



LAWS OF ALASKA

1995

Source
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Chapter No.
75

AN ACT

Relating to workers' compensation insurance rate filings; to second independent medical evaluations for workers' compensation claims; to confidentiality of workers' compensation medical and rehabilitation information; to immunity for third-party design professionals from civil actions by recipients of workers' compensation benefits; to workers' compensation death benefits; to computation of workers' compensation benefits; to penalties for fraudulent acts related to workers' compensation; to immunity for employer workplace safety inspections related to workers' compensation insurance.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 6, 1995
Actual Effective Date: September 4, 1995

AN ACT

1 Relating to workers' compensation insurance rate filings; to second independent medical
2 evaluations for workers' compensation claims; to confidentiality of workers' compensation
3 medical and rehabilitation information; to immunity for third-party design professionals from
4 civil actions by recipients of workers' compensation benefits; to workers' compensation death
5 benefits; to computation of workers' compensation benefits; to penalties for fraudulent acts
6 related to workers' compensation; to immunity for employer workplace safety inspections
7 related to workers' compensation insurance.

8

9 * Section 1. FINDINGS AND PURPOSE AS TO SECTION 9. (a) The legislature finds
10 that
11 (1) efficiency in calculating workers' compensation benefits does not require
12 unfairness;

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1 (2) a quick, efficient, and predictable scheme for determining a worker's gross
2 weekly earnings can be formulated without denying employees their workers' compensation
3 benefits commensurate with their actual losses;

4 (3) many workers in the state are only seasonally employed in the construction,
5 tourism, fishing, and education industries;

6 (4) many workers in the state choose a subsistence lifestyle and are only
7 occasionally, sporadically, or on a part-time basis members of the labor force;

8 (5) many other states avoid the need for an alternative open-ended
9 determination of an employee's future earning capacity by focusing on the employee's wages
10 at the time of injury and converting, by formula, the employee's rate of pay into a weekly
11 wage;

12 (6) benefits for permanent total disability can last for a substantial period into
13 the future and serve a different purpose than benefits for temporary partial or temporary total
14 disability.

15 (b) It is the purpose of sec. 9 of this Act to

16 (1) redefine the calculation of an employee's spendable weekly wage used to
17 determine workers' compensation benefits in a manner that complies with the decision of the
18 Alaska Supreme Court in *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922
19 (Alaska 1994);

20 (2) fix a fair approximation of an employee's probable future earning capacity
21 during the period of temporary partial or temporary total disability without resorting to an
22 open-ended determination of actual future earning capacity;

23 (3) avoid uncertainty and litigation for injured workers and their employers;

24 (4) allow an alternative open-ended determination of actual future earnings for
25 those employees who suffer a permanent total disability and whose wages cannot otherwise
26 be fairly calculated.

27 * **Sec. 2.** AS 21.39 is amended by adding a new section to read:

28 Sec. 21.39.045. **WORKERS' COMPENSATION RATE FILINGS.** (a)
29 Notwithstanding any other provision of this chapter, a rate filing for workers'
30 compensation insurance that classifies a risk in the construction industry may not
31 contain or impose a higher premium rate if the risk upon which the higher rate filing

1 is based consists only of a higher wage rate paid by the employer.

2 (b) The director shall accept a rate filing for workers' compensation insurance
3 if the filing includes a reasonable method of recognizing differences in rates of pay
4 and the method uses a credit scale that begins at an amount equal to the average
5 weekly wage in this state as determined by the Department of Labor.

6 * Sec. 3. AS 23.30 is amended by adding a new section to read:

7 Sec. 23.30.017. IMMUNITY FOR THIRD-PARTY DESIGN
8 PROFESSIONAL. (a) A person entitled to compensation under this chapter as a
9 result of injury occurring at the job site of a construction project may not bring a civil
10 action to recover damages for that injury against a design professional or an employee
11 of a design professional who provides professional services for the construction
12 project.

13 (b) This section does not apply to a person receiving compensation under this
14 chapter who is injured at a job site at which the design professional or employee of
15 the design professional

16 (1) specifically assumed responsibility for job site safety practices under
17 a contract;

18 (2) actually exercises control over the premises where the injury
19 occurred; or

20 (3) prepared design plans or specifications, the plans or specifications
21 contributed to the injury, and the plans or specifications were prepared negligently,
22 recklessly, or with intentional misconduct.

23 (c) In this section,

24 (1) "design professional" means a person licensed under AS 08.48 as
25 an architect, engineer, or land surveyor;

26 (2) "professional services" means services provided by a design
27 professional that are within the scope of services for which the design professional is
28 licensed.

29 * Sec. 4. AS 23.30.095(k) is amended to read:

30 (k) In the event of a medical dispute regarding determinations of causation,
31 medical stability, ability to enter a reemployment plan, degree of impairment,

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1 functional capacity, the amount and efficacy of the continuance of or necessity of
2 treatment, or compensability between the employee's attending physician and the
3 employer's independent medical evaluation, the board may require that a second
4 independent medical evaluation [SHALL] be conducted by a physician or physicians
5 selected by the board from a list established and maintained by the board. The cost
6 of an [THE] examination and medical report shall be paid by the employer. The report
7 of an [THE] independent medical examiner shall be furnished to the board and to the
8 parties within 14 days after the examination is concluded. A person may not seek
9 damages from an independent medical examiner caused by the rendering of an opinion
10 or providing testimony under this subsection, except in the event of fraud or gross
11 incompetence.

12 * Sec. 5. AS 23.30.107 is amended to read:

13 Sec. 23.30.107. RELEASE OF INFORMATION. Upon request, an employee
14 shall provide written authority to the employer, carrier, rehabilitation specialist
15 [PROVIDER], or reemployment benefits [REHABILITATION] administrator to
16 obtain medical and rehabilitation information relative to the employee's injury.

17 * Sec. 6. AS 23.30.107 is amended by adding a new subsection to read:

18 (b) Medical or rehabilitation records in an employee's file maintained by the
19 board are not public records subject to public inspection and copying under AS 09.25.
20 This subsection does not prohibit

21 (1) the reemployment benefits administrator, the board, or the
22 department from releasing medical or rehabilitation records in an employee's file,
23 without the employee's consent, to a physician providing medical services under
24 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
25 governmental agency; or

26 (2) the quoting or discussing of medical or rehabilitation records
27 contained in an employee's file during a hearing on a claim for compensation, or in a
28 decision and order of the board.

29 * Sec. 7. AS 23.30.175(b) is amended to read:

30 (b) The following rules apply to benefits payable to recipients not residing in
31 the state at the time compensation benefits are payable:

1 (1) the weekly rate of compensation shall be calculated by multiplying
2 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
3 23.30.190, 23.30.200, or 23.30.215, by the ratio of the cost of living of the area in
4 which the recipient resides to the cost of living in this state;

5 (2) the calculation required by (1) of this subsection does not apply if
6 the recipient is absent from the state for medical or rehabilitation services not
7 reasonably available in the state;

8 (3) if the gross weekly earnings of the recipient and the resulting
9 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10)
10 [AS 23.30.220(a)(2)], the calculation required by this subsection applies only to the
11 portion of the recipient's weekly compensation rate attributable to wages earned in the
12 state;

13 (4) application of this subsection may not reduce the weekly
14 compensation rate to less than \$154 a week, except as provided in (a) of this section.

15 * Sec. 8. AS 23.30.215(f) is amended to read:

16 (f) Except as provided in (g) of this section, the death benefit payable to a
17 widow or widower shall

18 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE
19 DECEASED EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT
20 BEING THEN PAID;

21 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE
22 DECEASED EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT
23 BEING THEN PAID;

24 (3)] terminate 10 years following death of the deceased employee.

25 * Sec. 9. AS 23.30.220(a) is repealed and reenacted to read:

26 (a) Computation of compensation under this chapter shall be on the basis of
27 an employee's spendable weekly wage at the time of injury. An employee's spendable
28 weekly wage is the employee's gross weekly earnings minus payroll tax deductions.
29 An employee's gross weekly earnings shall be calculated as follows:

30 (1) if at the time of injury the employee's earnings are calculated by
31 the week, the weekly amount is the employee's gross weekly earnings;

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1 (2) if at the time of injury the employee's earnings are calculated by
2 the month, the employee's gross weekly earnings are the monthly earnings multiplied
3 by 12 and divided by 52;

4 (3) if at the time of injury the employee's earnings are calculated by
5 the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

6 (4) if at the time of injury the

7 (A) employee's earnings are calculated by the day, hour, or by
8 the output of the employee, the employee's gross weekly earnings are the
9 employee's earnings most favorable to the employee computed by dividing by
10 13 the employee's earnings, not including overtime or premium pay, earned
11 during any period of 13 consecutive calendar weeks within the 52 weeks
12 immediately preceding the injury;

13 (B) employee has been employed for less than 13 calendar
14 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this
15 subsection and (A) of this paragraph, the employee's gross weekly earnings are
16 computed by determining the amount that the employee would have earned, not
17 including overtime or premium pay, had the employee been employed by the
18 employer for 13 calendar weeks immediately preceding the injury and dividing
19 this sum by 13;

20 (5) if at the time of injury the employee's earnings have not been fixed
21 or cannot be ascertained, the employee's earnings for the purpose of calculating
22 compensation are the usual wage for similar services when the services are rendered
23 by paid employees;

24 (6) if at the time of injury the employment is exclusively seasonal or
25 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings
26 are 1/50th of the total wages that the employee has earned from all occupations during
27 the calendar year immediately preceding the injury;

28 (7) when the employee is working under concurrent contracts with two
29 or more employers, the employee's earnings from all employers are considered as if
30 earned from the employer liable for compensation;

31 (8) if an employee when injured is a minor, an apprentice, or a trainee

1 in a formal training program, as determined by the board, whose wages under normal
2 conditions would increase during the period of disability, the projected increase may
3 be considered by the board in computing the gross weekly earnings of the employee;

4 (9) if the employee is injured while performing duties as a volunteer
5 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
6 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
7 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
8 attendant, police officer, or fire fighter employed in the political subdivision where the
9 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
10 police officers, or fire fighters, at a reasonable figure previously set by the political
11 subdivision to make this determination, but in no case may the gross weekly earnings
12 for calculating compensation be less than the minimum wage computed on the basis
13 of 40 hours work per week;

14 (10) if an employee is entitled to compensation under AS 23.30.180
15 and the board determines that calculation of the employee's gross weekly earnings
16 under (1) - (7) of this subsection does not fairly reflect the employee's earnings during
17 the period of disability, the board shall determine gross weekly earnings by considering
18 the nature of the employee's work, work history, and resulting disability, but
19 compensation calculated under this paragraph may not exceed the employee's gross
20 weekly earnings at the time of injury.

21 * Sec. 10. AS 23.30.220 is amended by adding a new subsection to read:

22 (c) In this section,

23 (1) "seasonal work" means employment that is not intended to continue
24 through an entire calendar year, but recurs on an annual basis;

25 (2) "temporary work" means employment that is not permanent, ends
26 upon completion of the task, job, or contract, and ends within six months from the date
27 of injury.

28 * Sec. 11. AS 23.30.250 is repealed and reenacted to read:

29 Sec. 23.30.250. PENALTIES FOR FRAUDULENT OR MISLEADING ACTS.

30 (a) A person who (1) knowingly makes a false or misleading statement,
31 representation, or submission related to a benefit under this chapter; (2) knowingly

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1 assists, abets, solicits, or conspires in making a false or misleading submission
2 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
3 misclassifies employees or engages in deceptive leasing practices for the purpose of
4 evading full payment of workers' compensation insurance premiums; or (4) employs
5 or contracts with a person or firm to coerce or encourage an individual to file a
6 fraudulent compensation claim is civilly liable to a person adversely affected by the
7 conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be
8 punished as provided by AS 11.46.120 - 11.46.150.

9 (b) If the board, after a hearing, finds that a person has obtained compensation,
10 medical treatment, or another benefit provided under this chapter by knowingly making
11 a false or misleading statement or representation for the purpose of obtaining that
12 benefit, the board shall order that person to make full reimbursement of the cost of all
13 benefits obtained. Upon entry of an order authorized under this subsection, the board
14 shall also order that person to pay all reasonable costs and attorney fees incurred by
15 the employer and the employer's carrier in obtaining an order under this section and
16 in defending any claim made for benefits under this chapter. If a person fails to
17 comply with an order of the board requiring reimbursement of compensation and
18 payment of costs and attorney fees, the employer may declare the person in default and
19 proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

20 * **Sec. 12.** AS 23.30 is amended by adding a new section to read:

21 Sec. 23.30.263. IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE
22 SAFETY INSPECTIONS. An employer's safety inspector is not liable for civil
23 damages for an injury to an employee of that employer resulting from an act or
24 omission in performing or failing to perform a loss control service, a workplace safety
25 inspection, or a safety advisory service provided in connection with an employer's
26 workers' compensation insurance coverage, unless the act or failure to act constitutes
27 intentional misconduct. In this section, "safety inspector" means

- 28 (1) a carrier and an employee or agent of the carrier;
29 (2) a trade association of which the employer is a member; or
30 (3) a person providing adjusting or inspection services to an employer
31 who is a member of an association established under AS 21.76.010 or to an employer

1 who is self-insured under AS 23.30.090.

2 * **Sec. 13.** TRANSITION. By January 1, 1996, a rating organization that files a rate for
3 workers' compensation insurance shall file a rating that contains a method of computing
4 workers' compensation insurance rates that is in compliance with AS 21.39.045, added by
5 sec. 2 of this Act.

6 * **Sec. 14.** Section 2 of this Act applies to a policy of workers' compensation insurance that
7 is entered into or renewed on or after the effective date of this Act.