to develop and maintain a detailed position description for each position within the classified and partially exempt services.

Also disallows the imposition of general physical ability requirements on a job class unless each position within the class requires the use of the physical ability.

Subsection 39.25.158.

(a) within 90 days after a physician's release to return to full or modified work, an injured employee must request to return to work for the state to be eligible for reemployment rights under this section.

(b) once an employee requests to return to work, the employee will be certified by the division of worker's compensation or the director of vocational rehabilitation. The certification will determine the employee's reemployment rights under this section.

(c) requires that a state agency offer an injured employee the employee's former position within 30 days, if the employee is certified able to perform the tasks assigned to the position and the position still exists.

(d) requires agencies to make efforts of reasonable accommodation to the physical and mental limitations of an injured employee who is not able to perform all of the tasks assigned to the employee's former position, but who is able to perform the essential functions of the position.

Following federal language, the section defines reasonable accommodation.

(e) if, after reasonable accommodation, the employee is still unable to perform the essential functions of the employee's former position, then the agency is required to offer the employee a position comparable in wage to the position the employee previously held.

If a comparable position within the agency cannot be found, then the employee is entitled to request preference for a comparable position within another agency, providing the employee is able to perform the essential functions of that position.

(f) if the employee cannot be reemployed in a comparable position either by the agency or another agency of the state, then the employee may request preference at a lower wage or accept retraining under AS 23.30.041.

Once training is complete, the employee may request preference for the state position for which the employee has been retrained.

(g) establishes guidelines for refusal by an agency to reemploy or continue the employment of a former employee.

(h) defines factors to be considered when determining if accommodation of an injured employee would constitute undue hardship to an agency. Factors to be considered include the number of employees in the section or office, number or type of facilities, size of budget, nature and cost of the accommodation needed, and the type, composition, and structure of the work force.

(i) requires that an injured employee requesting reemployment, who is able to perform the essential functions of the position, be the only person certified for that position, excepting any employees in layoff status for that job class.

(j) precludes collective bargaining agreements from including terms contrary to this section.

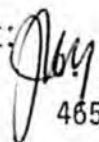
(k) definitions.

"agency" includes a department, division, division, office, agency, board, commission, authority, or other organizational unit of the executive, legislative, and judicial branches of state government including the University of Alaska.

Section 2. states that nothing in the act modifies or terminates the terms of a collective bargaining agreement in existence at the effective date of the act.

Bill No. 2nd Sponsor Substitute for
House Bill No. 318
Title "An Act relating to rights of injured
State employees."

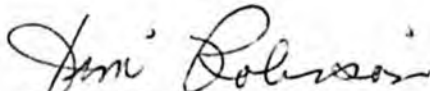
Date April 23, 1985

Contact:  L. McClintock
465-2790

The Department of Labor supports passage of the 2d Sponsor Substitute for HB 318, providing rehire rights for injured state employees.

The latest sponsor substitute adds several key features which strengthen the provisions of the bill and responds to the Department's concerns over potential conflicts between the earlier provisions of the bill and the workers' compensation rehabilitation provisions of AS 23.30.041.

APPROVED:


Jim Robison
Commissioner

HB 318 File Contents

To: All Members, House Labor and Commerce Committee
From: Roger Poppe, Committee Aide
Date: April 15, 1985
Subject: Overview, HB 318, Rights of Injured Sate employees

On April 15, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Building at 1:15 on HB 318.

There have been no versions of this bill submitted in previous sessions of the legislature; and there is no companion legislation in the Senate.

Basically, the bill grew out of problems that injured state workers encountered in trying to obtain re-employment with the state of Alaska after they had been injured on the job while working for the state. In an effort to address this problem, this bill would give employment preference to such injured state workers in any re-hire application.

The Sponsor has just submitted an official sponsor substitute to the Committee, which I understand has been read across the floor, but is not yet available in the printing office. A draft copy of the SS is available in your file folders. This SS incorporates primarily technical changes in the original bill, along with a substantive change that takes into account the concerns expressed by the Dept. of Labor in their Position Paper, found in your file under #4.

The Dept. of Labor supports the bill, and has a zero fiscal note. The substantive change would allow the employee to take advantage of any retraining options available before he returns to work, and at the same time allows him, whether he has additional training or not, to still receive preferential hire in either his old job or in any new job of comparable worth. Jackie McClintock of the Worker's Compensation offices will be presenting the Department's position at the hearings, and she will be able to explain how the SS covers the Department's concerns. Apparently, a meeting between the sponsor and the Department last week has taken care of the Depts. concerns, which is why the SS was submitted.

Bill No. House Bill 318

Date April 2, 1985

Title "An Act relating to rights of injured state employee."

Contact J. L. McClintock
465-2790

The Department of Labor supports the passage of HB 318 which provides rehire rights for injured state employees; however we suggest language be added to make the bill more consistent with the rehabilitation provisions of AS 23.30.041 of the Alaska Workers' Compensation Act.

The basic reason for the additional language is that persons covered under this bill are state employees who have been injured on the job and who are, therefore, entitled to benefits under the Workers' Compensation Act. We feel that the closer an injured state employee's rehire rights under AS 39.25.158 mesh with the rehabilitation entitlement under AS 23.30.041, the less chance there will be for the two statutes to conflict with one another.

The proposed language would add the following paragraphs to §.158:

The employee may request preference for rehire with the state if the agency cannot offer a position comparable in wage to the job previously held.

If the employee cannot be placed in a job with either the agency or the state at a wage equal to the employee's previous wage, the employee may choose to accept retraining through AS 23.30.041 and then request preference for rehire with the agency or the state in a position for which the employee has been retrained.


The proposed language would allow the employee to take advantage of any retraining options available under AS 23.30.041 and then request rehire by the state in the position for which the employee has been trained. This does not appear to conflict with the eligibility criteria under §.158(f), in which an employee can request preferential rehire after being injured on the job and laid off or terminated. It only specifically allows the employee to request rehire after completion of retraining, usually a period of not more than two 37 week periods.

Further, it would allow the employee to evaluate available positions within the agency, the state, or after retraining in light of the employee's average weekly wage for compensation purposes. That is, the employee would not lose any preferential rehire rights by choosing to accept a state job outside the agency at a wage equal to the previous wage if the employee refused a job offered by the agency at substantially less than the previous

POSITION PAPER/Department of Labor

wage. We believe this specification is consistent with HB 318 terminology regarding offering a "comparable" job, and this is also consistent with the rehabilitation provision's definition of "suitable gainful employment" under AS 23.30.265(28).

APPROVED:



Jim Robison
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 318
 Title: "An Act relating to ...
 injured state employees"
 Sponsor: Szymanski
 Requestor: House Labor & Commerce
 Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public
 Protection
 BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE						

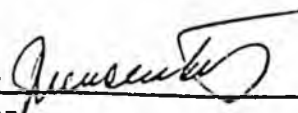
FUNDING: (Thousands of Dollars)

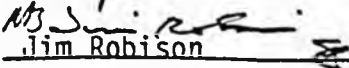
GENERAL FUND						
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OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{MB} Jacque McClintock  Phone: 465-2790
 Division: Workers' Compensation Date: 3/28/85

Approved by Commissioner: ^{MB} Jim Robison  Date: 3/28/85
 Agency: Labor

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Finance Committee
Oil and Gas Committee

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Phone (907) 349-3373

While in Session:
Pouch V
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April 11, 1985

TO: REPRESENTATIVE MIKE NAVARRE, CHAIRMAN
HOUSE LABOR AND COMMERCE COMMITTEE

FROM: REPRESENTATIVE MIKE SZYMANSKI

RE: HB 318 - RELATING TO REEMPLOYMENT OF INJURED STATE WORKERS

During the past year it has been brought to my attention that current state procedures for reemployment of injured state workers are inadequate. The legislation before you incorporates suggestions from involved state agencies, professional organizations in the field and informed citizens. Additionally, House Research reviewed reemployment policies in other states and provided policy alternatives (attached).

Basically, the bill:

- a) requires the state director of personnel to prepare and maintain a detailed position description for each position in the classified and partially exempt services;
- b) requires state agencies to give employment preference to injured state workers returning to the work force, preferably in the same capacity; and
- c) establishes clear guidelines for refusing to rehire or continue the employment of a former employee if the employment would impose an undue hardship on the operation of an agency's program.

I believe this is an important and needed piece of legislation and encourage your serious consideration of this measure. Thank you.

The second 1982 amendment added paragraph (c)(17).

The third 1982 amendment rewrote this section.

The first 1984 amendment inserted "and Veterans'" in paragraph (1) of subsection (c).

The second 1984 amendment changed the internal reference in subsection (b).

The third 1984 amendment substituted "of the public defender agency, and of the office of public advocacy in the Department of Administration" for "and of the public defender agency" in paragraph (3) of subsection (c).

The fourth 1984 amendment added paragraph (18).

Sec. 39.25.130. Extension of partially exempt and classified services. (a) The personnel board, upon written recommendation of the commissioner of administration, may extend the partially exempt service to include any position in the classified service which, in the judgment of the board:

- (1) involves principal responsibility for the determination of policy;
- (2) involves principal responsibility for the way in which policies are carried out; or
- (3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(b) Positions may not be included in the partially exempt service under this section if the inclusion is inconsistent with federal requirements for state agencies supported in whole or in part by federal funds.

(c) The personnel board, upon written recommendation of the commissioner of administration, may extend the classified service to include any position in the partially exempt service. (§ 7 ch 144 SLA 1960; am §§ 9, 10 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment "After June 30, 1961" from the beginning of subsections (a) and (c); deleted "which was" following "include any position" both in the introductory paragraph of subsection (a) and in subsec-

tion (c); and deleted "on April 19, 1960" following "in the classified service" in the introductory paragraph of subsection (a) and following "partially exempt service" in subsection (c).

NOTES TO DECISIONS

Cited in *Halling v Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Article 3. Personnel Rules.

<p>Section 140. Amendment of personnel rules 150. Scope of the rules</p>	<p>Section 153. Departmental personnel officers 155. Vocational substitution program</p>
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Sec. 39.25.140. Amendment of personnel rules. (a) The director of personnel shall prepare and submit to the commissioner of administration any proposed amendments to the personnel rules for all positions and employees subject to this chapter.

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(b) The commissioner of administration shall review the amendments and submit them to the personnel board.

(c) At least 30 days before the adoption, amendment, or repeal of a personnel rule, the secretary to the personnel board shall provide notice that the personnel board has the proposed action under consideration. The notice shall be

(1) posted in public buildings throughout the state;

(2) published in one or more newspapers of general circulation throughout the state;

(3) mailed to each person or group that filed a request for notice of proposed action with the secretary to the personnel board;

(4) furnished to each member of the legislature and to the Legislative Affairs Agency.

(d) The rules may provide for exemptions and modifications that are necessary to assure the continuity of federal grants to agencies supported in whole or in part by federal contributions.

(e) The rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act. The rules shall be published in the Alaska Administrative Register and Code for informational purposes.

(f) Failure to mail notice to a person as required in this section does not invalidate an action taken by the personnel board.

(g) An amendment to the personnel rules takes effect 30 days after it is approved by the personnel board. The board, if requested to do so, may hold a public hearing on a proposed amendment. (§ 12 ch 144 SLA 1960; am § 5 ch 5 SLA 1966; am §§ 11-13 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote subsection (c), substituted "shall be published" for "may be

published" in the second sentence of subsection (e), and added subsections (f) and (g).

NOTES TO DECISIONS

A right clearly created by statute cannot be taken away by regulation. *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967).

Stated in *Kelly v. Zamarello*, Sup. Ct.

Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Sec. 39.25.150. Scope of the rules. The personnel rules shall provide for

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

(A) a grouping together of all positions into classes on the basis of duties and responsibilities;

(B) an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary specifications for each class of positions;

(2) the preparation, maintenance, revision and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan (A) shall be based upon the position classification plan; (B) shall provide for fair and reasonable compensation for services rendered, and reflect the principle of like pay for like work; (C) may be amended, approved, or disapproved by the legislature in regular or special session; after the pay plan is in effect, a salary or wage payment may not be made to a state employee covered by the plan unless the payment is in accordance with this chapter and the rules adopted under this chapter or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;

(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought;

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, the applicants' qualifications, performance records, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

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(10) transfers from one department to another and from another merit system jurisdiction to the state service;

(11) transfers from one area of the state to another;

(12) the reinstatement of a person who resigns in good standing;

(13) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(14) the development, maintenance, and use of employee performance records;

(15) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(16) the procedures for review of disputed personnel actions, for resolving employee and interagency grievances, and for resolving grievances of the general public concerning the operation of the state personnel system;

(17) hours of work for all employees in the state service;

(18) methods and procedures covering overtime work and pay;

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the classified service; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

(A) "veteran" means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975;

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability;

(20) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(21) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(22) the establishment of programs facilitating the employment of disadvantaged persons;

(23) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(24) the establishment of a transition period of up to 12 months for an employee to be reappointed to a classified position if the employee's position is withdrawn from the partially exempt or exempt service and placed in the classified service;

(25) other rules and administrative regulations, not inconsistent with this chapter, that are necessary for its enforcement. (§ 13 ch 144 SLA 1960; am § 1 ch 130 SLA 1961; am § 1 ch 147 SLA 1962; am § 1 ch 117 SLA 1966; am § 1 ch 33 SLA 1967; am § 3 ch 226 SLA 1970; am § 1 ch 39 SLA 1971; am § 3 ch 42 SLA 1971; am § 1 ch 21 SLA 1973; am § 1 ch 27 SLA 1976; am § 1 ch 4 SLA 1978; am § 2 ch 67 SLA 1979; am § 38 ch 94 SLA 1980; am §§ 1, 2 ch 89 SLA 1982; am § 14 ch 112 SLA 1982)

Revisor's notes. — AS 39.25.150 was also amended by §§ 1 and 2, ch. 89, SLA 1982. That chapter amended former paragraphs (6) and (9). However, ch. 112, SLA 1982 is given effect here since it was enacted later than ch. 89, SLA 1982, and is a comprehensive repeal and re-enactment of this section.

Cross references. — For the pay plan prepared under (2) of this section, see AS 39.27.011.

Effect of amendments. — The 1980 amendment substituted "November 7, 1975" for "a date to be determined by the legislature which shall be on or about six

months after the termination of hostilities involving forces of the United States in Viet Nam" near the middle of paragraph (23), and substituted a semicolon for a period at the end of paragraph (23).

The first 1982 amendment added "including the granting of employment preference to local residents in accordance with AS 39.25.181 or under appropriate circumstances" to the end of paragraph (6) and "including the granting of employment preference to local residents in accordance with AS 39.25.181" to the end of paragraph (9).

The second 1982 amendment rewrote this section.

NOTES TO DECISIONS

The scope of rules prepared pursuant to AS 39.25.050 is limited severely in this section, leaving the director of personnel very little discretion and virtually no policy-making power.

Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255-1256), 486 P.2d 906 (1971).

Chapter attempts to ensure most efficient expenditure of public funds.

— This chapter attempts to ensure most efficient expenditure of public funds. Eogenrife, Sup. Ct. Op. No. 915-13 (1973).

This section prescribes the conditions under which the state may require a public employee to work overtime. State v. Bogenrife, Sup. Ct. Op. No. 915-13 (1973).

A public employee is not entitled to overtime payment for work beyond the hours of his valid contract unless he is authorized by statute or by a collective bargaining agreement. State v. Bogenrife, Sup. Ct. Op. No. 915-13 (1973).

When an employee is required to work overtime, he is entitled to overtime payment for such work. State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

The establishment of a public employee's overtime rate is a matter for the legislature. State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Requirement of a public employee to work overtime is not enforceable unless the employee has agreed to it. State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Collateral reference to this section is made in AS 39.25.050.

— This chapter and the personnel rules attempt to ensure the state and its taxpayers that public funds will be spent in their most efficient manner. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

This section and personnel rule 7 05 prescribe the only manner in which the state may become obligated to pay for overtime performed by a classified service employee. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

A public employee is not entitled to payment for overtime in the absence of a valid contract executed pursuant to statutes or regulations specifically authorizing such compensation in addition to the employee's fixed monthly salary. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

When employee entitled to compensation for overtime. — This chapter and the applicable regulations adopted thereunder do not entitle an employee in the classified service, who is paid a fixed monthly salary, to receive any compensation for overtime, either in the form of cash or compensatory leave time unless: He is a member of the class eligible to receive overtime payment under personnel rule 7 05.2; he has worked hours in excess of his scheduled hours; and his appointing authority has authorized in writing payment for such overtime work. Even if these conditions are satisfied, personnel rule 9 04 stipulates that the employee is entitled to overtime pay only at his hourly rate. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

The establishment of normal working hours and provision for compensatory time off for work beyond those hours do not, of themselves, give the employee a right to payment for overtime. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Requirement of an express written authorization for payment for overtime cannot be circumvented by the implied contract theory. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

A public employee undertakes to perform the duties of his position, whether these duties, or the hours necessary to perform them, are increased or decreased. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

When a public servant is paid by time, for example by the month, rather than by the quantity of work performed, he is expected to perform his duties without extra compensation for overtime or holiday hours worked. This chapter and the personnel regulations are reflective of this widely accepted policy. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

The regulatory scheme under this section and personnel rule 7 05 centralizes decision-making power with respect to overtime in the appointing authority who presumably has a broad view of the department's needs and is shielded from dangers of favoritism by his distance from the particular employee. *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Right of probationary employee to appeal dismissal. — The intended scope of AS 39.25.170(a) and its relation to paragraph (7) of this section is of sufficient importance to warrant legislative review in order that any potential ambiguity in the Personnel Act, in regard to the question of whether a probationary employee in the classified service has the right to appeal his dismissal to the personnel board, may be obviated. *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967), decided prior to the first 1971 amendment to this section.

Any ambiguity in personnel rule in regard to the right to appeal a dismissal to the personnel board should be resolved in favor of an employee who was promoted from a position in which he had (or subsequently attained) permanent status. *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967), decided prior to the first 1971 amendment to this section.

Collateral references. — Power to suspend or lay off public officers for a tempo-

rary period without pay as an economy and not as a disciplinary measure, 11 ALR 432.

Sec. 39.25.153. Departmental personnel officers. (a) If a principal department of the executive branch has a personnel officer, the personnel officer shall be employed by and located within that department.

(b) Subject to the provisions of (d) of this section, the personnel officers for the Departments of Transportation and Public Facilities, Fish and Game, Education, Labor, and Health and Social Services, have the following powers with respect to the classes of positions unique to their departments:

(1) to assign positions to an existing class in the state classification plan and to the salary range for that class as established by the state pay plan or by a valid agreement entered into in accordance with AS 23.40;

(2) to administer and score examinations and to place successful applicants on departmental eligible lists;

(3) to certify those eligible to the appointing authorities.

(c) The initial determination of classes of positions unique to the departments listed in (b) of this section shall be made by the personnel officer of the department in consultation with the commissioner of the department subject to the approval of the director of personnel in the Department of Administration.

(d) The assumption of a power set out in (b) of this section must be approved by the commissioner of administration and must be in harmony with the merit principle of personnel administration (AS 39.25.010). (§ 14 ch 207 SLA 1975; am § 15 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 39.25.155. Vocational substitution program. (a) It is the purpose of this section to establish a liberal system under which Alaskan residents not employed by the state who do not meet the minimum educational or experience criteria for state employment may demonstrate their abilities and achieve temporary or permanent state employee status. This program is intended for use primarily in remote or underemployed areas where the opportunity to gain required hiring qualifications does not exist, but where there is a local need for employees with certain vocational skills. The provisions of this section apply notwithstanding the provisions of AS 39.25.150(3).

(b) The director of personnel shall establish vocational standards as alternatives for educational or experience levels now required for nonprofessional occupational areas under the state personnel system and incorporate these alternatives into the state classification plan.

(c) Applicants shall be placed on eligible lists for the vocational classification indicated in their applications submitted to the division of personnel in the order of their relative ranking based on an assessment of their technical ability, place of residence and without

written examination

(d) The selected beginning position person the range t

(e) The technical al in the pers

(f) Applications of AS

(g) *Repealed* ch 67 SLA

Effect of an amendment re

Section 160. Prohibiti

Sec. 39.2 may not ta above the p

(b) A per money, serv making an classified s

(c) A pe contribution

(d) A per ment in con service.

(e) An er seeks nomi: political off service. Th employee fi office.

(f) Action applicant demotion, s basis of unl origin, age, pregnancy,

written examination. Aptitude or occupational tests may be given if a position requires a specific ability.

(d) The director of personnel shall establish rates of pay for the selected vocational substitution classifications in relation to the beginning entry classification pay rates. However, vocational substitution personnel may not be classified lower than one pay range below the range to which the classified position is allocated.

(e) The director of personnel shall embody a concept combined of technical ability, place of residence, local hire and area unemployment in the personnel rules to accomplish the intent of this section.

(f) Applicants selected under this section are subject to the provisions of AS 39.25.160.

(g) *[Repealed, § 19 ch 67 SLA 1983.]* (§ 1 ch 14 SLA 1971; am § 19 ch 67 SLA 1983)

Effect of amendments. — The 1983 amendment repealed subsection (g).

Article 4. Prohibitions.

Section

160. Prohibitions generally

Sec. 39.25.160. Prohibitions generally. (a) A classified employee may not take an active part in the management of a political party above the precinct level.

(b) A person may not give, render, pay, offer, solicit, or accept money, services, or other valuable thing in connection with securing or making an appointment, promotion, or advantage in a position in the classified service.

(c) A person may not require an assessment, subscription, contribution, or service for a political party from a state employee.

(d) A person may not seek or attempt to use a political party endorsement in connection with an appointment or promotion in the classified service.

(e) An employee in the classified or partially exempt service who seeks nomination or becomes a candidate for state or national elective political office shall immediately resign any position held in the state service. The employee's position becomes vacant on the date the employee files a declaration of candidacy for state or national elective office.

(f) Action affecting the employment status of a state employee or an applicant for state service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to race, religion, color, or national origin, age, handicap, sex, marital status, change in marital status, pregnancy, or parenthood. In addition, action affecting the employment

status of an employee in the classified service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld for a reason not related to merit.

(g) Action affecting the employment status of an employee in the classified service or an applicant for a position in the classified service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to political beliefs.

(h) A person may not knowingly make a false statement, certificate, mark, rating, or report with regard to a test, certification, or appointment made under this chapter or in any manner commit a fraud preventing the impartial execution of this chapter and the personnel rules adopted under this chapter.

(i) A person may not obstruct the right of another person to examination, eligibility, certification, appointment, or promotion under this chapter. (§ 19 ch 144 SLA 1960; am § 38 ch 71 SLA 1972; am § 1 ch 15 SLA 1975; am § 16 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Article 5. Hearings.

<p>Section</p> <p>170. Hearings and appeals upon dismissal, demotion or suspension</p>	<p>Section</p> <p>175. Subpoena authority</p> <p>176. Effect of failure to respond or obey</p>
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Sec. 39.25.170. Hearings and appeals upon dismissal, demotion or suspension. (a) An employee in the classified service who is dismissed, demoted, or suspended for more than 30 working days in a 12-month period shall be notified in writing by the employer of the action and the reason for it and may be heard publicly by the personnel board and may be represented by counsel at the hearing. In order to be heard, the complainant shall request a hearing within 15 days of dismissal, demotion or suspension.

(b) If the board finds that the action complained of was taken for a political, racial or religious reason, or in violation of this chapter or the rules adopted under this chapter, the officer or employee shall be reinstated to the position without loss of pay or leave benefit for the period of dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties. (§ 16 ch 144 SLA 1960)

NOTES TO DECISIONS

"Employee in the classified service," as used in this section, has been administratively construed as referring to employees having a permanent, rather than a probationary status, except in cases where dismissal of a probationary

employee is due to racial discrimination. Ct. Op. No. 465 718 (1968).

An employee is considered in classified service. Titus v. State, Sup. Ct. No. 968, 451 P.2d

Appeal limited to permanent status. This section applies to a hearing following a permanent government decision of another state employee, considering the provisions relating to a probationary employee. The latter may be appointed without a hearing or without a hearing. v. State, Sup. Ct. No. 833, 438 P.2d 718

Provisional status. Whaley v. State, Sup. Ct. No. 833, 438 P.2d

"Provisional status" is a status that is temporary, more so, than probationary. v. State, Sup. Ct. No. 833, 438 P.2d 718

Sec. 39.25.171 at the request of the person. (§ 17 ch 112 SLA)

Revisor's notes. This section contained sub

Sec. 39.25.172 person refuses to testify or refuses to testify before the personnel board. (b) Failure to appear at a subpoena of court. (§ 17 ch 112 SLA)



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

RECEIVED OCT 13 1984

October 11, 1984

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley
Legislative Analyst

RE: Priority Rehire For Disabled State Employees
Research Request 35-025

You have asked about instituting a policy of preferential rehire for State employees who are forced to leave their jobs due to work-related disabilities. Short summaries of rehire policies in Washington, Oregon, and Idaho as well as the U.S. Postal Service and the Municipality of Anchorage are provided below. A discussion of policy alternatives for amending Alaska law along similar lines follows.

WASHINGTON

An employee of the State of Washington who becomes disabled cannot be terminated for at least sixty days. Supervisors have broad discretion to extend leave without pay to the injured employee and fill the position temporarily until the employee is able to resume his or her duties. If the injured employee is out longer than sixty days and is terminated from his or her position, the employee is eligible to be placed on the Reduction In Force (RIF) list for that job class when he or she is ready to return to work. Persons on the RIF list have the right of first hire when vacancies in that job class appear.

If the disabled employee is not able to resume the duties of his or her former job class and seeks reemployment in an alternate job class, the employee must go through the normal application and testing procedures to be certified to the register for the alternate job class. Once certified, the disabled employee is entitled to hiring preference over applicants on the open competitive register. If the alternate job class constitutes a promotion, the disabled employee has second hire priority after those on the RIF list. If the alternate job class is a demotion or lateral transfer, reemployment preference over open competitive candidates is at the discretion of the hiring authority.

Representative Szymanski
October 12, 1984
Page Two

Under Washington law, a person whose disability keeps them out of work for more than 120 days is referred to a vocational rehabilitation counselor for evaluation and vocational rehabilitation planning. A person who is permanently disabled may qualify for the state's equal employment opportunity program for the handicapped. Washington State civil service rules allow handicapped persons to test for any job class for which they meet the minimum qualifications, whether or not that register is open for recruitment. State agencies have the option of using the list of qualified handicapped workers, in preference to the regular register when filling vacancies.

Incentive for state agencies (or any employer) to hire workers with occupational injuries is provided by the Preferred Worker Program, which excludes the worker from the computation of workers' compensation premiums for a period of three years. The benefits due the worker in the event of an injury during the three-year period are covered by the state's Second Injury Fund.

OREGON

Of the states contacted, Oregon has the strongest laws for rehiring injured employees. Oregon civil rights law provides that an injured employee has the right to reinstatement on demand in his or her former position, or in any other job, if a position is available and the worker able to perform the duties of the job. In the state system, responsibility for rehiring the injured employee falls on each agency. Oregon statutes also require "reasonable accommodation" for the special needs of handicapped workers. In the state personnel system, this may include some restructuring of the job.

IDAHO

Idaho personnel rules provide that when an employee is absent due to injury or illness, the job is held open for the employee and may not be declared vacant for at least six months. If the worker has not returned to work within six months and is terminated, for an additional 12 months the worker is eligible to be placed on the lay-off register for that agency if the doctor has cleared the employee for return to work. If the employee is not able to resume the same job duties, the agency has some discretion to modify work for the employee, but there is no program or policy to further accommodate workers who must change job classes.

Representative Szymanski
October 11, 1984
Page Three

U.S. POSTAL SERVICE

The U.S. Postal Service goes beyond the requirements of federal law to return injured employees to work. Under federal law, an injured federal employee who is able to return to work within one year has the right to return to the same or an equivalent position in the same agency. If it takes longer than a year to return to work, the employee has the right to priority placement in the same or equivalent position in that or another federal agency. The returning federal employee is credited with wage step increases and other benefits based on length of service for the entire time he or she was out on disability compensation.

A partially or temporarily disabled postal employee is on leave status until the doctor certifies that the employee is able to return to work. The worker is either returned to his or her former job, with some modification of duties if needed, or transferred to an alternate job. In planning a placement, the post office considers the risk of reinjury and the potential compensation costs as well as the skills and abilities of the worker. Only if this assessment indicates that the worker will not be returned to federal service is the employee terminated.

The responsibility for finding or creating a job falls on the local postmaster. To encourage the placement of partially disabled workers, the salary of a partially disabled employee is not paid out of the operating unit's budget, nor are the hours worked by a partially disabled worker counted in computing the operating unit's productivity rating. Thus the operating units are able to show a higher productivity, for which they are rewarded, by utilizing partially disabled workers.

ANCHORAGE

The Municipality of Anchorage has implemented a modified work program for municipal employees injured on the job. The stated purposes of the program are to minimize long-term costs to the municipality and to return the employee to good health and productive employment at the earliest opportunity.

Under the modified work program, an injured worker who is able to resume partial duties will be placed in modified work for up to three months while the worker is in transition back to full duties. If rehabilitation requires a complete change in employment, participation in the modified work program may exceed three months. The worker is paid his or her full regular salary during the period of modified work. If the worker's permanent job placement is at a lower salary than his or her old job, two-thirds of the difference is paid to the employee through the city's workers compensation account. Workers whose disability precludes them from placement in a permanent position receive a worker's compensation settlement.

Representative Szymanski
October 11, 1984
Page Four

While providing modified work is the responsibility of each municipal agency, a job placement coordinator for the municipality as a whole oversees the development of modified jobs and placements. According to Harry Sjoberg, Risk Manager for the municipality, the city's experience with the program has shown significant reductions in compensation claims and changes in the attitudes of supervisors and injured employees alike. Prior to institution of the modified work program, the prevailing pattern was that supervisors were not inclined to rehire an employee at anything less than 100 percent productivity. Employee morale suffered from prolonged periods off work. Mr. Sjoberg said that now less work time is lost, supervisors show more concern for the circumstances of their injured employees, and rehabilitation is quicker.

ALASKA

Under the Alaska personnel rules, leave without pay due to a disability is at the discretion of the supervisor, but in any case may not exceed the employee's length of service or 24 months, whichever is shorter. The supervisor may cancel leave without pay upon notice to the absent employee. If the employee does not report for duty on the specified date, he or she may be terminated immediately.

A disabled classified employee terminated "in good standing" has rehire rights for two years from the date of termination. This means that they will be placed on the transfers and rehires list for that job class, which agencies may use in preference to the regular register when seeking applicants to fill vacancies. A few departments such as Health and Social Services have internal policies requiring agency heads to use the transfer and rehire list first, but most departments leave this to the discretion of the supervisor.

Injured State workers who are unable to resume the duties of their former job have few advantages in seeking other State jobs. They must go through the same process as anyone else of finding job classes for which they qualify, waiting for an open recruitment period for that class, taking applicable tests, getting on the job register, and successfully competing with other applicants. If the worker is fortunate enough to still be on leave and thus retain permanent employee status, he or she may be eligible for noncompetitive appointment at the discretion of the hiring authority.

State law provides that workers absent from work more than 90 days due to an on-the-job injury have a right to vocational rehabilitation evaluation. This includes an assessment of skills and abilities, aid in planning for training and rehabilitation, and job placement assistance.

Representative Szymanski
October 11, 1984
Page Five

If the worker qualifies as severely handicapped and is a client of the Division of Vocational Rehabilitation, the worker may be referred to a State job and hired noncompetitively if the hiring authority chooses.

State workers whose occupational injuries disable them from resuming their former job duties qualify for a disability pension under the Public Employees Retirement System. The pension is terminated in one year, however, unless the recipient submits evidence that he or she meets the qualifications for federal Social Security disability income (SSI). Federal standards for SSI are stringent; the worker must be unable to hold any gainful employment, not merely his or her former job.

Policy alternatives to facilitate reemployment of injured State workers in Alaska, patterned after some of the preferential rehire programs in other jurisdictions, are listed below:

POLICY OPTIONS

1. Employees could be guaranteed the right to disability leave.
2. Injured workers returning to work could be placed on the lay-off list, which assures them priority placement within their former job class.
3. Injured workers unable to resume the duties of their former job class could be allowed to test for any other job class for which they meet the minimum qualifications, whether or not recruitment is open.
4. Hiring preference in alternate job classes for which the worker qualifies could be granted by making the worker eligible for the lay-off, promotion, or transfer and rehire lists. Eligibility for the lay-off list would guarantee the worker first priority placement, while the promotion and the transfer and rehire lists would give the worker preference only at the option of the hiring authority.
5. A modified work program could provide injured workers job duties tailored to their capabilities during a period of transition back to full duties or to a new job.
6. State agencies could be given incentives to rehire disabled State workers, such as omitting the disabled worker from the calculation of their worker's compensation assessment.
7. State employees injured in the course of their employment could be guaranteed State jobs when doctors certify that the employees

Representative Szymanski
October 11, 1984
Page Six

are able to return to work. The employee would be reemployed in their original job class if they were able to perform the duties, in an alternate job class for which they qualify, in an alternate job class for which they may be retrained, or in a modified job tailored to their individual capabilities.

8. The injured worker could also be extended the right to receive pay no less than the pay he or she received prior to injury, regardless of the final job placement.

These policy changes could be effected by amending AS 39.25.150 to direct the Department of Administration to provide for these policies in the personnel rules. Alternatively, reemployment could be mandated for all employers in the state under the workers' compensation or civil rights laws. Copies of the Oregon law and the Postal Service policy manual, both of which are regarded by vocational rehabilitation professionals as model policies, are attached.

Because the State is a self-insurer and is liable for workers' compensation benefits as well as for the disability pension payments, it may be in the State's financial interests as well as the interests of the injured worker to implement a preferential rehire policy and return the worker to a job as quickly as possible. Approximately 1,200 injured State employees file worker's compensation claims per year, of which about 200 to 250 include a claim for wage loss due to being out of work more than three days. Compensation is also paid for loss of earning capacity if the injured worker's prospective employment pays less than his or her former job. Compensation for wage loss is generally calculated at two-thirds of the lost wages, but because workers' compensation is tax exempt, the take home compensation is worth more than two-thirds of net wages lost.

* * * * *

I am still expecting some additional information from other states to come in the mail. If upon reviewing the material I find that it provides any significant information on this issue that I have not adequately covered here, I will forward it on to you with a supplemental memo. Meanwhile, I hope that this memorandum provides you with the information that you need.

If you have any further questions please call me.

SH

659.410 Discrimination against workers applying for workers' compensation benefits prohibited. It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.79; and 656.802 to 656.82, or of 659.400 to 659.435 or has given testimony under the provisions of such sections. [1973 c.660 §4]

659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14]

659.420 Employment of injured worker in other available and suitable work; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between

the employer and a representative of the employer's employees.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §6; 1979 c.813 §4]

659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) For the purpose of ORS 659.400 to 659.435, it is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because:

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved;

(b) An individual has a record of a physical or mental impairment; or

(c) An individual is regarded as having a physical or mental impairment.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a handicapped person, or to classify or refer for employment any individual because that individual is a handicapped person.

(3) It is an unlawful employment practice for a labor organization, because an individual is a handicapped person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person.

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property. [1973 c.660 §7; 1979 c.640 §3]

659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person because the purchaser, lessee or renter is a handicapped person shall:

LWOP for an initial period of up to 1 year from the date OWCP compensation began.

.92 Extensions. If the employee is unable to return to work at the end of the 1 year period on LWOP, the LWOP may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.

.93 Separations. If it is not likely that the employee will be able to return to work at the end of one year of LWOP or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of the OWCP can be separated, the postal official must submit a comprehensive report to the General Manager, Employee Relations (Region), with appropriate recommendations and retain the employee on the rolls of the Postal Service pending a decision.

.94 Deciding Appropriate Action. In considering the action to take in matters involving extended leave, the installation head sends Form 2573, *Request for OWCP Claim Status*, in duplicate, to the appropriate OWCP district office; and, upon receiving a completed Form 2573 from OWCP, does one of the following:

- a. Extends LWOP for an additional period, at the end of which an additional determination must be made;
- b. Authorizes a fitness-for-duty examination by a medical officer as provided in 547.31, .32, and .33 if OWCP does not respond within a maximum of 60 days or if OWCP's response does not explain the situation; or
- c. Request permission to terminate LWOP as required in .93; and
- d. Terminates LWOP after receiving permission from the General Manager, Employee Relations (Region) as follows:

(1) If the employee has 5 or more years of creditable civilian service, inform the employee of retirement rights. Allow the employee 14 calendar days to file a retirement application under the Civil Service Retirement Act.

(2) If the employee does not file a retirement application within the 14 day period, terminate LWOP and take action to separate the employee as described in 365 and 568.

(3) If the employee has less than 5 years creditable civilian service, terminate LWOP and take action to separate the employee as described in 365.

546 Reemployment of Employees Injured On Duty

546.1 Law

.11 General. The USPS has legal responsibility to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations, as outlined below.

.12 Disability Fully Overcome Within 1 Year

.121 Obligation. When the injury or disability is fully overcome within one year after the commencement of compensation payments from OWCP, or after compensable disability recurs, the USPS must give an

employee the right to resume employment in the former or equivalent position.

.122 Rights and Benefits. Upon reemployment, all rights and benefits which an employee would have had or acquired in the former position, had there been no injury or disability, must be restored.

.13 Disability Fully Overcome More Than 1 Year

.131 Obligation. When the injury or disability is fully overcome more than one year after compensation began, the USPS must give an employee priority consideration for reemployment into the former position or an equivalent one.

.132 Reemployment List. The names of all former employees who fully recover from their compensable disabilities more than one year after compensation begins must be entered on a reemployment list in two groups. *Group one* will include all such former employees who are entitled to 10 point veteran preference. *Group two* will include all other such former employees. Persons in *group one* will be considered for employment before persons in *group two*, and persons in *group two* will be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

.133 Rights and Benefits. The same as 546.122.

.14 Disability Partially Overcome

.141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances (see 546.32). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

a. To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; that work shall constitute the limited duty to which the employee is assigned.

b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort will

be made to assign the employee to work within the employee's craft, within the employee's regular schedule, and as near as possible to the regular work facility to which normally assigned.

.142 Former Employees. When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which qualified, including a lower grade position than that held when compensation began.

.15 Employee Appeal Rights. An employee who believes the proper consideration for reemployment was not received may appeal to the Merit Systems Protection Board, under 5 CFR, 353.

546.2 Collective Bargaining Agreements

Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

.21 Contractual Considerations

.211 Scope. Collective bargaining agreement provisions for filling job vacancies and promotions, and procedures relating to retreat rights due to reassignment, will be complied with before an offer of employment is made to a former postal employee on the OWCP rolls for more than 1 year.

.212 Reemployment. A former employee will be offered reemployment in a residual vacancy (a vacancy which has been posted for bid or application and for which there are no successful bidders or applicants), or may work as an unassigned regular or as a part-time flexible. Regional Directors, Employee and Labor Relations (APMG, Employee Relations, for Headquarters and Administrative Support Facilities (ASFs) may waive minimum qualification requirements (including written examinations) in individual cases for former employees injured on duty who are being considered for reemployment when there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in the position within ninety days after assignment.

.22 Types of Appointments

.221 Former career employees will be reemployed as career full-time or part-time employees.

.222 Former substitute rural carriers will be reemployed as substitute rural carriers or in any other position for which they qualify.

.223 Former casual and temporary employees will be reemployed as casual or temporary employees. Upon satisfactory demonstration of ability to meet job requirements during two 90-day casual appointments or one 180-day temporary appointment, the employee's

status may be noncompetitively converted to a career appointment (NOA 501).

546.3 OWCP Referrals

.31 General. OWCP will make referrals of current and former postal employees who may be candidates for reemployment.

.32 Work Limitation Tolerances. The individual's physician of record, or other physician selected by the individual or OWCP, will furnish OWCP with a definitive medical summary, clearly documenting the medical limitations that will have to be accommodated. The OWCP District Medical Director evaluates the work limitation tolerances, submitted by the physician of record, and upon concurrence, refers them to the USPS for consideration.

.33 USPS Medical Review

.321 Reemployment Physical Examination

a. The medical officer will evaluate fully all medical records referred to the USPS from the OWCP district offices.

b. A complete physical examination, paid for by the USPS, will be required by the appointing officer. The result of the physical examination will be documented on Form 2485, *Certificate of Medical Examination*.

c. The medical officer will make a statement of concurrence with the OWCP documented medical limitations, or further restrict the former employee's work limit tolerances. The medical officer can in no way liberalize the medical limitations rendered by the OWCP district offices.

.322 Special Considerations

a. An individual referred for reemployment consideration by OWCP may have some degree of concurrent disability, not caused by or related to the original job injury or disability. The medical officer should examine for any concurrent medical condition that might prevent the individual from performing the duties of the position for which the individual is being considered.

b. The medical officer will carefully evaluate all concurrent disabilities and include their potential impact in the recommendation for reemployment to the appointing official.

c. All former employees, now permanently, partially disabled, have some type of residual handicap. The medical officer, conducting the physical examination, will be responsible for assigning the correct handicap code as defined in Handbook P-11, *Personnel Operations*, Chapter 6.

546.4 Restoration Rights

.41 OPM Regulations. OPM has responsibility for the implementing regulations of 5 USC 8151. These regulations are codified in 5 CFR Part 353. 5 USC 8151(a) provides that an individual, injured or disabled on duty, who resumes employment with the USPS is to be credited with the time during which compensation

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

.423 Leave Credit. Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from OWCP for purposes of computing leave rate accrual upon reemployment.

.424 Retirement. Former employees who were covered by the Civil Service Retirement Act (see ELM 560) will be credited with the time spent on OWCP compensation in computing retirement credit.

.425 Salary Determination. The following salary restoration criteria must be met (*Note:* The term "Grade/Step," as used below, means "Grade/Salary" for individuals in a non-step salary schedule):

a. Reemployment to the Former Grade/Step. These individuals reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade/step from the appropriate salary schedule.

b. Reemployment to a Higher Grade. Those individuals reemployed to a position with a grade higher than that of the position held at the time of injury or disability will be placed in the higher grade at the current salary for the grade/step held at the time of injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

c. Reemployment to a Lower Grade/Step.

(1) Salary Below Maximum of Lower Grade. The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(2) Salary Above Maximum of Lower Grade. In those cases where the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/step salary. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

d. Reemployment to a Position in a Different Salary Schedule. When an individual is reemployed to a position in a salary schedule different from the schedule under which paid at the time of injury or disability, once reemployed, the individual will be treated under the rules applicable to the salary schedule to which reemployed:

(1) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(2) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

e. Former Position Under Different Salary Schedule. Where the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade/step will be determined by:

(1) Regional Compensation Division, for field, district, and regional positions.

(2) Office of Compensation, Headquarters, for Headquarters and Headquarters-related positions.

f. Step Increases. Upon reemployment, permanently, partially disabled individuals begin a new waiting period for step increases.

.43 Rights and Benefits Upon Full Recovery. See 546.122.

546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligibility

.521 If an annuitant, reemployed under the procedures in this section, is later found unable to successfully perform in the new position due to the original compensable injury or disability, and is again separated, the employee will be entitled to the restoration of disability retirement status under the Civil Service Retirement Act.

.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

.54 Notification. Upon reemployment of a disability annuitant (or in advance, if possible), the appointing official must notify the Office of Personnel Management, Compensation Group, Room 3305, Attention: Annuitant

Services Division, Washington, DC 20415. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 Scope. In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 Expense. Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel*.

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 Evaluation. Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

.712 Interview. During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.

b. If applicable the status of injury compensation and disability retirement benefits and future eligibility.

c. A full explanation of all restoration rights and benefits (see 546.4).

d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)

e. Instructions for completion and submission of any required employment forms.

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of

Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 Refusal of Reemployment Offer. When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

a. Offer the individual an opportunity to sign a declination of employment.

b. Advise the individual that the effect of such refusal may result in the termination or reduction of compensation benefits by the Department of Labor.

c. Notify the OWCP district office by telephone of the declination and reasons given.

d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

.73 Refusal to Reemploy. The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

a. Notify the employee in writing of that fact, with a copy to the OWCP; and

b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 Processing Personnel Actions. The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. (See 612.5 Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

must be advised that failure to keep appointments with a physician or hospital is a form of absenteeism. Control office/control point personnel will report failures to keep appointments to the OWCP district office.

547.2 Medical Reports

.21 Progress reports received from the attending physician may show the employee is capable of some work during convalescence or after medical treatment has been completed.

.22 If not, this information is requested by the control office/control point from the attending physician or the OWCP district office by use of Form CA-17.

.23 If the attending physician submits a medical report, Form CA-17, indicating that the employee is medically capable of performing some of the normal duties for a limited number of hours, or other work of a different nature than the employee's former assignment, the installation head must make every reasonable effort to place the employee in an appropriate assignment.

547.3 Fitness-For-Duty Determination

.31 **Determining Fitness.** The fact that an injured or ill employee is scheduled for a series of treatments or appointments with a physician or hospital does not, by itself, establish that the employee is not fit-for-duty in the interim. Control personnel will recommend, upon medical justification, to the installation head that any employee being treated by a physician or hospital be required to report to a USPS medical unit (or contract equivalent) for a fitness-for-duty examination. Only an installation head is authorized to approve a fitness-for-duty examination.

.32 **Examination Report.** This physical examination may include the parts of the anatomy being treated, provided the examination in no way disturbs or interferes with the treatment regimen. The results of this examination will be brought to the attention of the OWCP district office for consideration.

.33 **Physician Report Questioned.** If the medical officer questions the medical procedures and/or determination of the employee's attending physician, no administrative action may be taken to change the employee's compensation or employment status until the medical issue is settled.

.34 **Resolving Determination.** The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

a. The physician or hospital must, for each visit of the employee, make a professional statement, using Form CA-17, showing the employee either:

- (1) Fit-for-duty; or
- (2) Fit for limited duty, and the work tolerance limitations due to the injury; or
- (3) Not fit for duty with an expected return-to-duty date.

b. If the physician or hospital is unable to predict an employee's fitness for duty on either a short-term or long-term basis, the control office/control point supervisor may request information from the OWCP by sending Form 2573, Request—OWCP Claim Status, in duplicate, to the OWCP district office. If OWCP does not respond within a maximum of 60 days, or if the OWCP response does not explain the situation, a fitness-for-duty examination may be recommended to the installation head as provided in 547.31, .32, and .33. However, a fitness-for-duty examination can be initiated at any time to determine the duty status of the injured employee.

c. If the results of the fitness-for-duty examination disagree with the findings of the attending physician, the matter, along with justification for the USPS position, is referred by the control office/control point supervisor to the OWCP Deputy Commissioner for resolution.

d. A fitness-for-duty determination is not limited to the employee's regular duties, but should be based on whether the employing installation has any temporary alternative duties available which the employee may safely perform.

HB 318 File Contents

April 15, 1985 Monday

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Fiscal Note -- Dept. of Labor, 3/28/85
- 4) Position Paper -- Dept. of Labor, 4/2/85
- 5) Memo from Rep. Szymanski to Committee, April 11, 85
- 6) Alaska Statutes: AS 39.25.140-160
- 7) House Research Agency Analysis -- October 11, 1984
- 8) SS for HB 318, proposed as CS by sponsor, with explanation of changes

INTRODUCTION OF BILLS (House)(cont'd)

HB 316 (cont'd)

of the public to use and have free access to the navigable or public water of the state.'

Provides Act takes effect immediately.

Introduced March 25 and referred to Resources, Finance.

Professional
Licensing of
Social Workers

HOUSE BILL NO. 317, by Reps. Koponen, Larson, Hurley, Goll, Gruenberg, Davis & Pignalberi. Identical to Senate Bill 227, page 426.

Introduced March 25 and referred to Labor & Commerce, Health, Education & Social Services, Finance.

Injured State
Employees
(rights of)

HOUSE BILL NO. 318, by Rep. Szymanski. Amends the State Personnel Act (AS 39.25) by adding new sections that would require the Director of Personnel, in consultation with the appropriate departments or agencies, to prepare and maintain a position description for each position in the classified and partially exempt services that will describe the essential functions of the position and the actual skills and abilities required to perform the assigned task. A general requirement for physical abilities may not be imposed on a job classification unless each position within the class requires the use of physical ability.

Would require a state agency to offer an injured employee the employee's former position if the employee is able to perform the assigned tasks. If another employee has attained permanent status in that position, the agency is required, at the request of the injured employee, to offer the injured employee the position as soon as a vacancy occurs, or, immediately offer the injured employee a comparable position in the same agency.

If an employee can no longer perform all of the assigned tasks, the agency is required to rehire the employee after making a reasonable accommodation to the physical and mental limitations of the employee. Allows the agency to refuse to rehire if the accommodation imposes an undue hardship on the operation of the agency's program, or if, after reasonable efforts at accommodation, the employee cannot perform the essential functions in a manner that would not endanger the health and safety of the employee or to others to a greater extent than if a nonhandicapped person performed the job.

Outlines factors to be considered in determining undue hardship. If an agency is unable to rehire the employee, the employee may request reference for another position. The new section applies to all state employees who were injured on-the-job, and were laid off or terminated after the injury and have requested to return to work for the state. Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced March 25 and referred to Labor & Commerce, Finance.



Finance Committee
Oil and Gas Committee

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol

Juneau, Alaska 99811
(907) 465-4978/4979

April 13, 1985

TO: REPRESENTATIVE MIKE NAVARRE, CHAIRMAN
HOUSE LABOR AND COMMERCE COMMITTEE

FROM: REPRESENTATIVE MIKE *M. Szymanski*

RE: SPONSOR SUBSTITUTE HB 318

The purpose of this memo is to advise you of the differences between the Sponsor Substitute for House Bill 318, introduced this morning, and the original bill. The changes, with one exception, are technical in nature and were recommended by experts in the fields of vocational rehabilitation and personnel management.

However, although the essence of the bill remains the same in both versions, the order of the subsections changed substantially. To aid your committee's discussion, the attached subsectional analysis outlines the intent of each subsection of the Sponsor Substitute.

The one substantive difference between the original bill and the Sponsor Substitute, is found in Sec. 39.25.158 (a). Under the original bill, an injured state worker returning to the work force who is capable of performing the assigned tasks of his/her former position, would be reinstated to that position, unless another employee has attained permanent status in that position. In the Sponsor Substitute, the returning injured employee would be offered his/her former position if the employee can perform the assigned tasks of that position, regardless of whether or not another employee has attained permanent status in that position. This change was recommended and is supported by both the Division of Personnel and the Division of Vocational Rehabilitation.

For further consideration of the content of the legislation, I refer you to the attached subsectional analysis of the Sponsor Substitute.

Thank you.

1 IN THE HOUSE

BY SZYMANSKI

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH 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 39.25 is amended by adding new sections to read:

10 Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-
11 nel, in consultation with the appropriate department or agency, shall
12 prepare and maintain a position description for each position in the
13 classified and partially exempt services. The position description
14 shall describe the essential functions of the position and the actual
15 skills and abilities required to perform the tasks assigned to the
16 position. A general requirement for physical abilities may not be
17 imposed on a job classification unless each position within the class
18 requires the use of the physical ability.

19 Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

20 (a) A state agency shall offer an injured employee the employee's
21 former position if the employee is able to perform the tasks assigned
22 to the position.

23 (b) If the employee is no longer able to perform all of the
24 tasks assigned to the position the employee held when the employee was
25 injured but is able to perform the essential functions of the
26 position, then the agency shall reemploy the employee in the position
27 after making a reasonable accommodation to the physical and mental
28 limitations of the employee.

29 (c) If the employee is unable after reasonable accommodation to

1 perform the essential functions of the employee's former position,
2 then the agency shall offer the employee a position comparable in wage
3 to the position the employee previously held. If the employee is
4 unable to perform the essential functions of a comparable position
5 within the agency, then the employee is entitled to preference for a
6 comparable position with another agency if the employee is able to
7 perform the essential functions of that position.

8 (d) If the agency and the state are unable to reemploy the
9 employee in a position at a wage comparable to the employee's previous
10 wage, the employee may choose to accept retraining under AS 23.30.041.
11 After completing the training the employee may request preference for
12 employment with the agency or with another agency in the state in a
13 position for which the employee has been retrained.

14 (e) Reasonable accommodation may include imposing work restric-
15 tions on the tasks performed by the employee, making job or site
16 modifications necessary to permit the employee to perform the tasks of
17 the position, removing institutional and architectural barriers, and
18 providing additional support services.

19 (f) An agency may refuse to reemploy or continue the employment
20 of a former employee if the accommodation imposes an undue hardship on
21 the operation of the agency's program or if, after reasonable efforts
22 at accommodation, the injured employee cannot perform the essential
23 functions of the position in a manner that would not endanger the
24 health or safety of:

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

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

29 (g) Factors to consider in determining undue hardship include

1 the current number of employees in the section or office, number and
2 type of facilities, size of budget, nature and cost of the accommoda-
3 tion needed, and the type, composition, and structure of the work
4 force.

5 (h) Notwithstanding any other provision of law, if an injured
6 employee requests reemployment under this section and if the employee
7 is able to perform the essential functions of the position, the state
8 may not certify any other person for that position except an employee
9 in layoff status for that job class.

10 (i) This section applies to a permanent, probationary, or provi-
11 sional employee of an agency who

12 (1) was injured on-the-job;

13 (2) was laid off or terminated after the injury; and

14 (3) has requested to return to work for the state.

15 (j) In this section "agency" includes a department, division,
16 office, agency, board, commission, authority, or other organizational
17 unit of the executive, legislative, and judicial branches of state
18 government including the University of Alaska.

HB 318 File Contents

April 15, 1985 Monday

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Fiscal Note -- Dept. of Labor, 3/28/85
- 4) Position Paper -- Dept. of Labor, 4/2/85
- 5) Memo from Rep. Szymanski to Committee, April 11, 85
- 6) Alaska Statutes: AS 39.25.140-160
- 7) House Research Agency Analysis -- October 11, 1984
- 8) SS for HB 318, proposed as CS by sponsor, with explanation of changes
- 9) Memo from Rep. Szymanski to Committee Re SS, April 13, 85
- 10) Sectional Analysis of SS -- by Sponsor
- 11) State of Alaska Position Description Questionnaire

Cramer
4/24/85

Original sponsors: Szymanski, Collins,
and Rieger

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IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rights of injured state employ-
ees."

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

* Section 1. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-
nel, in consultation with the appropriate department or agency, shall
require the preparation of and shall maintain a position description
for each position in the classified and partially exempt services.
The position description shall describe the essential functions of the
position and the actual skills and abilities required to perform the
tasks assigned to the position. A general requirement for physical
abilities may not be imposed on a job classification unless each
position within the class requires the use of the physical ability.

Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

(a) An injured employee who requests to return to work for the state
within 90 days after receipt of a release from a physician indicating
that the employee is able to return to full or modified work is eli-
gible for reemployment rights under this section.

(b) After an employee requests to return to work, the rehabili-
tation administrator of the division of workers' compensation or the
director of vocational rehabilitation in the Department of Education
shall review the request and certify that the employee is able to
return to work under (c), (d), (e), or (f) of this section, or defer
certification until the employee completes retraining under (f) of



1 this section.

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3 (c) If the rehabilitation administrator or the director of
4 vocational rehabilitation certifies that the employee is able to
5 perform the tasks assigned to the employee's former position, the
6 agency shall reemploy the employee within 30 days of receipt of the
7 certification unless the position no longer exists.

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

18 (e) If the employee is not eligible for reemployment under (c)
19 or (d) of this section, then the agency shall offer the employee a
20 position comparable in wage to the position the employee previously
21 held. If the employee is unable to perform the essential functions of
22 a comparable position within the agency, then the employee is entitled
23 to preference for a comparable position with another agency if the
24 employee is able to perform the essential functions of that position.

25 (f) If the agency and other agencies in the state are unable to
26 reemploy the employee in a position at a wage comparable to the
27 employee's previous wage, the employee may request preference for
28 employment at a lower wage or accept retraining under AS 23.30.041.
29 After completing the training the employee may request preference for
employment with the agency or with another agency in the state in a



1 position for which the employee has been retrained.

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3 (g) An agency may refuse to reemploy or continue the employment
4 of a former employee if the accommodation imposes an undue hardship on
5 the operation of the agency's program or if, after reasonable efforts
6 at accommodation, the injured employee cannot perform the essential
7 functions of the position in a manner that would not endanger the
8 health or safety of

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

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

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

18 (i) Notwithstanding any other provision of law, if an injured
19 employee requests reemployment under (e) or (f) of this section and if
20 the employee is able to perform the essential functions of the posi-
21 tion, the state may not hire another person for that position except
22 an employee in layoff status for that job class.

23 (j) A collective bargaining agreement under AS 23.40.070 -
24 23.40.260 may not include terms contrary to this section.

25 (k) In this section

26 (1) "agency" includes a department, division, office,
27 agency, board, commission, authority, or other organizational unit of
28 the executive, legislative, and judicial branches of state government
29 including the University of Alaska;

(2) "injured employee" or "employee" means a permanent,



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probationary, or provisional employee of an agency who

(A) was injured on the job;

-(B) whose injury is a compensable injury or condition under AS 23.30; and

(C) who was laid off or terminated after the injury.

* Sec. 2. Nothing in this Act modifies or terminates the terms of a collective bargaining agreement in existence on the effective date of this Act.



Original sponsors: Szymanski, Collins,
and Rieger

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IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rights of injured state employ-
ees."

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

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may not negotiate terms contrary to the reemployment rights for injured state employees under AS 39.25.158.

* Sec. 2. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.157. POSITION DESCRIPTIONS. The division of personnel, in consultation with the appropriate department or agency, shall require the preparation of and shall maintain a position description for each position in the classified and partially exempt services. The position description shall describe the essential functions of the position and the actual skills and abilities required to perform the tasks assigned to the position. A general requirement for physical abilities may not be imposed on a job classification unless each position within the class requires the use of the physical ability.

Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

(a) An injured employee is eligible for reemployment rights under this section if the employee requests to return to work for the state within 90 days after receipt of a release from a physician indicating that the employee is able to return to full or modified work.

(b) After an employee requests to return to work, the rehabilitation 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 layoff that person under AS 39.25.150(13).

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

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

1
2 another agency if the employee is able to perform the essential func-
3 tions of that position.

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

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

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

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

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

28 (i) Notwithstanding any other provision of law, if an injured
29 employee requests reemployment under (e) or (f) of this section and if
the employee is able to perform the essential functions of the

1 position, the state may not hire another person for that position
2 except an employee in layoff status for that job class.

3 (j) A collective bargaining agreement under AS 23.40.070 -
4 23.40.260 may not include terms contrary to this section.

5 (k) In this section

6 (1) "agency" includes a department, division, office,
7 agency, board, commission, authority, or other organizational unit of
8 the executive, legislative, and judicial branches of state government
9 including the University of Alaska;

10 (2) "injured employee" or "employee" means a permanent,
11 probationary, or provisional employee of an agency

12 (A) whose injury is a compensable injury or condition
13 under AS 23.30; and

14 (B) who was laid off or terminated after the injury.

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.
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HB 318 File Contents

April 15, 1985 Monday

- 1) Bill Summary -- Legislative Reporting Service
 - 2) Overview -- R. Poppe, Committee Staff
 - 3) Fiscal Note -- Dept. of Labor, 3/28/85
 - 4) Position Paper -- Dept. of Labor, 4/2/85
 - 5) Memo from Rep. Szymanski to Committee, April 11, 85
 - 6) Alaska Statutes: AS 39.25.140-160
 - 7) House Research Agency Analysis -- October 11, 1984
 - 8) SS for HB 318, proposed as CS by sponsor, with explanation of changes
 - 9) Memo from Rep. Szymanski to Committee Re SS, April 13, 85
 - 10) Sectional Analysis of SS -- by Sponsor
 - 11) State of Alaska Position Description Questionnaire
-

April 24, 1985 Wednesday Meeting

- 12) Proposed CS for SS for HB 318 -- by Szymanski
 - 13) Sectional Analysis of CS for HB 305 -- Szymanski staff
 - 14) Position Statement on CS for HB 305 (listed as 2nd SS), by Dept. of Labor --April 23, 85
-

April 26, 1985 Friday Meeting

- 15) Revised CS for HB 318 with 2 additional proposed amendments -- by sponsor Szymanski, (with cover memo to Navarre, April 26, 1985)



Finance Committee
Oil and Gas Committee

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:

Pouch V

State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

April 26, 1985

TO: Representative Mike Navarre
Chair, House Labor and Commerce Committee

FROM: Representative Mike Szymanski *Mike*

RE: Changes in Second CS HB 318 - Injured State Workers

As discussed in committee on Wednesday, the changes in this version of the Committee Substitute for HB 318 incorporate the suggestions made by Frank Ray, Director of Personnel for the State of Alaska. All of those changes were discussed and approved in committee.

Further, this version has two additional changes.

First, in response to your suggestion, Mr. Chairman, this version modifies Sec. 2(e) so that reemployment rights under this subsection apply only to "vacant" positions. This was a needed technical change.

Secondly, Sec. 2(k)(2)(b) is dropped in this version. Thus the definition of "injured employee" or "employee" now includes any permanent, probationary, or provisional employee of an agency whose injury or condition is compensable under AS 23.30. This change was suggested by the Director of the State Division of Worker's Compensation and is consistent with the intent of the legislation.

Thank you.

Original sponsors: Szymanski, Collins,
and Rieger

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IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rights of injured state employ-
ees."

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

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties
may not negotiate terms contrary to the reemployment rights for
injured state employees under AS 39.25.158.

* Sec. 2. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-
nel, in consultation with the appropriate department or agency, shall
require the preparation of and shall maintain a position description
for each position in the classified and partially exempt services.
The position description shall describe the essential functions of the
position and the actual skills and abilities required to perform the
tasks assigned to the position. A general requirement for physical
abilities may not be imposed on a job classification unless each
position within the class requires the use of the physical ability.

Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

(a) An injured employee is eligible for reemployment rights under
this section if the employee requests to return to work for the state
within 90 days after receipt of a release from a physician indicating
that the employee is able to return to full or modified work.

(b) After an employee requests to return to work, the rehabili-
tation administrator of the division of workers' compensation or the

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

7 (c) If the rehabilitation administrator or the director of
8 vocational rehabilitation certifies that the employee is able to
9 perform the tasks assigned to the employee's former position, the
10 agency shall reemploy the employee within 30 days after receipt of the
11 certification unless the position no longer exists. If a permanent,
12 probationary or provisional employee is currently employed in the
13 position, the agency shall ^{cause a vacancy under the layoff process} ~~layoff that person under~~ AS 39.25.150(13).
14

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

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

(for which the employee is qual. f. id)

1 another agency if the position is vacant and the employee is able to
2 perform the essential functions of that position.

3
4 (f) If the agency and other agencies in the state are unable to
5 reemploy the employee in a position at a wage comparable to the
6 employee's previous wage, the employee may request reemployment at a
7 lower wage or accept retraining under AS 23.30.041. After completing
8 the training the employee may request reemployment in a position for
9 which the employee has been retrained in the agency. If the agency
10 cannot offer reemployment, the employee may request reemployment in a
11 position for which the employee has been retrained with another
12 agency.

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

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

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

23 (h) Factors an agency may consider in determining undue hardship
24 under (g) of this section include the current number of employees in
25 the section or office, number and type of facilities, size of budget,
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2 except an employee in layoff status for that job class.

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I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


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Date