HB

303

<TARGET><BILL>HB 303</BILL><SUBJECT>HB 303</SUBJECT><COMM>HL&C30</COMM></TARGET>

MEMORANDUM
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

STATE OF ALASKA
Commissioner's Office

TO: Representative Sam Kito, Chair
House Labor and Commerce Committee

DATE: February 6, 2018

PHONE: 907-465-2700

FROM: Acting Commissioner Greg Cashen

SUBJECT: Hearing Request for HB 303

At your earliest convenience, I respectfully request the scheduling of HB 303, relating to workers' compensation reemployment benefits, in the House Labor and Commerce Committee.

Please do not hesitate to contact my staff, Tally Teal, at 465-2702 with any questions or concerns about this legislation. I look forward to hearing from you and discussing the bill in further detail if you would like.

Thank you for your consideration.

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532

550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Bill Walker
STATE OF ALASKA

January 23, 2018

The Honorable Bryce Edgmon
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Edgmon,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the rehabilitation and reemployment of injured employees in the workers' compensation system. The bill improves the process of determining eligibility and developing reemployment plans for workers who cannot return to their former jobs as a result of a work-related injury, and proposes services to support employers in getting injured workers back on the job quickly.

The reemployment process is meant to provide severely injured workers with new skills to return to the labor market. However, developing workable reemployment plans within statutory constraints has grown increasingly difficult since the reemployment process was last reformed over ten years ago. This bill updates an outdated process with new approaches to provide adequate benefits while controlling costs, and to enhance the system's efficiency and fairness.

This bill would set the maximum cost for a reemployment plan at an amount that accounts for inflation since the last statutory increase in 2000, and provides for annual adjustments of the maximum cost based on the consumer price index. The bill would also increase the limited cash benefit for job dislocation to account for inflation since the benefit was created in 2005. Eligible employees would also have more choices in reemployment goals and plans. The law would no longer require that plans take the shortest amount of time for completion, although statutory time and cost limitations would still apply.

At the same time, the bill would help employers control costs by setting fees for the services of rehabilitation specialists who evaluate eligibility, and develop and monitor plans. The bill would limit the payment of stipend benefits that cover living expenses during the reemployment process to not more than one year before a plan is approved and not more than two years after a plan is approved. This helps employers control costs and curb abuse of the system by discouraging employees from delaying the reemployment process to receive additional stipend. Finally, the bill would also limit liability for employers for reemployment benefits by establishing a deadline for a worker to request these benefits.

The bill would reduce disputes over an employee's non-cooperation with the process by making participation by employees wholly voluntary. Eligibility evaluations would occur only upon an employee's written request and are bypassed if the employer and employee agree to the employee's eligibility. Also, eligible employees would have more time to choose the job dislocation benefit over continuing to participate in the reemployment process. Even after the period for selecting the job

dislocation benefit ends, an employee may choose to stop participating in the reemployment process at any time, ending an employer's ongoing liability for reemployment benefits. The process may be suspended on request if an employee's medical condition changes or the employee has other unusual and extenuating circumstances that prevent the employee from temporarily participating in retraining. Additionally, the bill would permit an employer to controvert and stop paying reemployment benefits if the employee is not willing to participate in the process.

Even though the reemployment process would be voluntary, the bill would encourage employees to return to work because it would not permit employees to settle reemployment benefits with their employers. Instead, employees eligible for reemployment benefits must choose to either complete a reemployment plan or take a job dislocation benefit. This avoids injured employees receiving large lump sums that they often do not use to complete retraining on their own.

The bill would also encourage employees' return to work by allowing the administrator to offer consultation services for employers on early return-to-work policies and programs. Returning injured workers to the job on light duty while they are recovering from their injury maintains their connection to the workforce, and minimizes lost wages and downtime. Moreover, studies have shown that the longer an injured worker remains off work, the less likely that the worker will return to the labor market. The proposed consultation services are meant to reduce the need for retraining and the overall cost of workers' compensation benefits by returning injured employees to work sooner.

Finally, the bill would make the process more efficient in three different ways. First, the bill would allow the reemployment benefits administrator to reconsider or modify decisions, and rehabilitation specialists to help parties modify plans, changing the cumbersome process under current law that requires parties to ask the Alaska Workers' Compensation Board for such adjustments. However, parties would still be permitted to seek Board review of the administrator's decisions in any matter. Second, because the number of qualified rehabilitation specialists is declining, the bill would provide greater flexibility for the administrator to assign and manage these specialists so that lack of availability does not delay eligibility evaluations and plan development. Third, the bill would extend the deadline for specialists to complete eligibility evaluations to 60 days, eliminating the requirement that they request more time if an evaluation is not completed in 30 days.

This bill would improve the delivery of reemployment benefits to injured workers, ensure reemployment benefits remain adequate, control employers' costs, and encourage the early return to work of injured employees for the benefit of both employees and their employers.

I urge your prompt and favorable action on this measure.

Sincerely,

Bill Walker
Governor

Enclosure

THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Labor and Workforce Development

Office of the Commissioner

Post Office Box 111149
Juneau, Alaska 99811
Main: 907.465.2700
Fax: 907.465.2784

HB 303 Version A
Sectional Analysis

Section 1 amends AS 23.30.005(h), by allowing implementation of a fee schedule for rehabilitation specialist services.

Section 2 amends AS 23.30.012(a), by no longer permitting employees to settle reemployment benefits with their employers.

Section 3 amends AS 23.30.041(b), by allowing the reemployment benefit administrator (RBA) to offer consultation services for employers on early return-to-work policies and programs and providing the RBA greater flexibility to assign and manage specialists and their services.

Section 4 amends AS 23.30.041(c), by making eligibility evaluations voluntary instead of mandatory and establishing a deadline for an injured worker to request reemployment benefits.

Section 5 amends AS 23.30.041(d), by extending the deadline for specialists to complete eligibility evaluations to 60 days and allowing reconsideration or modification of the RBA's decision.

Section 6 amends AS 23.30.041(e), by requiring an injured worker's post injury job meet the worker's remunerative wage to be considered in the evaluation for eligibility.

Section 7 repeals and reenacts AS 23.30.041(f), removing "previously rehabilitated" language and replacing it with more specific language.

Section 8 repeals and reenacts AS 23.30.041(g), allowing injured workers more time to choose the job dislocation benefit over continuing to participate in the reemployment process.

Section 9 amends AS 23.30.041(h), by requiring a rehabilitation specialist progress report at 60 days and allowing an employee in some circumstances to select a desired occupational goal that might result in wages lower than what the law usually allows.

Section 10 repeals and reenacts AS 23.30.041(j), requiring the employee and employer within 30 days to either approve and sign a reemployment plan, or deny the plan by providing a specific reason for the denial, and allowing reconsideration or modification of the RBA's decision approving, denying, or changing the plan.

Section 11 amends AS 23.30.041(k), by limiting payment of stipend benefits to not more than one year before a plan is approved and not more than two years after a plan is approved.

Section 12 amends AS 23.30.041(*l*), by increasing the maximum cost for a reemployment plan to $19,300 and providing an annual adjustment based on the consumer price index.

Section 13 amends AS 23.30.041(n), by allowing an employer to controvert benefits if an injured worker does not cooperate with the reemployment process.

Section 14 amends AS 23.30.041(o), by allowing reconsideration or modification of the RBA's decision on noncooperation.

Section 15 repeals and reenacts AS 23.30.041(q), no longer permitting employees to settle reemployment benefits with their employers.

Section 16 amends AS 23.30.041(r)(6), by providing the RBA greater flexibility to assign and manage specialists and their services.

Section 17 adds new subsections to AS 23.30.041, allowing an injured worker 150 days after eligibility to choose the job dislocation benefit over continuing to participate in the reemployment process, increasing the job dislocation benefit amount, allowing the RBA to suspend the reemployment process under certain circumstances, allowing parties to request plan modification based on a change in conditions or a factual mistake, permitting an injured worker to voluntarily exit the reemployment process at any time, allowing parties to request reconsideration of certain RBA decisions, and establishing a process for reconsideration.

Section 18 adds a new subsection to AS 23.30.130, allowing parties to request modification based on a change in conditions or a factual mistake, and establishing a process for modification.

Section 19 repeals AS 23.30.041(i), because the language was moved to Section 9.

Section 20 amends the uncodified law of the State of Alaska, by adding applicability language.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	HB 303
Fiscal Note Number:	1
(H) Publish Date:	1/24/2018

Identifier: DOA-DRM-01-10-18
Title: WORKERS' COMP; REHAB/REEMPLOYMENT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Governor

Department: Department of Administration
Appropriation: Risk Management
Allocation: Risk Management
OMB Component Number: 71

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2019**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By: Scott Jordan, Director — Phone: (907)465-5723
Division: Risk Management — Date: 01/10/2018 09:00 AM
Approved By: Sylvan Robb, Deputy Commissioner — Date: 01/10/18
Agency: Administration

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

Analysis

Risk Management (RM) would not be financially impacted by this legislation

This bill reforms the reemployment process by ensuring the injured worker takes advantage of the reemployment training. If the injured worker chooses not to be retrained, this bill allows for the injured worker to take the option of the job dislocation benefit offered under AS 23.30.041. One of the significant changes to the reemployment process is the employee can no longer settle their reemployment benefits. The intent of the reemployment process was to put injured workers back to work in a position that meets their physical capacities after a workplace injury. The intent was not to give an employee a lump sum payment.

RM does not anticipate any financial changes from this bill, as any savings we might see in lump sum settlements will be offset in anticipation of more injured employees taking the job dislocation benefit.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	HB 303
Fiscal Note Number:	2
(H) Publish Date:	1/24/2018

Identifier: DOLWD-WC-12-29-17
Title: WORKERS' COMP; REHAB/REEMPLOYMENT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Governor

Department: Department of Labor and Workforce Development
Appropriation: Workers' Compensation
Allocation: Workers' Compensation
OMB Component Number: 344

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2019**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Personal Services	95.3		95.3	95.3	95.3	95.3	95.3
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**95.3**	**0.0**	**95.3**	**95.3**	**95.3**	**95.3**	**95.3**
Fund Source (Operating Only)							
1157 Wrkrs Safe (DGF)	95.3		95.3	95.3	95.3	95.3	95.3
Total	**95.3**	**0.0**	**95.3**	**95.3**	**95.3**	**95.3**	**95.3**
Positions							
Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							
Change in Revenues							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 12/31/19

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By: Marie Marx, Director — Phone: (907)465-6060
Division: Workers' Compensation — Date: 12/29/2017 11:30 AM
Approved By: Greg Cashen, Acting Commissioner — Date: 12/29/17
Agency: Department of Labor and Workforce Development

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

Analysis

This legislation will result in a number of changes to the Alaska workers' compensation reemployment benefits program intended to reduce reemployment costs to employers and expedite return-to-work of injured employees.

This legislation will modify the reemployment evaluation process to make eligibility evaluations voluntary instead of mandatory; implement a fee schedule for rehabilitation specialist services; increase the reemployment plan maximum cost from $13,300 (last increased in 2000) to $19,300 and add an annual CPI adjustment; and add early return to work consultation services to the program. These changes will require the Workers' Compensation Board update affected regulations, and it is anticipated that the process will take through 12/31/2019.

A new Program Coordinator I, range 18, will be needed to provide outreach and consultation services to employers about how to develop early return to work programs at their work sites. A dedicated staff member will be required to institute these services. Workers' Compensation has eliminated seven full-time positions over the last three fiscal years and current staffing is not sufficient to achieve this objective. This new position will be located in Anchorage to be collocated with existing reemployment benefits program staff for more efficient supervision and management. The annual salary of $57,852 and total cost of $95,322 for this position will be fully funded by the designated general fund Workers' Safety and Compensation Administration Account.

RESOLUTION NUMBER 17-01

RESOLUTION IN SUPPORT OF ADDRESSING THE REEMPLOYMENT BENEFITS SYSTEM UNDER THE ALASKA WORKERS' COMPENSATION ACT

WHEREAS, the Alaska Workers' Compensation Board (Board) is a public organization that is accountable through its members to the residents, the Legislature, and the Governor of Alaska;

WHEREAS, the Board acts as the lead state agency for adjudicating disputes under the Alaska Workers' Compensation Act (Act), to ensure quick, efficient, and fair payments of benefits to injured workers at a reasonable cost to employers;

WHEREAS, Alaska's workers' compensation premium rates are the 5th highest in the nation according to the October 2016 Oregon Workers' Compensation Premium Rate Ranking Summary;

WHEREAS, stay-at-work/early return-to-work programs reduce reemployment costs to employers and improve worker outcomes;

WHEREAS, the Act requires a reemployment benefits eligibility evaluation when an injured worker has been unable to work for 90 days, without regard to whether an evaluation is warranted at that time;

WHEREAS, retraining plans under the Act focus on the quickest option to return an injured worker to work regardless of interest in that vocational goal, and at a maximum plan cost of $13,300;

WHEREAS, the maximum plan cost of $13,300, which has not been adjusted since 2000, is often insufficient to create a plan that meets statutory requirements;

NOW THEREFORE BE IT RESOLVED that the Board respectfully requests that the Alaska State Legislature amend the Alaska Workers' Compensation Act to provide the following:

1. Transition from emphasis on retraining to emphasis on stay-at-work/early return-to-work.
2. Revise the 90-day mandatory reemployment evaluation under AS 23.30.041.
3. Increase eligibility evaluation time from 30 days to 60 days.
4. Provide a statutory provision allowing reconsideration of the RBA's decision within 30 days of the decision.
5. Provide a statutory provision allowing modification of the RBA's decision within one year if circumstances have changed.
6. Transition from reemployment plans of shortest duration to plans that consider the injured worker's interests and experience, within statutory cost and duration limits.

7. Authorize the Board to establish fees for reemployment specialist services.
8. Increase the benefit under .041(l) from $13,300 to $19,300, and adjust to cpi annually.
9. Extend the timeframe to select a job dislocation benefit.
10. Establish a method for injured workers to voluntarily exit the reemployment benefits system.
11. Allow an employer to controvert reemployment benefits based on noncooperation.

BE IT FURTHER RESOLVED that copies of the Resolution be promptly transmitted to the Governor, the President of the Senate, the Speaker of the House, and the Chairman of the Senate and House Labor and Commerce Committees.

CERTIFICATION

The Alaska Workers' Compensation Board held a meeting duly and regularly called, noticed, and convened this 6th day of October, 2017, and the foregoing Resolution was signed and adopted at said meeting.

Marie Marx,
Chair

ABSENT
Saleutogi Letuligasenoa,
Industry Member

Stacy Allen,
Labor Member

Linda Murphy,
Industry Member

Brad Austin,
Labor Member

Donna Phillips,
Labor Member

Pamela Cline,
Labor Member

ABSENT
Aaron Plikat,
Labor Member

Chuck Collins,
Industry Member

Amy Steele,
Industry Member

Bradley Evans,
Industry Member

Brett Stubbs,
Industry Member

ABSENT
David Kester,
Industry Member

ABSENT
Rick Traini,
Labor Member

Jacob Howdeshell,
Labor Member

Patricia Vollendorf,
Labor Member

Sarah Lefebvre,
Industry Member

Robert Weel,
Industry Member

ABSENT
Lake Williams,
Labor Member

KEENAN POWELL
Attorney at Law

750 West Second Ave Ste 106
POB 222269
Anchorage, Alaska 99522

TELEPHONE: 907.258.7663
FACSIMILE: 907.245.0854
keenan@keenanpowell.com

February 15, 2018

Alaska State Representatives by e-mail

Dear Representative,

I request that you oppose HB 303 and SB 112, two acts designed to eviscerate our workers compensation system.

I represent injured Alaskans in workers compensation claims. The vast majority of my clients want to "get fixed" (receive medical treatment) and go back to work as soon as possible. On the occasions it turns out they cannot go back to their job, they want retraining so they can work. Working, earning wages and paying their bills like responsible citizens are core values of these people.

These bills are designed to deny injured workers the opportunities to get fixed and go back to work. Ultimately they will be shifted onto the backs of working Alaskans to support and provide treatment for as an ever-growing body of unemployed and homeless expands.

These are the specific problems I see with these bills:

HB 303. The net effect of this bill is that it will render more injured workers permanently totally disabled, creating an increase in benefits owed by employers, as they will be unable to complete retraining:

Section 5 would amend AS 23.30.041(e) to create two separate classes of workers who would be denied reemployment benefits if they have the physical capacities to perform (2) "other jobs that exist in the labor market" (A) that the employee has held or received training for within 10 years before the injury; or (B) that offer wages that ensure remunerative employability for the employee that the employee has held following the injury…" There is no rational basis for drawing a distinction between workers who had jobs before their injury which do not provide remunerative employability and those workers who after their injury held jobs that did provide remunerative employability. As such, I foresee a constitutional challenge.

Section 9 would amend AS 23.30.041(h) to provide for retraining that would include (3)(A) on-the-job training, (B) vocational training, (C) academic training; (D) self-employment; or (E) a combination of (A)-(D). These are laudable goals. However the cost of the employment plan makes no allowance for costs of starting up a self-employed business. Moreover, the $19,300 total cost of plan set out in Section 12 is inadequate for academic training and self-employment especially when University of Alaska raises its tuition every year.

Section 11 would amend AS 23.30.041(k) to limit benefits prior to plan approval to one year and benefits post-approval to two years. In the event that a plan could not be approved or completed within those time periods, the injured worker only has two choices: complete their plan without any income to support

themselves, a luxury most laborers do not have, or quit. This is a particularly draconian result when the amendments also may preclude him from seeking job dislocation benefits instead of retraining[1], settling these benefits[2] and, because the injured worker participated in a reemployment plan, he will be forever barred from seeking reemployment benefits again[3] if he was fortunate enough to obtain another job.

Additionally there is a draconian denial of modification can be sought in the amendments. Under Section 17, AS 23.30.041(s)(5) precludes an injured worker from modifying his decision to select job dislocation benefits, even if these benefits are far less than he would have received in retraining and even if there was a change in conditions or a mistake. He is also precluded from modifying a decision to terminate the plan under proposed (w)(3) even if he was unable to convert his decision into job dislocation benefits because of passage of time and even if there was a change in conditions or a mistake.

SB 112. The primary issues with this bill is that it will prevent injured workers from obtaining the medical treatment they need so they can go back to work, terminate temporary total disability benefits after two years even if the worker is not medically stable and cannot work and unconstitutionally denying access to counsel. Again, the net result is more Alaskans who cannot work imposing a burden on the state to provide them with support and medical treatment in direct conflict with the proposed amendment section 5 which adds the language that "the workers' compensation system shall be cost-effective to the citizens of the state."

More specifically:

First, the several provisions which would eliminate the Workers' Compensation Board and shift claim-level litigation to the Office of Administrative Hearings would not be cost-effective. Currently with the Board, we are blessed with a body of hearing officers versed in the highly-technical and complicated area of law. Removing and replacing them with ALJs would create a maelstrom of incorrectly decided cases and a flood of appeals.

The amendments to AS 23.30.041 proposed in Section 24 are irrational. Under (h), the voucher would expire within two years after the date it is issued or five years after the date of injury. So, if the voucher was issued four years and ten months after the date of injury, it would expire in two months even if retraining had not been completed because the injured worker had the misfortune of having a complicated injury and it took that long for him to receive the voucher.

Under proposed (j), "[a]n employer may not be liable for compensation for injuries incurred by the employee while using a voucher issued under this section." What does that mean? If the work-injury is reinjured during the course of retraining, the employer is not liable? Who then will pay for the treatment necessary so the employee can continue retraining?

Under proposed (k), there is no wage replacement while retraining other than the lump-sum payment of permanent partial impairment ratings. Then how is the injured worker to survive while he goes through retraining? Very few workers have the luxury of living without an income while they are going to school.

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[1] Section 17 amendment to AS 23.30.041(s)
[2] Section 15 amendment to AS 23.30.041(q)
[3] AS 23.30.041(k)(e)(3)

The employee is forever barred from receiving permanent total disability benefits if he qualifies for a voucher and fails to use it. So he finds himself in a situation where he cannot complete retraining because he has no wage replacement so he is permanently unemployable. Who will support this person and his family? Who will provide for his medical benefits? The State of Alaska will.

Section 26 limits treatment guidelines to the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines regardless of the specialty of the treating physician. If treatment outside of the guidelines is requested, the employer or insurer may request an administrative review, however there is no such provision for the employee.

Treatment is cut off in its entirety two years after the date of injury under Section 26's amendments to AS 23.30.095(a) regardless of whether treatment or care is necessary. However later in the same paragraph, treatment after two years is authorized only for prosthetic devices, braces and supports, certain pain medication under certain conditions, and life-preserving modalities. So in those cases we typically see where a joint (hip, knee, shoulder or elbow) must be replaced because of the injury, the subsequent replacement surgeries typical of those injuries are barred even if there is no intervening circumstances or superseding cause.

The employer is allowed to designate the attending physician under this same amendment. And that designation does not constitute an independent medical evaluation. Thus the employer is allowed to dictate who the treating physician is as well as choose its own expert whereas under existing law. There is no advocate for the employee.

Section 28 proposes an amendment to AS 23.30.095(e) which would allow an employer to demand a mental health examination of an injured worker with no rational basis for doing so. Unfortunately, it is a common insurance ploy to claim that an injured worker is not really injured but instead manifesting secondary gain, conversion syndrome or some other psychological reason that would cause him or her to claim pain is being suffered. This section gives the insurance company carte blanche to claim this defense in every case and, because the employee is not allowed to pick his or her treating physician, there is no one to advocate for the employee.

Under Section 32, AS 23.30.095(o) limits palliative care to the same evidence-based guidelines when necessary only so the employee can continue working. Palliative care necessary for retraining is eliminated. Palliative care to relieve chronic debilitating pain is eliminated even if it was caused by the work injury.

Section 52 would modify AS 23.30.122 to limit the Board's ability to determine credibility which is otherwise in its sole province.[4] There is no such legislation curtailing a jury or judge's credibility determinations in court, nor any legislation in any other administrative matters. It is doubtful that this distinction can pass constitutional muster.

Additionally, Section 52 limits the use of lay testimony under proposed (c). It cannot be relied upon for causation, impairment, ability to work, physical capacities, or past and future medical treatment. Thus, the

[4] AS 23.30.122

injured worker's family, those people most familiar with the injured worker's abilities before and after the injury and efficacy of treatment would be excluded from testifying. Again, this does not appear it would pass constitutional muster.

Section 69 would terminate permanent total disability if the employee begins to receive social security, pension or other retirement benefits. This provision is unfair to the injured worker and designed to keep aged, injured, disabled workers in a state of poverty. The reason it is unfair is that a disabling work injury would prematurely stop the employee's contributions to his social security fund, pension or other retirement benefits thus he would be forced to live on whatever benefits were amassed before the disabling injury. A much more fair system is in place now whereby the insurance company is entitled to a deduction for these types of benefits.

Section 70 would amend AS 23.30.185 to cap temporary total disability benefits to a maximum of two years even if the injured worker is disabled. It is rare, but sometimes happens, that a worker is so injured that he or she is not medically stable within two years of the date of injury. What is more common is that after medically stability, the injured worker needs a second or a third surgery which necessitates a lengthy recovery. This provision is designed to prevent payment of those benefits even if the worker cannot work even if the disability was wholly caused by the work injury.

The bill would runs afoul with the injured worker's constitutional right to counsel. *Langfeldt-Haaland v Saupe Enterprises, Inc*, 768 P 2d 1144, 1146 (Alaska, 1989). See Section 63. It would limit attorney's fees to certain percentages regardless of the amount of effort it took to bring the case to conclusion. It would wipe out compensation for all the work done if a settlement offer was made at least thirty days before a hearing. By language in (d), successfully obtaining medical benefits after hearing would not lead to the award of attorney's fees at all.

The intent is to make it uneconomical for attorneys to practice workers compensation law which is fundamentally unfair to the injured workers. In the present system, attorneys are only paid if they are successful in obtaining benefits, benefits to which the injured worker was entitled but were denied by the insurance companies. This is a fair system. After every hearing, the employer has the opportunity to object to attorneys fees sought both in the amount per hour and line item of services provided. If the insurance companies were interested in limiting employee attorney fees, they have a simple solution available to them: do not deny benefits unfairly.

There is no other area of law where attorneys fees are limited to the amount recovered. It is true that in civil cases, attorneys have a contingency fee agreement whereby the client pays the attorney a portion of their settlement or judgment and that Civil Rule 82 provides for the payment of fees pursuant to a schedule but that does not preclude the attorney from being paid by his client. However, even under Rule 82, the court may award full fees depending on a number of factors including "vexatious or bad faith conduct" of the other party.

But that provision is not in place here which would lead to abuse whereby the insurance company is free to stall, delay and impede the litigation process forcing the employee's attorney to expend an extraordinary amount of effort to conclude the case and that attorney would only be paid for benefits over and above medical benefits when medical benefits are usually the core of the case.

Because there is no other area of law where fees are limited in this way, this distinction leads to a constitutional challenge.

Currently it is illegal for an attorney to accept fees from an injured worker unless for a consultation in a case in which the attorney will not appear,[5] however employer attorney fees are not regulated at all and approximately two-thirds of litigation costs currently paid by insurance companies are paid to their own attorneys.[6]

I wish to stress that in every instance I have identified as problematic, and there may be more if these bills are passed, litigation would no doubt ensue putting more pressure on Alaska legal system.

To summarize, Alaska's economy is not improved by creating a larger population of disabled people. They cannot earn money to pay their bills. They cannot contribute to the state's resources. They cannot pay taxes. They will draw welfare and Medicaid. As the Alaska population in poverty expands, crime is bound to as well.

So please vote to keep the social contract between employer and employee in place, the one which the legislature worked very hard on since statehood to make sure that employees will have access to benefits when they are hurt on the job and employers will have access to able-bodied employees.

Thank you for your time and consideration.

Cordially,

Law Office of Keenan Powell

Keenan Powell

[5] 8 AAC 45.180(c).

[6] 8 AAC 45.180(h).

Workers' Compensation Reemployment Benefits: HB 303
House Labor & Commerce Committee
February 16, 2018

ALASKA DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
ACTING COMMISSIONER GREG CASHEN

What is Workers' Compensation?

A system of insurance that protects workers and employers from some of the losses caused by on-the-job accidents and job-related illnesses

The "Grand Bargain"

An employer provides prompt, necessary medical and wage loss benefits to an injured worker for a work-related injury.

In exchange, the injured worker receives limited benefits and gives up the right to sue the employer.

Workers' Compensation

MISSION

To ensure the quick, efficient, fair and predictable delivery of indemnity, medical, and vocational rehabilitation benefits to injured workers at a reasonable cost to employers

- Quick
- Efficient
- Fair
- Predictable
- Reasonable cost

Workers' Compensation

Benefits Provided

- Medical Care
- Indemnity (Wage Loss) Benefits
- Death Benefits
- Reemployment (Retraining) Benefits

Reemployment Benefits

Intended to return an injured worker to work when the worker cannot return to the job of injury or to jobs for which the worker has relevant training or experience.

Current Challenges

- Mandatory reemployment benefits eligibility evaluations
- Maximum plan cost of $13,300
- Retraining plans focus on quickest return to work option, regardless of worker's interest in that vocational goal
- Declining pool of rehabilitation specialists
- No rehabilitation specialist fee schedule

Workers' Compensation

HB 303

- Improves the delivery of reemployment benefits to injured workers
- Provides eligible employees with more choices in reemployment goals and plans
- Encourages injured employees' early return to work
- Helps employers control costs

WE'RE PREPARING ALASKANS FOR THE JOBS OF TODAY—AND TOMORROW.

Alaska Department of Labor and Workforce Development
ACTING COMMISSIONER GREG CASHEN
Email: Commissioner.Labor@alaska.gov
Phone: (907) 465-2700

HLAC

ANCHORAGE LEGISLATIVE INFORMATION OFFICE

Email: Anchorage.lio@akleg.gov 907-269-0111/ phone, 907-269-0229/fax

WRITTEN TESTIMONY

NAME: Sandy Travis

REPRESENTING: Injuryed workers

BILL#/ SUBJECT: HB 303

COMMITTEE &

HEARING DATE: 02/18/18

I oppose HB 303

It takes away benefits from the injuryed worker it is not fair.

~~Again~~ Not for the voucher system, doing away with settlement and stipen befits

I would like to Know what gives Marie Mark the right to lie in front of the House Labor & Commerce cmte and misrepresent the truth.

I feel Marie Mark should only have ~~the~~ the same amount of time since she is only ~~representing~~ representing the employer and insurer not the injuryed worker.

Also when I went through the rehabilitation there was a time limit with circumstances so even though I went through the process which was much to quick not enough time for the injuryed worker or people working with the injuryed workers.

30-GH2709\A.1
Wallace
2/20/18

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE JOSEPHSON

TO: HB 303

Page 11, line 2:

Delete "$**19,300**"

Insert "**$30,000**"

30-GH2709\A.2
Wallace
2/21/18

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE JOSEPHSON

TO: HB 303

Page 12, lines 21 - 26:

Delete all material and insert:

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

"(q) Notwithstanding AS 23.30.012, after medical stability has been determined and a physician has predicted that the employee may have a permanent impairment that may cause the employee to have permanent physical capacities that are less than the physical demands of the employee's job at the time of injury, **and, upon approval of the board and the assigned rehabilitation specialist,** an employee may waive any benefits or rights under this section, including an eligibility evaluation and benefits related to a reemployment plan. To waive any benefits or rights under this section, an employee must file a statement under oath with the division to notify the parties of the waiver and to specify the scope of benefits or rights that the employee seeks to waive. The statement must be on a form prescribed or approved by the director. The division shall serve the notice of waiver on all parties to the claim within 10 days after filing. The waiver is effective upon **approval of the board and the assigned rehabilitation specialist** [SERVICE TO THE PARTY]. A waiver effective under this subsection discharges the liability of the employer for the benefits or rights contained in this section. The waiver may not be modified under AS 23.30.130."

Page 16, lines 3 - 4:

Delete "repealed and reenacted"

Insert "amended"

30-GH2709\A.3
Wallace
2/20/18

AMENDMENT #3

OFFERED IN THE HOUSE BY REPRESENTATIVE JOSEPHSON

TO: HB 303

Page 12, following line 31:

Insert a new bill section to read:

"* **Sec. 17.** AS 23.30.041(r)(7) is amended to read:

(7) "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least **75** [60] percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated **75** [60] percent shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage."

Renumber the following bill sections accordingly.

Page 16, line 4:

Delete "sec. 17"

Insert "sec. 18"

Page 16, line 5:

Delete "sec. 19"

Insert "sec. 20"

Page 16, line 6:

Delete "17, and 19"

Insert "18, and 20"

Page 16, line 12:
Delete "sec. 17"
Insert "sec. 18"
Delete "sec. 18"
Insert "sec. 19"

Page 16, line 14:
Delete "17, and 18"
Insert "18, and 19"

Page 16, line 23:
Delete "sec. 17"
Insert "sec. 18"
Delete "sec. 18"
Insert "sec. 19"

Page 16, line 24:
Delete "17, and 18"
Insert "18, and 19"

Page 16, line 26:
Delete "sec. 17"
Insert "sec. 18"

Page 16, line 27:
Delete "sec. 17"
Insert "sec. 18"

30-GH2709\A.4
Wallace
2/21/18

AMENDMENT #4 Withdrawn

OFFERED IN THE HOUSE BY REPRESENTATIVE JOSEPHSON

TO: HB 303

Page 9, line 28, following "**subsection.**":

Insert "**However, if a plan is not approved within one year after a request or stipulation, stipend compensation under (2) of this subsection may be extended beyond one year after permanent partial impairment benefits are exhausted under (1) of this subsection for a period equal to the period it took beyond one year to obtain plan approval.**"

KEENAN POWELL
Attorney at Law

750 West Second Ave Ste 106
POB 222269
Anchorage, Alaska 99522

TELEPHONE: 907.258.7663
FACSIMILE: 907.245.0854
keenan@keenanpowell.com

February 15, 2018

Alaska State Representatives by e-mail

Dear Representative,

I request that you oppose HB 303 and SB 112, two acts designed to eviscerate our workers compensation system.

I represent injured Alaskans in workers compensation claims. The vast majority of my clients want to "get fixed" (receive medical treatment) and go back to work as soon as possible. On the occasions it turns out they cannot go back to their job, they want retraining so they can work. Working, earning wages and paying their bills like responsible citizens are core values of these people.

These bills are designed to deny injured workers the opportunities to get fixed and go back to work. Ultimately they will be shifted onto the backs of working Alaskans to support and provide treatment for as an ever-growing body of unemployed and homeless expands.

These are the specific problems I see with these bills:

HB 303. The net effect of this bill is that it will render more injured workers permanently totally disabled, creating an increase in benefits owed by employers, as they will be unable to complete retraining:

Section 5 would amend AS 23.30.041(e) to create two separate classes of workers who would be denied reemployment benefits if they have the physical capacities to perform (2) "other jobs that exist in the labor market" (A) that the employee has held or received training for within 10 years before the injury; or (B) that offer wages that ensure remunerative employability for the employee that the employee has held following the injury…" There is no rational basis for drawing a distinction between workers who had jobs before their injury which do not provide remunerative employability and those workers who after their injury held jobs that did provide remunerative employability. As such, I foresee a constitutional challenge.

Section 9 would amend AS 23.30.041(h) to provide for retraining that would include (3)(A) on-the-job training, (B) vocational training, (C) academic training; (D) self-employment; or (E) a combination of (A)-(D). These are laudable goals. However the cost of the employment plan makes no allowance for costs of starting up a self-employed business. Moreover, the $19,300 total cost of plan set out in Section 12 is inadequate for academic training and self-employment especially when University of Alaska raises its tuition every year.

Section 11 would amend AS 23.30.041(k) to limit benefits prior to plan approval to one year and benefits post-approval to two years. In the event that a plan could not be approved or completed within those time periods, the injured worker only has two choices: complete their plan without any income to support

themselves, a luxury most laborers do not have, or quit. This is a particularly draconian result when the amendments also may preclude him from seeking job dislocation benefits instead of retraining[1], settling these benefits[2] and, because the injured worker participated in a reemployment plan, he will be forever barred from seeking reemployment benefits again[3] if he was fortunate enough to obtain another job.

Additionally there is a draconian denial of modification can be sought in the amendments. Under Section 17, AS 23.30.041(s)(5) precludes an injured worker from modifying his decision to select job dislocation benefits, even if these benefits are far less than he would have received in retraining and even if there was a change in conditions or a mistake. He is also precluded from modifying a decision to terminate the plan under proposed (w)(3) even if he was unable to convert his decision into job dislocation benefits because of passage of time and even if there was a change in conditions or a mistake.

SB 112. The primary issues with this bill is that it will prevent injured workers from obtaining the medical treatment they need so they can go back to work, terminate temporary total disability benefits after two years even if the worker is not medically stable and cannot work and unconstitutionally denying access to counsel. Again, the net result is more Alaskans who cannot work imposing a burden on the state to provide them with support and medical treatment in direct conflict with the proposed amendment section 5 which adds the language that "the workers' compensation system shall be cost-effective to the citizens of the state."

More specifically:

First, the several provisions which would eliminate the Workers' Compensation Board and shift claim-level litigation to the Office of Administrative Hearings would not be cost-effective. Currently with the Board, we are blessed with a body of hearing officers versed in the highly-technical and complicated area of law. Removing and replacing them with ALJs would create a maelstrom of incorrectly decided cases and a flood of appeals.

The amendments to AS 23.30.041 proposed in Section 24 are irrational. Under (h), the voucher would expire within two years after the date it is issued or five years after the date of injury. So, if the voucher was issued four years and ten months after the date of injury, it would expire in two months even if retraining had not been completed because the injured worker had the misfortune of having a complicated injury and it took that long for him to receive the voucher.

Under proposed (j), "[a]n employer may not be liable for compensation for injuries incurred by the employee while using a voucher issued under this section." What does that mean? If the work-injury is reinjured during the course of retraining, the employer is not liable? Who then will pay for the treatment necessary so the employee can continue retraining?

Under proposed (k), there is no wage replacement while retraining other than the lump-sum payment of permanent partial impairment ratings. Then how is the injured worker to survive while he goes through retraining? Very few workers have the luxury of living without an income while they are going to school.

---

[1] Section 17 amendment to AS 23.30.041(s)
[2] Section 15 amendment to AS 23.30.041(q)
[3] AS 23.30.041(k)(e)(3)

The employee is forever barred from receiving permanent total disability benefits if he qualifies for a voucher and fails to use it. So he finds himself in a situation where he cannot complete retraining because he has no wage replacement so he is permanently unemployable. Who will support this person and his family? Who will provide for his medical benefits? The State of Alaska will.

Section 26 limits treatment guidelines to the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines regardless of the specialty of the treating physician. If treatment outside of the guidelines is requested, the employer or insurer may request an administrative review, however there is no such provision for the employee.

Treatment is cut off in its entirety two years after the date of injury under Section 26's amendments to AS 23.30.095(a) regardless of whether treatment or care is necessary. However later in the same paragraph, treatment after two years is authorized only for prosthetic devices, braces and supports, certain pain medication under certain conditions, and life-preserving modalities. So in those cases we typically see where a joint (hip, knee, shoulder or elbow) must be replaced because of the injury, the subsequent replacement surgeries typical of those injuries are barred even if there is no intervening circumstances or superseding cause.

The employer is allowed to designate the attending physician under this same amendment. And that designation does not constitute an independent medical evaluation. Thus the employer is allowed to dictate who the treating physician is as well as choose its own expert whereas under existing law. There is no advocate for the employee.

Section 28 proposes an amendment to AS 23.30.095(e) which would allow an employer to demand a mental health examination of an injured worker with no rational basis for doing so. Unfortunately, it is a common insurance ploy to claim that an injured worker is not really injured but instead manifesting secondary gain, conversion syndrome or some other psychological reason that would cause him or her to claim pain is being suffered. This section gives the insurance company carte blanche to claim this defense in every case and, because the employee is not allowed to pick his or her treating physician, there is no one to advocate for the employee.

Under Section 32, AS 23.30.095(o) limits palliative care to the same evidence-based guidelines when necessary only so the employee can continue working. Palliative care necessary for retraining is eliminated. Palliative care to relieve chronic debilitating pain is eliminated even if it was caused by the work injury.

Section 52 would modify AS 23.30.122 to limit the Board's ability to determine credibility which is otherwise in its sole province.[4] There is no such legislation curtailing a jury or judge's credibility determinations in court, nor any legislation in any other administrative matters. It is doubtful that this distinction can pass constitutional muster.

Additionally, Section 52 limits the use of lay testimony under proposed (c). It cannot be relied upon for causation, impairment, ability to work, physical capacities, or past and future medical treatment. Thus, the

[4] AS 23.30.122

injured worker's family, those people most familiar with the injured worker's abilities before and after the injury and efficacy of treatment would be excluded from testifying. Again, this does not appear it would pass constitutional muster.

Section 69 would terminate permanent total disability if the employee begins to receive social security, pension or other retirement benefits. This provision is unfair to the injured worker and designed to keep aged, injured, disabled workers in a state of poverty. The reason it is unfair is that a disabling work injury would prematurely stop the employee's contributions to his social security fund, pension or other retirement benefits thus he would be forced to live on whatever benefits were amassed before the disabling injury. A much more fair system is in place now whereby the insurance company is entitled to a deduction for these types of benefits.

Section 70 would amend AS 23.30.185 to cap temporary total disability benefits to a maximum of two years even if the injured worker is disabled. It is rare, but sometimes happens, that a worker is so injured that he or she is not medically stable within two years of the date of injury. What is more common is that after medically stability, the injured worker needs a second or a third surgery which necessitates a lengthy recovery. This provision is designed to prevent payment of those benefits even if the worker cannot work even if the disability was wholly caused by the work injury.

The bill would runs afoul with the injured worker's constitutional right to counsel. *Langfeldt-Haaland v Saupe Enterprises, Inc*, 768 P 2d 1144, 1146 (Alaska, 1989). See Section 63. It would limit attorney's fees to certain percentages regardless of the amount of effort it took to bring the case to conclusion. It would wipe out compensation for all the work done if a settlement offer was made at least thirty days before a hearing. By language in (d), successfully obtaining medical benefits after hearing would not lead to the award of attorney's fees at all.

The intent is to make it uneconomical for attorneys to practice workers compensation law which is fundamentally unfair to the injured workers. In the present system, attorneys are only paid if they are successful in obtaining benefits, benefits to which the injured worker was entitled but were denied by the insurance companies. This is a fair system. After every hearing, the employer has the opportunity to object to attorneys fees sought both in the amount per hour and line item of services provided. If the insurance companies were interested in limiting employee attorney fees, they have a simple solution available to them: do not deny benefits unfairly.

There is no other area of law where attorneys fees are limited to the amount recovered. It is true that in civil cases, attorneys have a contingency fee agreement whereby the client pays the attorney a portion of their settlement or judgment and that Civil Rule 82 provides for the payment of fees pursuant to a schedule but that does not preclude the attorney from being paid by his client. However, even under Rule 82, the court may award full fees depending on a number of factors including "vexatious or bad faith conduct" of the other party.

But that provision is not in place here which would lead to abuse whereby the insurance company is free to stall, delay and impede the litigation process forcing the employee's attorney to expend an extraordinary amount of effort to conclude the case and that attorney would only be paid for benefits over and above medical benefits when medical benefits are usually the core of the case.

Because there is no other area of law where fees are limited in this way, this distinction leads to a constitutional challenge.

Currently it is illegal for an attorney to accept fees from an injured worker unless for a consultation in a case in which the attorney will not appear,[5] however employer attorney fees are not regulated at all and approximately two-thirds of litigation costs currently paid by insurance companies are paid to their own attorneys.[6]

I wish to stress that in every instance I have identified as problematic, and there may be more if these bills are passed, litigation would no doubt ensue putting more pressure on Alaska legal system.

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So please vote to keep the social contract between employer and employee in place, the one which the legislature worked very hard on since statehood to make sure that employees will have access to benefits when they are hurt on the job and employers will have access to able-bodied employees.

Thank you for your time and consideration.

Cordially,

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Keenan Powell

[5] 8 AAC 45.180(c).
[6] 8 AAC 45.180(h).

HLAC

ANCHORAGE LEGISLATIVE INFORMATION OFFICE

Email: Anchorage.lio@akleg.gov 907-269-0111/ phone, 907-269-0229/fax

WRITTEN TESTIMONY

NAME: Sandy Travis

REPRESENTING: Injuryed workers

BILL#/ SUBJECT: H B 303

COMMITTEE &

HEARING DATE: 02/18/18

I oppose HB 303

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NO Yes
1111 11
States

30-GH2709\A.5
Wallace
2/23/18

No Biden

AMENDMENT #5 failed

OFFERED IN THE HOUSE BY REPRESENTATIVE JOSEPHSON

TO: HB 303

Page 9, line 28, following "**subsection.**":

Insert "**However, if the board determines that benefits under this section should not have been denied, the board may award the stipend compensation that would have been paid but for the employer's controversion and the award may include more than one year of stipend compensation for the period before the date of plan approval.**"