



LAWS OF ALASKA

2009

Source
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Chapter No.

AN ACT

Modifying the Alaska unemployment insurance statutes by redefining the base period for determining eligibility for unemployment benefits; relating to contributions, interest, penalties, and payments under the Alaska Employment Security Act; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

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2 determining eligibility for unemployment benefits; relating to contributions, interest,
3 penalties, and payments under the Alaska Employment Security Act; and providing for an
4 effective date.

5

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that
9 (1) P.L. 106-544 (Consolidated Appropriations Act, 2001) amended 26 U.S.C.
10 3301 - 3311 (Federal Unemployment Tax Act) to require certified state unemployment
11 insurance programs to provide federally recognized tribes and their wholly owned
12 subdivisions, subsidiaries, or businesses the option to be a reimbursable employer;
13 (2) the state's unemployment insurance program has been certified by the
14 United States Department of Labor;

1 (3) as a certified program, the Department of Labor and Workforce
2 Development receives federal funds to administer its unemployment insurance program;

3 (4) because this state has a certified program, Alaska employers receive a tax
4 credit of up to 90 percent of the federal unemployment tax that employers are required to pay;

5 (5) to maintain its certified status, this state must conform AS 23.20 (Alaska
6 Employment Security Act) with the requirements of 26 U.S.C. 3301 - 3311 (Federal
7 Unemployment Tax Act);

8 (6) failure to bring AS 23.20 (Alaska Employment Security Act) into
9 compliance with federal legislation could result in the loss of approximately \$20,000,000 in
10 administrative funding under 26 U.S.C. 3301 - 3311 (Federal Unemployment Tax Act) and
11 the loss of approximately \$111,000,000 in tax credits under 26 U.S.C. 3301 - 3311 (Federal
12 Unemployment Tax Act) to employers in this state;

13 (7) of the 33 states that have federally recognized tribes, Alaska is the only
14 state that has not yet passed conforming legislation; and

15 (8) to bring AS 23.20 (Alaska Employment Security Act) into conformity with
16 26 U.S.C. 3301 - 3311 (Federal Unemployment Tax Act), it is necessary to amend AS 23.20
17 to allow federally recognized tribes and their wholly owned subdivisions, subsidiaries, or
18 businesses the option to be a reimbursable employer.

19 (b) It is the intent of the legislature that this Act not alter or expand in any way the
20 governmental relationship between federally recognized tribes and the state.

21 * **Sec. 2.** AS 23.20.277(b) is amended to read:

22 (b) At the end of each calendar quarter, or at the end of any other period as
23 determined by the department, the department shall bill each government entity,
24 **federally recognized tribe**, nonprofit organization, or group of nonprofit
25 organizations that has elected to make payments in place of contributions, for benefits
26 paid during the quarter or other prescribed period that are attributable to service in the
27 employ of the government entity, **federally recognized tribe**, nonprofit organization,
28 or group. In the case of nonprofit organizations and groups of nonprofit organizations,
29 the amount billed is an amount equal to the full amount of regular benefits plus
30 extended benefits that are not reimbursable by the federal government. In the case of a
31 government entity **or federally recognized tribe**, the amount billed is an amount

1 equal to the full amount of the regular benefits plus the full amount of the extended
2 benefits paid.

3 * **Sec. 3.** AS 23.20.277(e) is amended to read:

4 (e) At the end of each taxable year, the department shall determine whether
5 the total of payments for the year made by a nonprofit organization or group of
6 nonprofit organizations is less than, or in excess of, the total amount of regular
7 benefits plus extended benefits not reimbursable by the federal government paid to
8 individuals during the taxable year based on wages attributable to service in the
9 employ of the nonprofit organization or group. In the case of a government entity **or**
10 **federally recognized tribe** that has elected to make payments under this section, the
11 department shall determine whether the total of payments for the year is less than, or
12 in excess of, the total amount of regular benefits plus the total amount of extended
13 benefits as determined in this subsection. **If** [EACH ORGANIZATION OR GROUP
14 WHOSE] total payments for the taxable year are less than the amount so determined,
15 **the employer** is liable for payment of the unpaid balance to the fund in accordance
16 with (f) of this section. If the total payments exceed the amount so determined for the
17 taxable year, all or part of the excess may, at the discretion of the department, be
18 refunded from the fund or retained in the fund as part of the payments that may be
19 required for the next taxable year.

20 * **Sec. 4.** AS 23.20.277(f) is amended to read:

21 (f) Payment of any bill rendered under (b) or (c) of this section shall be made
22 not later than 30 days after the bill was mailed to the last known address of the
23 nonprofit organization, **group of nonprofit organizations, government entity, or**
24 **federally recognized tribe** or was otherwise delivered to it, unless there has been an
25 application for review and redetermination in accordance with (h) of this section.

26 * **Sec. 5.** AS 23.20.277(g) is amended to read:

27 (g) Payments made by any nonprofit organization, **group of nonprofit**
28 **organizations, government entity, or federally recognized tribe** under the
29 provisions of this section may not be deducted or deductible, in whole or in part, from
30 the remuneration of **an individual** [INDIVIDUALS] in the employ of the
31 organization, **group of organizations, government entity, or federally recognized**

1 **tribe**; nor may contributions be required of an employee on the basis of wages paid to
2 that employee for services performed by the employee in employment for a nonprofit
3 organization, **group of nonprofit organizations, government entity, or federally**
4 **recognized tribe that** [WHICH] makes an election to become liable for payments in
5 place of contributions under **AS 23.20.276 - 23.20.278** [AS 23.20.276], and the wages
6 are paid during the period of election.

7 * **Sec. 6.** AS 23.20.277(h) is amended to read:

8 (h) The amount due, specified in a bill from the department, is conclusive on
9 the **employer** [ORGANIZATION] unless, not later than 30 days after the bill was
10 mailed to its last address of record or otherwise delivered to it, the **employer**
11 [ORGANIZATION] files an application for redetermination by the department, setting
12 out the grounds for the application. The department shall promptly review and
13 reconsider the bill and shall [THEREAFTER] issue a redetermination in any case in
14 which an application for redetermination has been filed. Any redetermination is
15 conclusive on the **employer** [ORGANIZATION] unless, not later than 30 days after
16 the redetermination was mailed to its last address of record or otherwise delivered to
17 it, the **employer** [ORGANIZATION] files an appeal to the commissioner, setting out
18 the grounds for the appeal. Proceedings on appeal to the commissioner from the
19 amount of a bill rendered under this subsection or a redetermination of the amount
20 shall be in accordance with AS 23.20.410 - 23.20.470.

21 * **Sec. 7.** AS 23.20.277(j) is amended to read:

22 (j) At the discretion of the department, a nonprofit organization, **group of**
23 **nonprofit organizations, government entity, or federally recognized tribe** that
24 elects to become liable for payments in place of contributions under **AS 23.20.276 -**
25 **23.20.278** [AS 23.20.276] is required, within 30 days after the effective date of its
26 election, to execute and file with the department a surety bond approved by the
27 department or it may elect instead to deposit with the department money or securities.
28 The amount of the bond or deposit shall be determined by the department in
29 accordance with regulations adopted by the department.

30 * **Sec. 8.** AS 23.20.277(k) is amended to read:

31 (k) If a nonprofit organization, **group of nonprofit organizations,**

1 **government entity, or federally recognized tribe** is delinquent in making payments
2 in place of contributions as required under this section **and after having been given**
3 **notice**, the department, **after giving notice to the employer who is delinquent, shall**
4 [MAY] terminate that **employer's** [ORGANIZATION'S] election to make payments
5 in place of contributions **until a time provided by regulations adopted by the**
6 **department** [AS OF THE BEGINNING OF THE NEXT TAXABLE YEAR, AND
7 THE TERMINATION IS EFFECTIVE FOR THAT AND THE NEXT TAXABLE
8 YEAR].

9 * **Sec. 9.** AS 23.20.277(l) is amended to read:

10 (l) Each employer that is liable for payments in place of contributions shall
11 pay to the department for the fund the amount of regular benefits plus the extended
12 benefits not reimbursable by the federal government paid to individuals that are
13 attributable to service in the employ of that employer. However, a government entity
14 **or federally recognized tribe** that has elected to make payments under this section is
15 liable for the amount of regular benefits plus the full amount of extended benefits that
16 are attributable to service in the employ of that entity **or tribe**. If benefits paid to an
17 individual are based on wages paid by more than one employer and one or more of
18 these employers is liable for payments in place of contributions, the amount payable to
19 the fund by each employer that is liable for payments shall be determined by the
20 department in accordance with regulations adopted by the department.

21 * **Sec. 10.** AS 23.20.277 is amended by adding a new subsection to read:

22 (m) The department may not approve an election to make payments in place
23 of contributions if, at the time of the election, a nonprofit organization, group of
24 nonprofit organizations, government entity, or federally recognized tribe is delinquent
25 in making contributions under AS 23.20.165.

26 * **Sec. 11.** AS 23.20.278 is amended to read:

27 **Sec. 23.20.278. Financing benefits paid to employees of the state,** [AND
28 **ITS] political subdivisions of the state, or a federally recognized tribe. A federally
29 **recognized tribe, a** political subdivision, or a department, division, or other agency of
30 the state subject to this chapter, under **AS 23.20.525(a)(14)** [AS 23.20.525(a)(4) AND
31 (14)], shall pay contributions under the provisions of AS 23.20.165, unless it elects to**

1 reimburse the department for the unemployment compensation fund according to the
2 provisions applicable to nonprofit organizations, **government entities, or federally**
3 **recognized tribes** under AS 23.20.276 and 23.20.277.

4 * **Sec. 12.** AS 23.20.381(j) is amended to read:

5 (j) Benefits based on services described in (e) and (h) of this section shall be
6 denied under (e), (h), and (i) of this section to an individual who performed those
7 services in an educational institution while in the employ of an educational service
8 agency. In this subsection, "educational service agency" means a governmental
9 agency, [OR] governmental entity, **or federally recognized tribe** that is established
10 and operated exclusively for the purpose of providing services to one or more
11 educational **institutions** [INSTITUTION].

12 * **Sec. 13.** AS 23.20.520(3) is amended to read:

13 (3) "base period" means the first four of the last five completed
14 calendar quarters immediately preceding the first day of an individual's benefit year,
15 **except that, if an individual would not otherwise be eligible for unemployment**
16 **compensation because of the use of a base period that does not include the most**
17 **recently completed calendar quarter immediately preceding the first day of an**
18 **individual's benefit year, "base period" means, and eligibility shall be**
19 **determined using, the four most recently completed calendar quarters before the**
20 **start of the benefit year;**

21 * **Sec. 14.** AS 23.20.520(10) is amended to read:

22 (10) "employing unit" means one or more departments or other
23 agencies of the state, a political subdivision of the state, **a federally recognized tribe,**
24 an individual, or a type of organization, partnership, association, trust, estate, joint
25 trust company, insurance company, or domestic or foreign corporation, or the receiver,
26 referee in bankruptcy, trustee, or successor of one of these, or the legal representative
27 of a deceased person, **that** [WHICH] has or [, AFTER JANUARY 1, 1937,] had one
28 or more individuals performing service for it in the state; an individual performing
29 services in the state for an employing unit **that** [WHICH] maintains two or more
30 separate establishments in the state is considered as employed by a single employing
31 unit for the purposes of this chapter; notwithstanding any provision in this chapter, any

1 employing unit **that** [WHICH] employs individuals whose services must be covered
2 by the unemployment insurance laws of this state [AFTER DECEMBER 31, 1971] as
3 a condition of approval of the unemployment insurance laws of this state under 26
4 U.S.C. 3304(a) (Internal Revenue Code of 1954), as amended, will be considered an
5 employer as to those individuals and is subject to contributions on all wages paid
6 [AFTER DECEMBER 31, 1971,] or reimbursement payments to cover benefits paid
7 based on services performed [AFTER DECEMBER 31, 1971], depending on the
8 applicable law;

9 * **Sec. 15.** AS 23.20.520(14) is amended to read:

10 (14) "institution of higher education" means an educational institution
11 **that** [WHICH]

12 (A) admits as regular students only individuals having a
13 certificate of graduation from a high school, or the recognized equivalent of a
14 high school graduation certificate;

15 (B) is legally authorized in the state in which it is located to
16 provide a program of education beyond high school;

17 (C) provides an educational program for which it awards a
18 bachelor's or higher degree, or provides a program **that** [WHICH] is
19 acceptable for full credit toward either degree, a program of postgraduate or
20 postdoctoral studies, or a program of training to prepare students for gainful
21 employment in a recognized occupation; and

22 (D) **is operated by a federally recognized tribe or** is a public
23 or other nonprofit institution;

24 * **Sec. 16.** AS 23.20.520 is amended by adding a new paragraph to read:

25 (22) "federally recognized tribe"

26 (A) means a tribe that is recognized by the United States
27 Secretary of the Interior to exist as an Indian tribe under 25 U.S.C. 479a
28 (Federally Recognized Indian Tribe List Act of 1994);

29 (B) includes any subdivision, subsidiary, or business enterprise
30 wholly owned by a federally recognized tribe.

31 * **Sec. 17.** AS 23.20.525(a)(14) is amended to read:

1 (14) service performed [AFTER DECEMBER 31, 1977,] in the
2 employ of this state or any of its instrumentalities or any political subdivision of this
3 state or any of its instrumentalities or any instrumentality of any of the foregoing and
4 one or more other states or political subdivisions, **or in the employ of a federally**
5 **recognized tribe**, if that service is excluded from "employment" under 26 U.S.C.
6 3306(c)(7) (Federal Unemployment Tax Act, Internal Revenue Code) and is not
7 excluded from "employment" under **AS 23.20.526(d)** [AS 23.20.526(d)(8)];

8 * **Sec. 18.** AS 23.20.526(d) is amended to read:

9 (d) For the purposes of **AS 23.20.525(a)(6) and (14)** [AS 23.20.525(a)(4) - (6)
10 AND (14)], the term "employment" does not apply to service performed

11 (1) by a duly ordained, commissioned, or licensed minister of a church
12 in the exercise of the person's ministry or by a member of a religious order in the
13 exercise of duties required by the order;

14 (2) in a facility conducted for the purpose of carrying out a program of
15 rehabilitation for individuals whose earning capacity is impaired by age or physical or
16 mental deficiency or injury or providing remunerative work for individuals who,
17 because of their impaired physical or mental capacity, cannot be readily absorbed in
18 the competitive labor market by an individual receiving the rehabilitation or
19 remunerative work;

20 (3) as part of an unemployment work-relief or work-training program
21 assisted or financed in whole or in part by **a federally recognized tribe or** any federal
22 agency or any agency of a state or political subdivision of the state, by an individual
23 receiving work relief or work training;

24 (4) for a state hospital by an inmate of a prison or correctional
25 institution;

26 (5) in the employ of a school, college, or university if the service is
27 performed by a student who is enrolled and is regularly attending classes at the school,
28 college, or university;

29 (6) by an individual under the age of 22 who is enrolled at a nonprofit
30 or public educational institution that normally maintains a regular faculty and
31 curriculum and normally has a regularly organized body of students in attendance at

1 the place where its educational activities are carried on as a student in a full-time
2 program, taken for credit at the institution, that combines academic instruction with
3 work experience if the service is an integral part of the program and the institution has
4 so certified to the employer, except that this paragraph does not apply to service
5 performed in a program established for or on behalf of an employer or group of
6 employers;

7 (7) in the employ of a hospital if the service is performed by a patient
8 of the hospital, as defined in AS 23.20.520;

9 (8) in the employ of the state or a political subdivision of the state if
10 the service is performed by an individual in the exercise of duties

11 (A) as a judicial officer, the governor, the lieutenant governor,
12 a person hired or appointed as the head or deputy head of a department in the
13 executive branch, a person hired or appointed as the director of a division of a
14 department in the executive branch, an assistant to the governor, a chair or
15 member of a state commission or board, state investment officers and the state
16 comptroller in the Department of Revenue, an appointed or elected municipal
17 officer, any other elected official, the fiscal analyst of the legislative finance
18 division, the legislative auditor of the legislative audit division, the executive
19 director of the Legislative Affairs Agency, and the directors of the divisions
20 within the Legislative Affairs Agency;

21 (B) as a member of the Alaska Army National Guard or Alaska
22 Air National Guard or Alaska Naval Militia;

23 (C) as an employee serving on only a temporary basis in case
24 of fire, storm, snow, earthquake, flood, or similar emergency; or

25 (D) as an election official or election worker if the amount of
26 remuneration received by the individual during the calendar year for services
27 as an election official or election worker is less than \$1,000;

28 (9) in the employ of

29 (A) a church or a convention or association of churches; or

30 (B) an organization that is operated primarily for religious
31 purposes and that is operated, supervised, controlled, or principally supported

1 by a church or a convention or association of churches;

2 **(10) in the employ of a federally recognized tribe in this state if the**
3 **service is performed by an individual in the exercise of duties as an officer of the**
4 **federally recognized tribe and meets the requirements of 26 U.S.C. 3309(b)(3)(E)**
5 **(Federal Unemployment Tax Act, Internal Revenue Code).**

6 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REVISOR'S INSTRUCTION. The revisor of statutes shall change the heading of
9 AS 23.20.277 from "Reimbursement payments by nonprofit organizations and government
10 entities" to "Reimbursement payments by nonprofit organizations, government entities, and
11 federally recognized tribes."

12 * **Sec. 20.** Section 13 of this Act takes effect January 1, 2010.

13 * **Sec. 21.** Sections 1 - 12 and 14 - 19 of this Act take effect immediately under
14 AS 01.10.070(c).