

ployee is liable for damages, he need not elect whether to receive compensation or to recover damages from the third person.

(b) Acceptance of compensation under an award in a compensation order filed by the board operates as an assignment to the employer of all rights of the person entitled to compensation and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to compensation commences an action against the third person within one year after an award.

(c) Payment of compensation into the second-injury fund as a result of death operates as an assignment to the employer of all rights of the representative of the deceased to recover damages from the third person.

(d) An employer under an assignment may either institute proceedings for the recovery of damages or may compromise with a third person, either without or after instituting an action.

(e) An amount recovered by the employer under an assignment, whether by action or compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to

(A) the expenses incurred by him in respect to the action or compromise, including a reasonable attorney fee determined by the board;

(B) the cost of all benefits actually furnished by him under this chapter;

(C) all amounts paid as compensation and second-injury fund payments;

(D) the present value of all amounts payable later as compensation present value to be computed from a schedule prepared by the board), and the present value of the cost of all benefits to be furnished later under sec. 95 of this chapter (as

estimated by the board), the amounts so computed and estimated to be retained by the employer as a trust fund to pay compensation and the cost of benefits as they become due and to pay any finally remaining excess sum to the person entitled to compensation or to the representative; and

(2) the employer shall pay any excess to the person entitled to compensation or to his representative, less one-fourth of the excess, not to exceed \$10,000, to be retained by the employer.

(f) Even if an employee, his representative, or his employer brings an action or settles a claim against the third person, the employer shall pay the benefits and compensation required by this chapter.

(g) If the employee or his representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A), (B), and (C) of this section, insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter.

(h) If compromise with a third person is made by the person entitled to compensation or his representative of an amount less than the compensation to which the person or representative would be entitled, the employer is liable for compensation stated in (f) of this section only if the compromise is made with his written approval.

(i) If the employer is insured and the carrier has assumed the payment of compensation, the carrier shall be subrogated to all the rights of the employer.

(j) Notice of the commencement of an action against a third party shall be given to the board and to all interested parties within 30 days.

Sec. 2. This Act takes effect July 1, 1965.

Approved April 14, 1965

CHAPTER 74

AN ACT

Relating to employer reports of employment security data; and providing for an effective date.

(H.B. 177)

Be It Enacted by the Legislature of the State of Alaska:

Section 1. AS 23.20.125 is repealed.

Sec. 2. This Act shall be retroactive to January 1, 1965.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 14, 1965

CHAPTER 75

AN ACT

Providing for determination of the average weekly wage of injured employees under the Alaska Workmen's Compensation Act; and providing for an effective date.

(H.B. 200)

Be It Enacted by the Legislature of the State of Alaska:

Section 1. AS 23.30.220 is repealed and re-enacted to read:

Sec. 23.30.220. **Determination of Average Weekly Wage.** Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and is determined as follows:

(1) if at the time of the injury the employee has been employed in the same or similar employment for 27 weeks immediately before the injury, the average weekly wage is the weekly wage at the time of the injury;

(2) if at the time of the injury the employee has been employed in the same or similar employment for less than 27 weeks immediately before the injury, the average weekly wage is that most favorable to the employee calcu-

lated by dividing 52 into the total wages earned, including self-employment, in any one of the three calendar years immediately preceding the injury;

(3) if the board determines that the wage at the time of the injury cannot be fairly calculated under (2) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the wage for calculating compensation shall be the usual wage for similar service rendered by paid employees under similar circumstances, as determined by the board;

(4) if an employee is a minor or an apprentice, or a trainee, as determined by the board, when injured, and under normal conditions his wages would increase during the period of disability, this fact shall be considered in computing his average weekly wage.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 14, 1965

CHAPTER 76

AN ACT

Relating to the organization and composition of the Alaska Workmen's Compensation Board; and providing for an effective date.

(H.B. 213)

Approved April 14, 1965