

SENATE BILL NO. 206

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATOR GRAY-JACKSON

Introduced: 1/24/24

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to workers' compensation reemployment benefits; establishing a**
2 **workers' compensation stay-at-work program; and providing for an effective date."**

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

4 *** Section 1.** AS 23.30.005(h) is amended to read:

5 (h) The department shall adopt rules for all panels [,] and procedures for the
6 periodic selection, retention, and removal of both rehabilitation specialists and
7 physicians under AS 23.30.041, 23.30.043, and 23.30.095, and shall adopt regulations
8 to carry out the provisions of this chapter. The department may by regulation provide
9 for procedural, discovery, or stipulated matters to be heard and decided by the
10 commissioner or a hearing officer designated to represent the commissioner rather
11 than a panel. If a procedural, discovery, or stipulated matter is heard and decided by
12 the commissioner or a hearing officer designated to represent the commissioner, the
13 action taken is considered the action of the full board on that aspect of the claim.
14 Process and procedure under this chapter shall be as summary and simple as possible.

1 The department, the board, or a member of it may for the purposes of this chapter
 2 subpoena witnesses, administer or cause to be administered oaths, and [MAY]
 3 examine or cause to have examined the parts of the books and records of the parties to
 4 a proceeding that relate to questions in dispute. The superior court, on application of
 5 the department, the board, or any members of it, shall enforce the attendance and
 6 testimony of witnesses and the production and examination of books, papers, and
 7 records.

8 * **Sec. 2.** AS 23.30.041(b) is amended to read:

9 (b) The administrator shall

- 10 (1) enforce regulations adopted by the board to implement this section;
 11 (2) recommend regulations for adoption by the board that establish
 12 performance and reporting criteria for rehabilitation specialists;
 13 (3) enforce the quality and effectiveness of reemployment benefits
 14 provided for under this section;
 15 (4) review on an annual basis the performance of rehabilitation
 16 specialists to determine continued eligibility for delivery of rehabilitation services;
 17 (5) submit to the department, on or before May 1 of each year, a report
 18 of reemployment benefits provided under this section for the previous calendar year;
 19 the report must include a general section, sections related to each rehabilitation
 20 specialist employed under this section, and a statistical summary of all rehabilitation
 21 cases, including
- 22 (A) the estimated and actual cost of each active rehabilitation
 23 plan;
 24 (B) the estimated and actual time of each rehabilitation plan;
 25 (C) a status report on all individuals requesting, waiving,
 26 beginning, completing, or terminating a reemployment benefits program
 27 including
- 28 (i) reasons for denial, waiver, suspension, or
 29 termination;
 30 (ii) dates of completion and return to work; and
 31 (iii) other information required by the director;

1 (D) the cost of reemployment benefits;

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

4 (i) the plan's occupational goal and whether the
5 individual obtained work after completion in the planned or another
6 occupation; and

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

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

11 (7) promote awareness among physicians, adjusters, injured workers,
12 employers, employees, attorneys, training providers, and rehabilitation specialists of
13 the reemployment program established in this subsection;

14 **(8) submit to the department, on or before October 1 of each year,**
15 **a report of stay-at-work benefits provided under AS 23.30.043 for the previous**
16 **calendar year; the report must include a general section, sections related to each**
17 **rehabilitation specialist employed under AS 23.30.043, and a statistical summary**
18 **of all stay-at-work cases, including**

19 **(A) the estimated and actual cost of each active stay-at-**
20 **work plan;**

21 **(B) the estimated and actual time of each stay-at-work**
22 **plan;**

23 **(C) a status report on all individuals requesting, beginning,**
24 **completing, or terminating a stay-at-work plan including**

25 **(i) reasons for denial or termination;**

26 **(ii) dates of completion and return to work; and**

27 **(iii) other information required by the director;**

28 **(D) the cost of stay-at-work benefits;**

29 **(E) status reports of all individuals who successfully**
30 **completed a stay-at-work plan that includes**

31 **(i) the plan's occupational goal and whether the**

1 **individual returned to work after completion of the stay-at-work**
 2 **plan; and**

3 **(ii) the individual's employment status six months,**
 4 **one year, and two years after stay-at-work plan completion.**

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

6 (c) An employee and an employer may stipulate to the employee's eligibility
 7 for reemployment benefits at any time. If an employee suffers a compensable injury
 8 and, as a result of the injury, the employee is totally unable, for **25** [45] consecutive
 9 days, to return to the employee's employment at the time of injury, the administrator
 10 shall notify the employee of the employee's rights under this section within 14 days
 11 after the **25th** [45TH] day. **Within 10 days after the employee receives the**
 12 **administrator's notification of the employee's rights, the employee shall elect, and**
 13 **notify the administrator and the employer of the election, whether to participate**
 14 **in the reemployment benefits process in accordance with this section or the stay-**
 15 **at-work benefits program established under AS 23.30.043. Except as provided in**
 16 **AS 23.30.043, if** [IF] the employee is totally unable to return to the employee's
 17 employment for **90** [60] consecutive days as a result of the injury, the employee or
 18 employer may request an eligibility evaluation. The administrator may approve the
 19 request if the employee's injury may permanently preclude the employee's return to the
 20 employee's occupation at the time of the injury. **Except as provided in AS 23.30.043,**
 21 **if** [IF] the employee is totally unable to return to the employee's employment at the
 22 time of the injury for **120** [90] consecutive days as a result of the injury, the
 23 administrator shall, without a request, order an eligibility evaluation unless a
 24 stipulation of eligibility was submitted. If the administrator approves a request or
 25 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 26 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 27 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
 28 selected by the administrator to perform an eligibility evaluation under this subsection
 29 is performing any other work on the same workers' compensation claim involving the
 30 injured employee, the administrator shall select a different rehabilitation specialist.

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

1 (f) An employee is not eligible for reemployment benefits if

2 (1) the employer offers employment within the employee's predicted
3 post-injury physical capacities at a wage equivalent to at least the state minimum wage
4 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
5 injury, whichever is greater, and the employment prepares the employee to be
6 employable in other jobs that exist in the labor market;

7 (2) the employee previously declined the development of a
8 reemployment benefits plan under (g) of this section, received a job dislocation benefit
9 under (g)(2) of this section, and returned to work in the same or similar occupation in
10 terms of physical demands required of the employee at the time of the previous injury;

11 (3) the employee has been previously rehabilitated in a former
12 workers' [WORKER'S] compensation claim and returned to work in the same or
13 similar occupation in terms of physical demands required of the employee at the time
14 of the previous injury; [OR]

15 (4) at the time of medical stability, no permanent impairment is
16 identified or expected;

17 (5) the employee fails to timely notify the administrator and the
18 employer of the employee's election under (c) of this section, unless the parties
19 submit to the administrator a stipulation to a reemployment benefits eligibility
20 evaluation or to the employee's eligibility for reemployment benefits;

21 (6) the employee completed a stay-at-work plan under
22 AS 23.30.043; or

23 (7) the employee has not cooperated with the stay-at-work benefits
24 program under AS 23.30.043(l).

25 * **Sec. 5.** AS 23.30 is amended by adding a new section to article 1 to read:

26 **Sec. 23.30.043. Stay-at-work benefits program.** (a) The stay-at-work benefits
27 program is established in the division. The division shall designate a member of the
28 division staff as coordinator of the stay-at-work benefits program.

29 (b) Within 14 days after an employee's election under AS 23.30.041(c) to
30 participate in the program, the administrator shall, on a rotating and geographic basis,
31 select a rehabilitation specialist from the list maintained under AS 23.30.041(b)(6) to

1 develop a stay-at-work plan and provide services under the plan. In selecting a
2 rehabilitation specialist, the administrator shall consider the rehabilitation specialist's
3 ability to accept and promptly provide program services and the rehabilitation
4 specialist's expertise and relevant experience relating to the employee's type of injury
5 or challenges specific to returning the employee to work with the employer. If the
6 person that employs a rehabilitation specialist selected by the administrator is
7 performing any other work on the same workers' compensation claim involving the
8 employee, the administrator shall select a different rehabilitation specialist.

9 (c) Within 60 days after the administrator selects the rehabilitation specialist,
10 the rehabilitation specialist shall

11 (1) develop a stay-at-work plan and provide the plan, in a format
12 prescribed by the director, to the employee, employer, program coordinator, and the
13 employee's attending physician; or

14 (2) provide the employee, employer, and the administrator with a
15 determination and findings supporting the determination, in a format prescribed by the
16 director, that the rehabilitation specialist is unable to develop a stay-at-work plan.

17 (d) The board shall establish by regulation the standards and procedures a
18 rehabilitation specialist must use in developing a stay-at-work plan and the contents
19 that the plan must include.

20 (e) The employee's attending physician shall provide a written opinion of
21 whether the employee has the permanent physical capacities to participate in a stay-at-
22 work plan. The failure of the employee's attending physician to provide an opinion
23 under this subsection constitutes grounds for a determination that the rehabilitation
24 specialist is unable to develop a stay-at-work plan under (c)(2) of this section.

25 (f) Within 14 days after the program coordinator receives a stay-at-work plan,
26 the program coordinator shall approve or deny the plan and notify the parties of the
27 decision. Within 30 days after the program coordinator notifies the parties under this
28 subsection, a party may request that the administrator review the plan. Within 14 days
29 after the administrator receives a request to review the plan, the administrator shall
30 issue a decision approving or denying the plan.

31 (g) Within 14 days after the administrator receives a determination under

1 (c)(2) of this section, the administrator shall decide whether the information in the
2 board's case file for the employee's workers' compensation claim supports the
3 rehabilitation specialist's determination and findings. If the administrator decides the
4 case file supports the rehabilitation specialist's determination and findings, the
5 administrator shall, within 10 days after the administrator's decision, notify the
6 employee and employer of the decision and notify the employee that the employee is
7 no longer eligible for stay-at-work benefits and may pursue reemployment benefits in
8 accordance with AS 23.30.041. If the administrator decides the case file does not
9 support the rehabilitation specialist's determination and findings, the administrator
10 shall, within 10 days after the administrator's decision, notify the employee, employer,
11 and rehabilitation specialist of the decision and

12 (1) notify the employee, employer, and rehabilitation specialist what
13 additional information is needed to develop a stay-at-work plan, who must submit the
14 information, and the date by which the information must be submitted; or

15 (2) select a different rehabilitation specialist in accordance with (b) of
16 this section to develop a stay-at-work plan and provide services under the plan.

17 (h) Within 10 days after the administrator notifies the parties of a decision
18 under (f) or (g) of this section, a party may seek review of the decision by requesting a
19 hearing under AS 23.30.110. The board shall uphold the decision of the administrator
20 unless evidence is submitted supporting an allegation of abuse of discretion on the part
21 of the administrator. The board shall render a decision within 30 days after completion
22 of the hearing.

23 (i) Only a rehabilitation specialist may develop a stay-at-work plan, provide
24 services under the plan, and make a determination and findings under this section. A
25 person who is not a rehabilitation specialist may perform work related to the stay-at-
26 work plan if the work is performed under the direct supervision of a rehabilitation
27 specialist employed in the same firm and location. The employer shall pay the fees
28 charged by the rehabilitation specialist or other person described in this subsection for
29 providing services under this section.

30 (j) The cost of the stay-at-work benefits incurred under this section shall be
31 the responsibility of the employer, shall be paid on an expense incurred basis, and may

1 not exceed \$3,000, exclusive of the fees charged by the rehabilitation specialist or
2 other person described in (i) of this section.

3 (k) Stay-at-work benefits terminate two years from the date the program
4 coordinator, administrator, or board approves the stay-at-work plan, whichever is later.

5 (l) After the employee has elected to participate in the program, and upon the
6 request of the employer, the administrator shall decide whether the employee has not
7 cooperated in the program. The administrator shall hold a hearing within 30 days after
8 the administrator receives a request from the employer for a hearing. The
9 administrator shall issue a decision within 14 days after the hearing. Within 10 days
10 after the administrator notifies the parties of the decision, either party may seek review
11 of the decision by requesting a hearing under AS 23.30.110. The board shall uphold
12 the decision of the administrator unless evidence is submitted supporting an allegation
13 of abuse of discretion on the part of the administrator. The board shall render a
14 decision within 30 days after completion of the hearing. If the employee is found to
15 have not cooperated with the program, the employer may terminate stay-at-work
16 benefits and disability benefits on the date on which a finding of noncooperation is
17 made under this subsection. Noncooperation means the employee's unreasonable
18 failure to

19 (1) maintain contact with the rehabilitation specialist;

20 (2) cooperate with the rehabilitation specialist in developing a stay-at-
21 work plan;

22 (3) comply with the employee's responsibilities outlined in the stay-at-
23 work plan; or

24 (4) participate in the stay-at-work plan or in a plan activity.

25 (m) An employee is not eligible for stay-at-work benefits if the employee fails
26 to timely notify the administrator and the employer of the employee's election under
27 AS 23.30.041(c), unless the parties submit to the administrator a stipulation that the
28 employee may participate in the program.

29 (n) An employer may elect not to participate or continue to participate in a
30 stay-at-work plan at any time before the employee completes the plan. If an employer
31 elects not to participate under this subsection, the employer shall notify the employee,

1 the program coordinator, and, if applicable, the rehabilitation specialist of the election.
 2 The notice must be in the format prescribed by the director and inform the employee
 3 that the employee is no longer eligible for stay-at-work benefits and may pursue
 4 reemployment benefits in accordance with AS 23.30.041. The notice of the election is
 5 effective the day after the notice is served on the employee, the program coordinator,
 6 or, if applicable, the rehabilitation specialist, whichever is later. The employer is
 7 responsible for the cost of the stay-at-work benefits incurred before the notice
 8 becomes effective.

9 (o) In this section,

10 (1) "administrator" means the reemployment benefits administrator
 11 employed under AS 23.30.041(a);

12 (2) "plan" or "stay-at-work plan" means a plan developed by a
 13 rehabilitation specialist under this section to return an employee to work for the
 14 employer;

15 (3) "program" means the stay-at-work benefits program established in
 16 this section;

17 (4) "program coordinator" means the division staff member designated
 18 as the coordinator of the program;

19 (5) "rehabilitation specialist" has the meaning given in
 20 AS 23.30.041(r);

21 (6) "stay-at-work benefits" means benefits provided under the
 22 program.

23 * **Sec. 6.** AS 23.30.100(a) is amended to read:

24 (a) Notice to an employer of an injury or death in respect to which
 25 compensation is payable under this chapter shall be given within **15** [30] days after the
 26 date of the [SUCH] injury or death [TO THE EMPLOYER].

27 * **Sec. 7.** AS 23.30.105(a) is amended to read:

28 (a) The right to compensation for disability under this chapter is barred unless
 29 a claim for it is filed within two years after the employee has knowledge of the nature
 30 of the employee's disability and its relation to the employment and after disablement.
 31 However, the maximum time for filing the claim in any event other than arising out of

1 an occupational disease shall be four years from the date of injury, and the right to
2 compensation for death is barred unless a claim therefor is filed within one year after
3 the death, except that, if payment of compensation has been made without an award on
4 account of the injury or death, a claim may be filed within two years after the date of
5 the last payment of benefits under AS 23.30.041, 23.30.043, 23.30.180, 23.30.185,
6 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of
7 latent defects pertinent to and causing compensable disability, the injured employee
8 has full right to claim as shall be determined by the board, time limitations
9 notwithstanding.

10 * **Sec. 8.** This Act takes effect January 1, 2025.