

SENATE BILL NO. 147

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR KAUFMAN

Introduced: 5/11/23

Referred: Labor & Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to reemployment rights and benefits."**

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

3 * **Section 1.** AS 23.30.041(b) is amended to read:

4 (b) The administrator shall

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

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

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

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

12 (5) submit to the department, on or before **October 1** [MAY 1] of each
13 year, a report of reemployment benefits provided under this section for the previous
14 calendar year; the report must include a general section, sections related to each
15 rehabilitation specialist employed under this section, and a statistical summary of all

1 rehabilitation cases, including

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

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

5 (C) a status report on all individuals requesting, waiving,
6 beginning, completing, or terminating a reemployment benefits program
7 including

8 (i) reasons for denial, waiver, suspension, or
9 termination;

10 (ii) dates of completion and return to work; and

11 (iii) other information required by the director;

12 (D) the cost of reemployment benefits;

13 (E) status reports of all individuals who successfully completed
14 a reemployment plan that includes

15 (i) the plan's occupational goal and whether the
16 individual obtained work after completion in the planned or another
17 occupation; and

18 (ii) the individual's employment status six months, one
19 year, and two years after reemployment plan completion;

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

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

25 * **Sec. 2.** AS 23.30.041(c) is amended to read:

26 (c) An employee and an employer may stipulate to the employee's eligibility
27 for reemployment benefits at any time. If an employee suffers a compensable injury
28 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
29 to return to the employee's employment at the time of injury, the administrator shall
30 notify the employee of the employee's rights under this section within 14 days after the
31 45th day. If the employee is totally unable to return to the employee's employment for

60 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the employee's occupation at the time of the injury. **If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive days as a result of the injury, the administrator may, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted.** If the employee is totally unable to return to the employee's employment at the time of the injury for **120** [90] consecutive days as a result of the injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. If the administrator approves a request or orders an evaluation, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation. If the person that employs a rehabilitation specialist selected by the administrator to perform an eligibility evaluation under this subsection is performing any other work on the same workers' compensation claim involving the injured employee, the administrator shall select a different rehabilitation specialist.

* **Sec. 3.** AS 23.30.041(d) is amended to read:

(d) Within **60** [30] days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. [THE ADMINISTRATOR MAY GRANT UP TO AN ADDITIONAL 30 DAYS FOR PERFORMANCE OF THE ELIGIBILITY EVALUATION UPON NOTIFICATION OF UNUSUAL AND EXTENUATING CIRCUMSTANCES AND THE REHABILITATION SPECIALIST'S REQUEST.] Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after **the hearing** [IT] is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

* **Sec. 4.** AS 23.30.041(h) is amended to read:

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must require continuous participation by the employee and must maximize the usage of the employee's transferrable skills. The reemployment plan must include at least the following:

- (1) a determination of the occupational goal in the labor market;
- (2) an inventory of the employee's technical skills, transferrable skills, physical and intellectual capacities, academic achievement, emotional condition, and family support;
- (3) a plan to acquire the occupational skills to be employable, **including use of training and employment services offered by the Department of Labor and Workforce Development under AS 23.15;**
- (4) the cost estimate of the reemployment plan, including provider fees; and the cost of tuition, books, tools, and supplies, transportation, temporary lodging, or job modification devices;
- (5) the estimated length of time that the plan will take;
- (6) the date that the plan will commence;
- (7) the estimated time of medical stability as predicted by a treating physician or by a physician who has examined the employee at the request of the employer or the board, or by referral of the treating physician;
- (8) a detailed description and plan schedule;
- (9) a finding by the rehabilitation specialist that the inventory under (2) of this subsection indicates that the employee can be reasonably expected to satisfactorily complete the plan and perform in a new occupation within the time and cost limitations of the plan; and
- (10) a provision requiring that, after a person has been assigned to perform medical management services for an injured employee, the person shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the person is employed, whom the person represents, and the scope of the services to be provided.

* **Sec. 5.** AS 23.30.041(j) is amended to read:

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment benefits plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the administrator. **The plan must ensure remunerative employability. The** [; THE] administrator shall approve or deny a plan within 14 days after the plan is submitted. **Within** [; WITHIN] 10 days **after** [OF] the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. **The** [; THE] board shall

(1) uphold the decision of the administrator unless evidence is submitted supporting an allegation of abuse of discretion on the part of the administrator; **and**

(2) [THE BOARD SHALL] render a decision within 30 days after completion of the hearing.

* **Sec. 6.** AS 23.30.041(l) is amended to read:

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed **\$22,150. The department shall, by regulation, adjust the cost limit set out in this subsection to account for inflation** [\$13,300].

* **Sec. 7.** AS 39.25.158(b) is amended to read:

(b) **If** [AFTER] an employee **who** requests to return to work **is not eligible for reemployment under (c) of this section**, the reemployment benefits administrator of the division of workers' compensation or the director of vocational rehabilitation in the Department of Labor and Workforce Development 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 this section.

* **Sec. 8.** AS 39.25.158(c) is amended to read:

(c) If **a physician** [THE REEMPLOYMENT BENEFITS ADMINISTRATOR OR THE DIRECTOR OF VOCATIONAL REHABILITATION] certifies that the employee is able to perform the tasks assigned to the employee's former position, the agency shall reemploy the employee within 30 days after receipt of the certification unless the position no longer exists. If a permanent, probationary, or provisional employee is currently employed in the position, the agency shall cause a vacancy

1 under the layoff provisions of AS 39.25.150(13).

2 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 39.25.158(b) and (c), as amended by secs. 7 and 8 of this Act,
5 apply to a contract or collective bargaining agreement that becomes legally binding on or after
6 the effective date of secs. 7 and 8 of this Act.